PUBLIC MATTER—DESIGNATED FOR PUBLICATION

Filed May 25, 2022

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	SBC-20-O-30310
	)	
DAVID ROMANO ISOLA,	)	OPINION
	)	
State Bar No. 150311.	)	
	)	

In his first disciplinary case after 21 years of practice, David Romano Isola is charged with 26 counts of misconduct in an environmental remediation matter. A hearing judge dismissed 15 of those counts, finding culpability on 11 counts, including six acts of moral turpitude, appearing for a party without authority, failing to inform a client of significant developments, breach of fiduciary duties, overreaching, and failing to communicate a settlement offer. The judge recommended two years actual suspension, with conditions, including continuing the suspension until proof of rehabilitation, fitness to practice, and present learning and ability in the law.

Isola appeals, denying culpability for all charges except his failure to communicate. He advocates for an actual suspension less than 90 days. The Office of Chief Trial Counsel of the State Bar (OCTC) also appeals, asserting that Isola is culpable of additional misconduct, that his actions were intentional, and that disbarment is appropriate.

Upon our independent review of the record (Cal. Rules of Court, rule 9.12), we agree with the hearing judge's dismissals, but find that additional counts also require dismissal. In sum, we find that Isola did not act with moral turpitude. Instead, he neglected to communicate with his clients over a six-year period, while he successfully pursued their interests. Importantly, Isola admitted at trial his failure to communicate and acknowledged that he should have

memorialized the attorney-client relationship. Unlike the hearing judge, we do not find that Isola's lack of communication with his clients negates or undermines the original authority he received when he was hired. We find culpability on two counts of misconduct involving failure to communicate (counts twenty-one and twenty-two). Based on Isola's misconduct and the aggravating and mitigating circumstances, we find that a 30-day actual suspension is necessary to protect the public, the courts, and the legal profession.

I. PROCEDURAL BACKGROUND

OCTC filed a Notice of Disciplinary Charges (NDC) on May 28, 2020. Isola timely filed his response, denying all allegations. OCTC filed an Amended Notice of Disciplinary Charges (ANDC) on September 10. The court deemed Isola's response to the NDC as his response to the ANDC. On September 17, the parties filed a Stipulation as to Facts (Stipulation). Trial was held on September 21, 22, and 23; October 27 and 30; November 9, 10, and 13; December 17; and January 6 and February 9, 2021. The parties submitted closing briefs and the hearing judge issued her decision on June 16, 2021. The parties submitted requests for review in July 2021. After briefing was completed, we heard oral argument on March 28, 2022.

II. FACTUAL BACKGROUND

The facts are based on the Stipulation, trial testimony, documentary evidence, and the hearing judge's factual findings, which are entitled to great weight unless we have found differently based on the record. (Rules Proc. of State Bar, rule 5.155(A); *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737, 748 [Review Department may decline to adopt hearing judge's findings if insufficient supporting evidence exists in record]; see also *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660, 672, fn. 15.) If the evidence leads to differing reasonable interpretations of the facts, we must adopt the inference that misconduct was lacking as OCTC has the burden to prove culpability. (*In the*

Matter of DeMassa, *supra*, 1 Cal. State Bar Ct. Rptr. at p. 749 [appropriate to resolve reasonable doubts in favor of respondent and reject contrary finding as unsupported by clear and convincing evidence].) Our recital of the facts utilizes these principles.

A. The Parties

In May 2011, Isola met with Gregory Hahn, Thomas DeArth, and Richard Greco in a diner in New Jersey to discuss representation of the Hahn family in an environmental remediation matter (Diner Meeting).[1] The Hahns owned a dry-cleaning business, Cameo Dry Cleaners of Fair Lawn, Inc. (Cameo Cleaners of Fair Lawn), from 1983 to 2002. Cameo Cleaners of Fair Lawn was located at a property in Fair Lawn, New Jersey, known as 31-01 Broadway. The Grecos (Richard, Michael, and Robert) owned the property and their family had previously operated a dry-cleaning business there, Cameo Fabric Care Center, Inc., also known as Cameo Cleaners. The Hahns bought the dry-cleaning business from the Grecos and they entered into a lease agreement for the property. Gregory currently works as a commercial real estate broker.

DeArth was a founding partner of Genesis Engineering & Redevelopment (Genesis), a consulting firm working on environmental remediation projects. Isola partnered with Genesis; he did legal work while Genesis did consulting work. Genesis and Isola promoted their services as environmental remediation at no cost to a client with insurance coverage.

[1] Isola was admitted to practice law in California in 1990 and later expanded his practice to New Jersey. He opened an office there, hired a New Jersey licensed attorney, and then became licensed to practice law there in 2013. All of the misconduct charged in this matter related to events that occurred in New Jersey. Isola is currently inactive in New Jersey and no longer plans to practice there. A grievance regarding the at-issue misconduct was also made to the New Jersey Office of Attorney Ethics. Isola testified that the New Jersey matter is in abeyance while this proceeding is ongoing.

B. Initial Environmental Remediation Events

The New Jersey Department of Environmental Protection (NJDEP) has the power to oversee remediation of contaminated sites.[2] In 2003, the NJDEP notified the Grecos about environmental contamination from dry-cleaning solvents at 31-01 Broadway. The NJDEP sent further correspondence in 2008 and 2009 regarding environmental remediation of the site. Richard[3] told Gregory about the environmental issues and asked him to assist him in finding insurance policies to help cover remediation.

In 2009, Richard retained Anderson Kill & Olick, P.C. (Anderson Kill) to help the Grecos locate any historical insurance coverage on the site.[4] Anderson Kill discovered two Travelers policies related to the Hahns: one from January 1985 to January 1986 and the second from January 1986 to October 1986. The policies insured Cameo Cleaners of Fair Lawn, Chung Hee, Min-Ku, and Chang Woo Hahn.[5] In 2010, letters were sent to Travelers regarding the Hahns' insurance policies. Even though the letters were purportedly sent from Gregory, the hearing judge found that the letters were likely sent by Richard on Gregory's behalf, with Gregory's consent, as they were working together to find insurance coverage for 31-01 Broadway.

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[2] 13C Slowinski & Walentowicz, N.J. Practice, Real Estate Law and Practice (3d ed. 2014) Environmental Controls § 46:8, pp. 21–22.

[3] We refer to the Grecos and the Hahns by their first names to avoid confusion; no disrespect is intended.

[4] When there is a continuing triggering event in environmental claims, coverage can be obtained from consecutive policies. (Kenny & Lattal, New Jersey Insurance Law (2022) § 21-35, p. 780.) Insurance policies triggered under a continuous trigger scheme are not jointly and severally liable. Rather, coverage is allocated among triggered policies based on years on the risk and policy limits; this is referred to as "weighted allocation." (*Id*. at § 21-36, p. 780; *Owens-Illinois v. United Ins. Co.* (1994) 138 N.J. 437.)

[5] Min-Ku is Gregory's Korean name. Chung Hee is his mother and Chang Woo is his father.

In January 2011, DeArth and Richard entered into a service agreement for Genesis to assist with environmental remediation at 31-01 Broadway. In March 2011, Michael and DeArth executed an NJDEP form that stated that insurance from the Hahns had been identified and could be used for coverage in addition to the insurance identified by the Grecos. The form also asserted that Genesis was working with "Ms. Hahn" in obtaining project funding through the tenant's historical insurance assets.

C. Isola's Involvement

Around 2010 or 2011, DeArth introduced Richard to Isola at a trade show and Richard told Isola about the environmental remediation at 31-01 Broadway. Richard mentioned his relationship with Gregory, who had helped him locate insurance policies for the site. Gregory was aware of the environmental issues resulting from the dry-cleaning business the Hahns had previously operated there.

At the May 2011 Diner Meeting, where Isola met with Gregory, DeArth, and Richard,[6] Isola presented information about the services he and Genesis could provide, including the

[6] DeArth testified that he was at the Diner Meeting and believed that Gregory hired Isola. Richard did not testify at Isola's disciplinary trial, but a deposition transcript was introduced where Richard stated that Isola was introduced to Gregory at the Diner Meeting as the attorney who would represent Gregory, who was "fine" with the representation. Isola testified about the subjects discussed at the Diner Meeting, which the hearing judge found credible. Despite Gregory's testimony that he did not retain Isola at the Diner Meeting, the judge did not rely on this testimony due to inconsistencies in his prior deposition testimony. We rely on Isola's version of events as it was corroborated at trial by DeArth and was consistent with Richard's deposition testimony. This finding is consistent with the principle that reasonable doubts must be resolved in favor of the respondent. (*In the Matter of DeMassa*, *supra*, 1 Cal. State Bar Ct. Rptr. at p. 749.) Therefore, we reject OCTC's argument that the hearing judge erred in crediting Isola's testimony. As discussed *post*, OCTC failed to prove that Isola lacked authority to represent the Hahns.

possibility of a lawsuit to force Travelers to cover the remediation.[7] They discussed the insureds listed in the Travelers' policies, and making a claim using Min-Ku as the insured.[8] They then exchanged business cards and shook hands. Isola understood from the conversation at the Diner Meeting that he was authorized to represent Min-Ku and Cameo Cleaners of Fair Lawn to discharge all liability under the "Spill Act" utilizing insurance.[9] A retainer agreement was never signed. Isola did not discuss with Gregory how best to communicate with him.

Isola began working on the case. He did not contact Gregory until nearly six years later when he finalized a settlement agreement on behalf of the Hahns. The record is clear that Isola only acted as the Hahns' attorney; he never represented the Grecos. Even though Gregory was aware of the environmental issues at 31-01 Broadway, nothing in the record suggests that he took any action after meeting with Isola regarding remediation. This is consistent with the various accounts that Gregory hired Isola at the Diner Meeting and believed that Isola would find coverage and represent the Hahns in any environmental claims related to the site.

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[7] "An insurer's obligation under an insurance policy is generally triggered by an event and notice to the insurer of a potentially covered claim." (Guevara & Deveau, Environmental Liability and Insurance Recovery (2012) p. 322.) Most policies require insurers to defend "suits" against the insured. (Kenny & Lattal, New Jersey Insurance Law, *supra*, §§ 21-2 & 21-3, pp. 726-727.)

[8] At this point in the factual history, the identity of Min-Ku, one of the names listed on the policies, was confusing. Isola believed that Min-Ku was Gregory's mother, not Gregory himself. As discussed *post*, whether Isola knew Min-Ku's actual identity is not outcome determinative because Gregory, as spokesperson for the Hahns, had authority to hire Isola to represent himself, Cameo Cleaners of Fair Lawn, and the other family members connected to the remediation.

[9] Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. [establishing liability for damages from discharge of hazardous substances in New Jersey, including cleanup and removal costs]. The NJDEP has broad authority to enforce the Spill Act. (13C Slowinski & Walentowicz, N.J. Practice, Real Estate Law and Practice, *supra*, § 46:150, p. 211.)

D. Contact with the NJDEP on Behalf of the Hahns

Isola's initial strategy was to partner with Genesis and file an NJDEP claim that would trigger Travelers' duty to defend and provide coverage for the remediation costs.[10] Isola directed Genesis to contact the NJDEP on behalf of the Hahns, which they did.[11]

On March 30, 2012, Genesis completed an NJDEP receptor evaluation form that identified Min-Ku as the person responsible for conducting the remediation. On April 23, Kenneth Wenz, a Genesis employee, sent a letter to Min-Ku, enclosing a Licensed Site Remediation Professional (LSRP) retention form. The form notified the NJDEP that remediation work conducted by Genesis would be supervised by an LSRP.[12] Wenz asked Min-Ku to sign the form. Instead, Isola signed it on April 30, as "counsel for" Min-Ku, the "owner" of the dry-cleaner. Above the signature line, the form provided, in part, "I certify under penalty of law that I have personally examined and am familiar with the information submitted herein, and that to the best of my knowledge, I believe that the submitted information is true, accurate and complete." Isola believed he had authority to execute this form as counsel for the Hahns since it

[10] An NJDEP directive ordering action will trigger the duty to defend. (Kenny & Lattal, New Jersey Insurance Law, *supra*, §§ 21-2 & 21-3, pp. 726-727.) "[T]he best strategy in insurance coverage is, frankly, to implement an aggressive offense in seeking coverage for the loss." (Guevara & Deveau, Environmental Liability and Insurance Recovery, *supra*, p. 297.)

[11] Later, on March 9, 2012, DeArth signed a master services agreement for Genesis to perform remediation services on behalf of Min-Ku. No one signed the document for Min-Ku. Isola testified that he never got a signature for the services agreement as Travelers had not agreed to pay for any remediation and, therefore, Genesis did not have funding to do the work.

[12] Under the Site Remediation Reform Act, an LSRP is responsible for overseeing remediation of contaminated sites. (N.J.S.A. 58:10C-1 et seq.; 13C Slowinski & Walentowicz, N.J. Practice, Real Estate Law and Practice, *supra*, § 46-8, pp. 21-22.) The NJDEP retains oversight under certain circumstances. (*Id*. at § 46:118, pp. 180–181.)

was part of his strategy to access the insurance coverage.[13] He testified that it was not his practice to notify clients when he completed an NJDEP form in the course of representation.

E. Isola's Dealings with Travelers

Most of Isola's relevant communications with Travelers were with Diane Colechia, a senior account executive responsible for evaluating claims in the company's Environmental Coverage Unit.

1. Isola Tenders Claim to Travelers on Min-Ku's Behalf

On July 18, 2011, Isola sent Colechia a letter stating that he represented Min-Ku in claims asserted by the NJDEP and demands made by the Grecos. Isola stated that, based on liability insurance Min-Ku and her husband purchased while operating the dry-cleaning business, Min-Ku was now tendering her defense and indemnity to Travelers. At this time, Isola mistakenly believed Min-Ku was Gregory's mother; as noted previously, Chung Hee was Gregory's mother.

Colechia responded on August 4, stating she had no documentation of demands or claims made against Cameo Cleaners of Fair Lawn or Min-Ku. Isola responded on September 8, stating, "There are two claimants *implicated* in this matter." (Italics added.) He stated these claimants were (1) the NJDEP, which was compelling Min-Ku "and others" to undertake an investigation and remediation of dry cleaning-related solvents at 31-01 Broadway, and (2) the Grecos, who owned 31-01 Broadway. At the time he wrote the letter, Isola had instructed Genesis to get a claim from the NJDEP, but an actual claim had not been filed. Isola believed that Min-Ku, as a

[13] The expert testimony at trial was unclear as to whether an attorney could sign an LSRP retention form on behalf of a client. Our independent research has not revealed whether an attorney could sign the form on behalf of a client.

tenant, was an additionally responsible party in the eyes of the NJDEP.[14] If the Hahns had not already been targeted, he believed they would soon be—data had been collected showing potential vapor intrusion at a nearby elementary school.

Isola testified that at the time he wrote this letter, he was unaware of the distinction between "Cameo Cleaners of Fair Lawn" and "Cameo Cleaners." The hearing judge found this testimony was not credible because it conflicted with Isola's testimony that he "jumped the gun" by disclosing in the letter that Min-Ku was already involved in an NJDEP claim. Isola testified that at the time he wrote this letter, he knew that Genesis had met with the NJDEP on behalf of the Hahns. When asked about the letter, Isola also stated, "I jumped the gun. I fully anticipated that there would be [an NJDEP] claim forthcoming, and that's what I indicated to Ms. Colechia . . . . I thought that we would be seeing [NJDEP] demand for the sensitive receptor survey and the school investigation imminently, if it hadn't already been issued." At the time, Isola believed Cameo Cleaners of Fair Lawn was already the subject of an NJDEP claim. His comment that he "jumped the gun" was made in hindsight at trial; he was explaining that he now knows that an NJDEP claim had not been made against the Hahns. Therefore, there is no inconsistency between his testimony that he did not yet know the distinction between Cameo Cleaners of Fair Lawn and Cameo Cleaners and the comment. Based on our review of the record, we reverse the hearing judge's credibility finding. (See *In the Matter of DeMassa*, *supra*, 1 Cal. State Bar Ct. Rptr. at p. 748; *In the Matter of Lingwood*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 672, fn. 15.)

[14] Persons "in any way responsible" for any hazardous substance are liable under the Spill Act; that is, anyone with ownership or control over the property at the time of the discharge may be liable. (*State, Dept. of Environmental Protection v. Ventron Corp.* (1983) 94 N.J. 473, 502; 13C Slowinski & Walentowicz, N.J. Practice, Real Estate Law and Practice, *supra*, § 46:143, pp. 202-203.)

2. The Grecos File an Environmental Lawsuit against the Hahns

On February 3, 2012, the Grecos filed a complaint in New Jersey Superior Court against Min-Ku and the dry-cleaning business (2012 environmental lawsuit). Isola accepted service of the suit on behalf of Min-Ku. He did not inform Gregory about the lawsuit because its sole purpose was to trigger coverage by Travelers, which was the stated goal from the Diner Meeting. On February 14, Isola sent Colechia a copy of the lawsuit. In March 2012, he filed an answer denying the allegations without consulting the Hahns.

On August 3, Isola sent Colechia a copy of the amended complaint. Colechia responded that Travelers would participate in the defense of Min-Ku and Cameo Cleaners of Fair Lawn, including paying attorney fees.[15] Isola later filed answers to the amended and second amended complaints, again without consulting the Hahns. The 2012 environmental lawsuit was eventually dismissed without prejudice and refiled as a new lawsuit in January 2016, with identical claims (2016 environmental lawsuit).

3. Travelers' Defense Obligations

On November 5, 2012, Isola sent Colechia a letter with a proposal for resolving the case, which included settlement with the Grecos and a policy buyback agreement. He also attached the task order from Genesis to evaluate the contamination site. Travelers refused to fund the Genesis evaluation because its insureds were not subject to an NJDEP order and thus not required to perform a site investigation. On January 8, 2013, Colechia sent Isola a letter stating that Travelers would contribute six percent toward the fees for the defense-related work performed on behalf of its insured. This was much lower than Isola expected.

[15] In defending an insured in an environmental claim, insurers often agree to pay defense costs. (Guevara & Deveau, Environmental Liability and Insurance Recovery, *supra*, p. 330.)

After many discussions with Travelers, Isola filed a third-party complaint against Travelers on July 29, 2013, in the 2012 environmental lawsuit. The aim of the suit was to pressure Travelers to increase the defense costs. Isola did not discuss the complaint with the Hahns as it only affected the amount Travelers would pay for the defense costs, and these funds did not directly or indirectly come from his clients. In September 2013, Travelers agreed to increase its share of the defense costs to 36.84 percent in exchange for dismissal of the third-party complaint.[16] No formal settlement agreement was signed. Isola dismissed the third-party complaint without prejudice and without discussing it with the Hahns.

F. Greco and Hahn Settlement Agreement

Isola discussed settlement of the 2016 environmental lawsuit with the Grecos' attorney, Ryan Milun. Isola told Milun that the Hahns would only pay what Travelers would cover. Isola and Milun went back and forth on what the remediation would cost, ranging from a few hundred thousand to two million dollars. Isola did not discuss the cost proposals with the Hahns.

On December 13, 2016, Isola proposed to Milun that Min-Ku assign the Travelers policies to the Grecos. He had not discussed this with the Hahns. Milun made settlement offers, proposing that the Hahns pay over $1.5 million. Travelers then asserted that it would not consent to an assignment of the Hahns' policies. Isola did not reveal this to the Hahns or Milun because he did not believe Travelers' position was "binding or material or relevant." In January 2017, Milun again made a $1.5 million demand to Isola for settlement. Isola tentatively agreed, without consulting the Hahns, subject to a condition that limited the Grecos to obtaining the money only from the Hahns' insurance coverage.

[16] The weighted allocation between policies also applies to the allocation of defense costs. (Kenny & Lattal, New Jersey Insurance Law, *supra*, § 21-41, pp. 789-790; *Owens-Illinois v. United Ins. Co.*, *supra*, at p. 477.) Isola believed that the proposal to pay 36.84 percent of the defense costs was consistent with Travelers' obligation under the law.

Milun and Isola then began to prepare the settlement agreement. Multiple versions of the settlement agreement were drafted, including one version with the erroneous statement that Travelers had not objected to the settlement. Travelers had told Isola on March 17, 2017, that it did not agree with the settlement.

Meanwhile, the Grecos had filed a separate lawsuit in January 2017 against the Hahns alleging a breach of a lease guarantee (lease guarantee lawsuit); Peter Kim represented Gregory in the lease guarantee lawsuit. Milun told Kim of the 2016 environmental lawsuit, and Kim thereafter informed Gregory. Isola learned from Milun that Kim was representing Gregory in the lease guarantee lawsuit. On March 27, 2017, Isola emailed Kim, introducing himself and informing Kim of the settlement agreement involving Min-Ku. Isola asked for assistance in contacting the Hahns.

Attached to the March 27 email was a draft of the settlement agreement containing the erroneous statement about Travelers' position on the settlement. Isola was not aware the draft sent to Kim contained the error. Isola believed the version being used stated that Travelers had been informed of the settlement negotiations, with no indication of Travelers' position.[17] On April 12, Isola emailed Kim a summary of a recent status conference with the court in the 2016 environmental lawsuit. The email was silent as to Travelers' objection.

Another insurance company, Hartford, then notified Milun of additional insurance policies for the Hahns' business from Hartford. Isola proposed to Milun and Kim that the

[17] We agree with the hearing judge that Isola's failure to catch the erroneous statement amounted to simple negligence as Isola and Milun credibly testified that multiple versions were involved and the wrong one was accidentally sent to Kim.

Hartford policies could be assigned to the Grecos, which could resolve all the lawsuits. Gregory discussed the settlement with Kim, but not with Isola.[18]

During April discussions as to who would sign the settlement agreement, the parties learned that Min-Ku was actually Gregory's name, not his mother's.[19] On May 1, 2017, Gregory approved the agreement and arranged for his mother to sign it. The settlement agreement between the Grecos and the Hahns was executed on May 11, 2017, and signed by Chung Hee, Gregory's mother, on behalf of herself and Cameo Cleaners of Fair Lawn.[20] The Hahns agreed to a $1.5 million consent judgment and the Grecos agreed that they could only seek enforcement of the judgment through insurance.[21] The Hahns also agreed to assign their proceeds under the insurance policies to the Grecos. The agreement was not contingent on Travelers' consent and Isola never informed Kim or Milun that Travelers had objected. However, Isola did not look at the signed version of the settlement agreement as Milun and Kim handled the final stages of the settlement. Later, Travelers paid Isola $26,085.69 for his services on behalf of Min-Ku.[22]

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[18] Isola did not communicate with any Hahn family member after the Diner Meeting until nearly six years later when he finalized the terms of the settlement agreement. However, at a June 2018 deposition in another case, *Greco v. Travelers*, Isola testified that he recalled having approximately "five to ten" conversations with Gregory. Later, at the disciplinary trial in the Hearing Department and in an interview with the New Jersey Office of Attorney Ethics, he admitted that this testimony was incorrect and that he had spoken directly to Gregory only at the Diner Meeting.

[19] Kim was also unaware until this time that Min-Ku was actually Gregory.

[20] The signed version contained the erroneous statement that Travelers had not objected to the settlement. Gregory's father was not alive at the time of the settlement.

[21] The Hahns had coverage for up to $2 million. Therefore, the $1.5 million settlement left $500,000 in coverage for the Hahns for any future claims.

[22] In July 2017, the Grecos filed a lawsuit against Travelers and Hartford to demand they pay the Hahns' share of the remediation costs. A New Jersey superior court determined in a summary judgment order that the settlement agreement could not be enforced against Travelers and Hartford. The summary judgment order did not affect the release the Hahns obtained from the Grecos for the claims against them.

Isola's representation of the Hahns resulted in a positive outcome for his clients. The goal of the representation was to find insurance coverage so that the Hahns would not have to pay out-of-pocket for the remediation. He initiated discussions with Travelers so that Travelers would share in the investigation and remediation costs of 31-01 Broadway with the Grecos' insurance. Despite Isola's efforts, Travelers did not acknowledge its duty to defend until the 2012 environmental lawsuit was filed. Subsequently, Travelers appointed Isola as counsel and paid for him to defend against the environmental claims. Thereafter, Isola kept Travelers informed of the remediation efforts and the possible settlement of the lawsuit. Isola negotiated the settlement on behalf of the Hahns. The settlement agreement procured a complete release of the Hahns from liability to the Grecos and preserved insurance coverage for possible future claims. Isola completed the representation at no cost to the Hahns.

III. CULPABILITY

OCTC must prove culpability by clear and convincing evidence. (Rules Proc. of State Bar, rule 5.103; *Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552 [clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command unhesitating assent of every reasonable mind].) Any reasonable doubts resulting from the evidence are resolved in favor of the respondent. (*Himmel v. State Bar* (1971) 4 Cal.3d 786, 793-794.) Evidence leading to differing reasonable interpretations of facts must lead us to adopt the inference of no culpability. (*In the Matter of DeMassa*, *supra*, 1 Cal. State Bar Ct. Rptr. at p. 749.)

Like the hearing judge, we first discuss the issue of Isola's authority as attorney for the Hahns and Cameo Cleaners of Fair Lawn. An attorney's duty to a client depends on the existence of an attorney-client relationship. (*Fox v. Pollack* (1986) 181 Cal.App.3d 954, 959.) "[T]he relationship can only be created by contract, express or implied. [Citations.]" (*Koo v. Rubio's Restaurants, Inc.* (2003) 109 Cal.App.4th 719, 729.) An implied-in-fact contract arises

from conduct of the parties that shows there is a relationship despite the absence of a formal agreement. An attorney-client relationship may be informally created by acts of the parties without a written contract. (1 Witkin, Cal. Procedure (6th ed. 2022) Attorneys, § 40.) There are several indicia of an attorney-client relationship, but the intent and conduct of the parties are critical to the formation of such a relationship. (*Lasky, Haas, Cohler & Munster v. Super. Ct.* (1985) 172 Cal.App.3d 264, 285.)

We agree with the hearing judge that the record supports the existence of an attorney-client relationship between Isola and Gregory, as representative of Cameo Cleaners of Fair Lawn. At the meeting, Isola met with Gregory, who represented the Hahn family.[23] They discussed the usual aspects of representation in these types of matters, including securing insurance coverage and the occasional need for a lawsuit. Gregory authorized Isola to begin working on the environmental remediation matter for his family. The conduct of the parties is consistent with the finding of an attorney-client relationship.[24] Gregory was aware of his family's involvement with the environmental issues at 31-01 Broadway. Nothing in the record suggests that after the Diner Meeting Gregory took further action regarding the remediation, which comports with the inference that Gregory hired Isola to act as his attorney to address the Hahns's liability. Gregory did not contact Travelers to make a claim or contact another attorney to deal with the remediation, even though he knew of the existence of the policies and was an experienced real estate professional. Isola's conduct also comports with the existence of an attorney-client relationship. After the Diner Meeting, Isola began working to establish coverage

[23] As noted *ante*, the hearing judge did not rely on Gregory's recollections of the Diner Meeting. He was the only one to testify that Isola was not hired at the Diner Meeting.

[24] We note that it would have been much easier to establish the existence of an attorney-client relationship if Isola had memorialized the understanding from the Diner Meeting in a signed retainer agreement.

and discharge the Hahns from liability. He then acted as the Hahns' attorney when they were sued by the Grecos.

We next address the extent of Isola's authority as the Hahns' attorney. Authority conferred upon an attorney is, in part (1) apparent authority—the authority to do that which the attorney was hired to do—and (2) actual authority implied in law. (*Blanton v. Womancare, Inc.* (1985) 38 Cal.3d 396, 404.) Considering our finding that Gregory hired Isola to discharge the Hahns' liability for the environmental issues at 31-01 Broadway, it follows that Isola had apparent authority to take reasonable actions to achieve that objective. Therefore, we disagree with the hearing judge that Isola's authority was somehow "limited." As the attorney, Isola was tasked with advancing the interests of the Hahns regarding the remediation. He did so by initiating a claim with Travelers, accepting service of the environmental lawsuit, and filing an answer to a complaint, among other things. Even though the Grecos had not yet sued the Hahns at the time of the Diner Meeting, the possibility of a lawsuit was discussed then. Clearly, Isola should have communicated with Gregory that the Grecos had sued, as it was a significant development in the case. However, this failure to inform did not decrease his authority to work on the environmental remediation matter for which he was hired. We agree with Isola that his failure to communicate cannot be conflated with a lack of authority. He believed in good faith that he had authority to act. (See *In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234, 240-241, citing *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387, 397-398, [no moral turpitude where attorney acts with apparent authority believed in good faith to have obtained].) Accordingly, we find that the record supports the finding that Isola had full authority to act as attorney for the Hahns and Cameo Cleaners of Fair Lawn in discharging their liability for the contamination.

OCTC argues on review that no attorney-client relationship existed with any of the Hahns and that Isola had no authority after the Diner Meeting to represent any of the Hahn family members. We disagree and we find that Isola had authority to represent the Hahns and Cameo Cleaners of Fair Lawn after the discussion between Isola and Gregory at the Diner Meeting.[25] In addition, considering our principles regarding reasonable inferences and resolving reasonable doubts in favor of the respondent, we hold that Isola had authority to represent the Hahns. At the Diner Meeting, Isola met Gregory, who had the ability to hire Isola to handle the remediation for him and his family. The confusion regarding Gregory's name and the fact that Isola had not met Gregory's mother does not reduce or eliminate Isola's authority as the attorney hired by Gregory to represent the Hahns and find coverage for Cameo Cleaners of Fair Lawn.

A. Counts One, Three, and Twenty-Five: Moral Turpitude (Bus. & Prof. Code, § 6106)

Counts one, three, and twenty-five alleged that Isola committed various moral turpitude violations including dishonest and corrupt acts (count one), a scheme to defraud (count three), and habitual disregard of client interests (count twenty-five). Business and Professions Code section 6106[26] provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. The hearing judge dismissed these counts with prejudice after finding OCTC failed to present clear and convincing evidence establishing culpability. She found that Isola had an honest belief that he was representing the Hahns' best interests, and that he was not spurred by a corrupt, dishonest, or

[25] OCTC argues that we should reverse the hearing judge's finding that Isola credibly asserted that the Diner Meeting included a discussion about his services and the possibility of a lawsuit. OCTC's argument is based on the belief that Isola was dishonest. As evidence of Isola's dishonesty, OCTC points to Isola's failure to correct the settlement agreement regarding Travelers's objection. We disagree, as discussed *post*, because we find that his actions did not amount to misconduct. There is no clear and convincing evidence that Isola was dishonest.

[26] All further references to sections are to this source, unless otherwise noted.

fraudulent purpose. Neither party challenges these dismissals on review. The record shows that Isola did not engage in moral turpitude in his representation of the Hahns. He believed he was advancing their interests by securing insurance coverage and representing them in lawsuits related to the remediation. Therefore, we affirm the dismissal of counts one, three, and twenty-five with prejudice. (*In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 843 [dismissal of charges for want of proof after trial on merits is with prejudice].)

B. Counts Two, Seven, and Eleven: Moral Turpitude—Misrepresentation (§ 6106)

Counts two, seven, and eleven alleged Isola made various false and misleading statements to Travelers. The hearing judge found OCTC did not prove these charges by clear and convincing evidence and dismissed counts two, seven, and eleven with prejudice.

Count two alleged that Isola falsely stated in a July 18, 2011 letter to Travelers, that he represented Min-Ku, that Min-Ku was female, and that Min-Ku had decided to tender her defense and indemnity to Travelers. At this time, Isola was unaware that Min-Ku was actually Gregory and not Gregory's mother. OCTC argues we should reverse the hearing judge on count two because Isola had no authority to represent Min-Ku. As discussed *ante*, we find that Isola had authority to represent the Hahns and to advance their interests concerning the remediation. Therefore, we affirm the dismissal of count two with prejudice. (*In the Matter of Kroff*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

Count seven alleged Isola made false and misleading statements to Travelers in January 2017 regarding his representation of Min-Ku and his authority to negotiate a settlement of the 2016 environmental lawsuit. OCTC again argues that we should find culpability because Isola had no authority to represent Min-Ku. We disagree. Isola was the attorney for the Hahns and made no intentional misrepresentation in his January 2017 discussions with Travelers regarding

his representation. Therefore, we affirm the dismissal of count seven with prejudice. (*In the Matter of Kroff*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

Count eleven alleged Isola falsely represented in a September 8, 2011 letter to Travelers that (1) Min-Ku was the insured making the claim and split her time between Korea and the United States; (2) Min-Ku had knowledge of New Jersey claims since 2002; (3) Min-Ku had received and was compiling several letters from the NJDEP;[27] and (4) Min-Ku believed she had purchased insurance exclusively from Travelers during the relevant period and had not corresponded with any other insurers. The hearing judge dismissed count eleven, finding no clear and convincing evidence that the assertions were false or not honestly held. Neither party disagrees with the dismissal of count eleven on review. After review of the record, we agree with the dismissal because, at the time he wrote the letter, Isola believed he was conveying correct information based on his discussion with Gregory at the Diner Meeting. Therefore, count eleven is dismissed with prejudice. (*In the Matter of Kroff*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

C. Count Ten: Moral Turpitude—Misrepresentation (§ 6106)

Count ten alleged Isola made false statements in letters to Travelers, dated July 18 and September 8, 2011, regarding the existence of an NJDEP claim against Min-Ku. In the July 2011 letter, Isola stated that he represented Min-Ku regarding "claims asserted by the [NJDEP] and demands made by the owner of the real property known as 31-01 Broadway." The hearing judge found it reasonable to infer that Isola did not actually know there was no NJDEP claim against Cameo Cleaners of Fair Lawn when writing the July 2011 letter, and found his

[27] The hearing judge found that the statement regarding the NJDEP letters was false but was duplicative of the allegations charged in count ten, for which she found culpability. As discussed *post* under count ten, we find that there was not clear and convincing evidence of a moral turpitude misrepresentation.

misstatement was not an act of moral turpitude. Neither party disputes this finding. We affirm the dismissal of the portion of count ten relating to the July 18, 2011 letter.

Regarding the September 8, 2011, letter, the ANDC alleged the following statement was a misrepresentation: "There are two claimants implicated in this matter, the first being the [NJDEP], which is compelling Min-Ku Hahn (and others) to undertake an investigation and remediation of dry-cleaning-related solvents at . . . 31-01 Broadway . . . . The second claimant is the current property owner, 31-01 Broadway Associates, and [its] representative, Richard Greco." The hearing judge found this statement was grossly negligent and amounted to moral turpitude because an NJDEP claim had not been made against Min-Ku or Cameo Dry Cleaners of Fair Lawn. The judge found that Isola made this representation in order to trigger Travelers' duty to defend and had not verified that an NJDEP claim had been made.[28]

We disagree that Isola's statement amounted to moral turpitude. Isola's letter discussed coverage and remediation of the site as it related to the Hahns. He stated that the NJDEP was "implicated in this matter," and was compelling Min-Ku and others to remediate 31-1 Broadway. Isola asserts that it was not false to say that the NJDEP was implicated as claims had been made related to the site and the Hahns had some liability as the prior tenants of 31-01 Broadway. In March 2011, the Grecos submitted an NJDEP form identifying the Hahns and stating that the Hahns' insurance could be used to obtain additional coverage. Additionally, Isola's letter was sent early in the case, and he was confused about Cameo Cleaners of Fair Lawn and Cameo Cleaners. He believed an NJDEP claim had been made against the Hahns. Therefore, we find no clear and convincing evidence to support the conclusion that Isola made a material misrepresentation amounting to either grossly negligent or intentional moral turpitude.

[28] The hearing judge noted that the NJDEP never made a claim against the Hahns.

OCTC argues on review that Isola intentionally made this statement in order to "create an adversarial situation in which Travelers would provide coverage." That argument is not based on the record. It ignores the fact that Travelers did not rely on the statement and, further, that Travelers did not get involved until the Grecos sued the Hahns, which had nothing to do with the existence of an NJDEP claim against the Hahns.[29] From the evidence, it is reasonable to believe that Isola was simply mistaken regarding the existence of an NJDEP claim against the Hahns. He believed that an NJDEP claim had been issued targeting the Hahns when it was actually against Cameo Cleaners. However, he also believed that even if the Hahns had not already been targeted by the NJDEP, they would be soon since they were a tenant and an additionally responsible party. For these reasons, we find that OCTC did not prove by clear and convincing evidence that Isola's statement in the September 8, 2011, letter amounted to a misrepresentation involving moral turpitude. Therefore, we dismiss count ten with prejudice. (*In the Matter of Kroff*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

D. Count Four: Appearing for a Party without Authority (§ 6104)

Count four alleged Isola appeared for Min-Ku in the 2012 environmental lawsuit without authority by filing pleadings, accepting service, claiming he had settlement authority, and appearing for Min-Ku in court. Section 6104 states, "Corruptly or willfully and without authority appearing as attorney for a party to an action or proceeding constitutes a cause for disbarment or suspension."

The hearing judge found that Isola's discussions with Travelers regarding settlement did not amount to a court appearance that would violate section 6104. However, the judge found culpability under section 6104 for Isola's appearances in court and pleadings filed in the 2012

[29] Travelers did not rely on Isola's statement in the letter and conducted its own investigation of the status of any NJDEP claims.

environmental lawsuit. The judge determined that Isola had no authority to appear on behalf of Min-Ku in the lawsuit by the Grecos "as it was not reasonably contemplated or discussed at the only client meeting."

We disagree that Isola lacked authority to appear in the 2012 environmental lawsuit, as discussed *ante*. Isola credibly testified that possible litigation was discussed at the Diner Meeting. At that meeting, Gregory retained Isola to represent him and his family in matters related to the environmental remediation. The Grecos sued the Hahns for remediation liability. Therefore, it follows that Isola believed he had authority to act as Min-Ku's attorney in the litigation. While we agree that Isola should have updated Gregory on the case status, this is not evidence of a lack of authority. His failure to communicate does not limit the authority he believed in good faith he had obtained from Gregory to act as the Hahns' attorney. OCTC failed to prove that Isola corruptly or willfully appeared without authority in violation of section 6104. (See *In the Matter of Lais* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907, 916 [§ 6104 prohibits actual appearance which is willful or corrupt and without authority].) Rather, the evidence shows that Isola was retained at the Diner Meeting to represent the Hahns and that he believed he had authority to appear in litigation related to the environmental remediation.[30] Therefore, we dismiss count four with prejudice. (*In the Matter of Kroff*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

E. Count Five: Moral Turpitude—Misrepresentation to the Court (§ 6106)

Count five alleged Isola falsely claimed he represented Min-Ku on four separate occasions in the 2012 and 2016 environmental lawsuits. Isola filed an amended answer and

[30] We reject OCTC's reliance on *In the Matter of Regan* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844 and *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315. Those cases dealt with attorneys who acted in contravention to stated client directives, which is not the case here.

third-party complaint, and executed the tolling agreement in the 2012 environmental lawsuit. He filed an answer in the 2016 environmental lawsuit. The hearing judge found that Isola unreasonably believed he had authority to represent Min-Ku in the litigation and committed a misrepresentation to the court through gross negligence by appearing on Min-Ku's behalf. Therefore, she found culpability under count five, but did not assign additional disciplinary weight because the conduct was duplicative of the conduct charged in count four. OCTC supports the judge's culpability determination, but argues that the judge should have found that his misrepresentations were intentional. Isola asserts he had authority from the Diner Meeting to engage in the litigation.

We disagree with the hearing judge that Isola operated from a "mistaken and unreasonable belief" as to his authority to represent Min-Ku. As discussed *ante*, we find that Isola reasonably believed he had authority to represent Min-Ku in the environmental remediation. Isola understood from the Diner Meeting that he was authorized to try to ensure that the remediation was paid for without cost to the Hahns. A suit by the Grecos to trigger coverage from Travelers was a probable outcome discussed at the meeting. Therefore, we cannot find that Isola committed an act involving moral turpitude, dishonesty, or corruption within the meaning of section 6106. (See *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, 9-11 [no moral turpitude found where attorney honestly believed in justifiability of actions].) Even if Isola was mistaken about his authority to act, which we do not find, his actions would not rise to grossly negligent moral turpitude as he sincerely believed that his conduct was justified. (*Id*. at fn. 5, citing *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83 & *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404 [gross negligence found, and no evidence belief was sincere and honestly held].)

Accordingly, we dismiss count five with prejudice. (*In the Matter of Kroff*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

F. Counts Six and Twenty: Moral Turpitude—Settling Without Authority (§ 6106)

Counts six and twenty set forth alternative theories of culpability regarding Isola's settlement of the third-party complaint in the 2012 environmental lawsuit. Count six alleged that Isola had no authority to represent Min-Ku and could not settle the third-party complaint. Count twenty alleged that Isola had authority to represent Min-Ku, but he settled the third-party complaint without discussing it with Min-Ku. The hearing judge found that Isola had "limited authority to act as counsel for Min-Ku," and therefore dismissed count six with prejudice. The judge found culpability under count twenty because Isola filed and settled the third-party complaint without client knowledge or consent. The judge determined Isola's actions amounted to overreaching and constituted moral turpitude. On review, OCTC argues that the judge should have found culpability under count six instead of count twenty because Isola had no authority to represent Min-Ku. As discussed *ante*, we find that Isola did have authority to represent Min-Ku in the environmental lawsuits and therefore, we reject OCTC's argument for culpability under count six.

The third-party complaint involved claims relating to Travelers' duty to pay the defense costs. Isola had informed Gregory at the Diner Meeting that Isola would be compensated for his work solely from compensation he would receive from Travelers pursuant to its duty to defend. Travelers initially proposed to pay only six percent of the defense costs. To pressure it into paying a larger percentage, Isola filed the third-party complaint. Travelers then proposed to pay approximately 36 percent of the defense costs. Isola believed that this was consistent with Travelers' obligation under the law and decided to dismiss the third-party complaint without prejudice. He argues that this was not a settlement agreement and did not bind the parties.

Rather, it was an interim agreement regarding payment of attorney fees that could be further negotiated and finalized later. We agree. There was no enforceable settlement agreement affecting the Hahns, and an ultimate agreement regarding Travelers' liability had not been reached. Isola's actions show that he was furthering the Hahns' interests by trying to find the money to fund his representation. Therefore, OCTC failed to show that Isola's actions regarding the third-party complaint amounted to settlement of a claim without authority, involving moral turpitude. Accordingly, we dismiss both counts six and twenty with prejudice. (*In the Matter of Kroff*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 843)

G. Counts Eight and Twenty-Four: Moral Turpitude—Misappropriation (§ 6106)

Counts eight and twenty-four alleged Isola misappropriated the $26,085.69 in attorney fees he received from Travelers. Travelers was obligated to pay defense costs. The fees paid to Isola were not paid from funds owed or attributable to the Hahns and did not affect their liability coverage. As Isola had explained at the Diner Meeting, there would be no out-of-pocket expenses for the Hahns' attorney fees. Therefore, the hearing judge found no evidence of misappropriation and dismissed counts eight and twenty-four with prejudice. Neither party challenges these dismissals on review. We agree that OCTC did not establish that Isola misappropriated any client funds, and we affirm the dismissals with prejudice. (*In the Matter of Kroff*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

H. Count Nine: Failure to Return Unearned Fees (Rules Prof. Conduct, rule 3-700(D)(2))

Count nine alleged Isola failed to earn the $26,085.69 in fees received from Travelers in violation of rule 3-700(D)(2) of the Rules of Professional Conduct.[31] Rule 3-700(D)(2) provides

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

that upon termination, an attorney shall "promptly refund any part of a fee paid in advance that has not been earned." The hearing judge found Isola performed the work for which he billed and, therefore, no culpability was established for a violation of rule 3-700(D)(2). The judge dismissed count nine with prejudice. Neither party challenges the dismissal on review, and we affirm it with prejudice. (*In the Matter of Kroff*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

I. Count Twelve: Moral Turpitude—Misrepresentation (§ 6106)

Count twelve alleged Isola made false and misleading statements in the LSRP form, which he signed as "counsel for" Min-Ku. The hearing judge found Isola committed moral turpitude through gross negligence because he signed without consulting his client. The judge found that Isola's signature on the form represented that Min-Ku was familiar with the information contained in the form. We disagree. Isola signed the LSRP form as counsel for Min-Ku. The attestation on the form provided that he was certifying to the best of *his* knowledge that the information submitted in the form was "true, accurate, and complete." The record supports his argument that the statements were facts that he believed to be true. OCTC failed to establish that Isola's signature amounted to a misrepresentation involving moral turpitude.[32] Isola believed he had authority as Min-Ku's attorney to sign and submit this document. Also, the statements depict Isola's understanding of the situation at the time. For these reasons, we dismiss count twelve with prejudice. (*In the Matter of Kroff*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

[32] OCTC argues on review that we should affirm culpability under count twelve, but find that Isola acted intentionally. Citing New Jersey law, OCTC argues that it was improper for Isola to sign the form on behalf of Min-Ku because it was equivalent to an affidavit or a declaration that an attorney may not sign on behalf of client. However, as noted *ante*, the expert testimony at trial was unclear as to whether an attorney could sign an LSRP form on behalf of a client. OCTC has not established that it was improper for Isola to do so. Our independent research did not reveal that an attorney is prohibited from signing an LSRP form on behalf of a client.

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

Count thirteen alleged Isola sought to mislead a judge when he stated in the third-party complaint that Min-Ku demanded judgment against Travelers because Isola had not communicated with Min-Ku and, therefore, did not actually know what Min-Ku would demand. Section 6068, subdivision (d), prohibits an attorney from misleading a judge or judicial officer by a false statement of law or fact. The hearing judge found that Isola did not intend the third-party complaint to be misleading. Instead, Isola believed he had authority to file the complaint against Travelers to secure payment of the defense costs. Therefore, the judge dismissed count thirteen with prejudice.

OCTC argues on review that the hearing judge should have found culpability because Isola intentionally sought to mislead by filing the third-party complaint. This argument is again premised on OCTC's belief that Isola did not have authority to act as Min-Ku's attorney, which we have rejected *ante*. We agree with the judge that Isola did not intentionally seek to mislead a judge when he filed the third-party complaint. Accordingly, we affirm the dismissal of count thirteen with prejudice. (*In the Matter of Kroff*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

K. Counts Fourteen and Fifteen: Moral Turpitude—Misrepresentation (§ 6106)

Counts fourteen and fifteen alleged that Isola made misrepresentations in a June 7, 2018, deposition related to a lawsuit where the Grecos sued Travelers (*Greco v. Travelers*). Count fourteen alleged Isola falsely stated in that deposition that he had never represented the Grecos. The hearing judge found OCTC failed to establish that Isola's statement was false. Isola maintained he never represented the Grecos, who had their own counsel at all relevant times. OCTC maintains on review that Isola's statement was false but offers no support for its argument. We agree with the hearing judge that the record does not support culpability for

count fourteen and we dismiss it with prejudice. (*In the Matter of Kroff*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

Count fifteen alleged that Isola falsely stated in the deposition that he estimated that he had "five to ten" telephone conversations with Gregory after the Diner Meeting. Actually, Isola had not communicated with Gregory at all during the relevant period. Isola later admitted in the disciplinary trial and in an interview with the New Jersey Office of Attorney Ethics that his statement in the deposition was incorrect. The hearing judge found the statement in the deposition to be a grossly negligent misrepresentation in violation of section 6106. We find, however, that OCTC has failed to carry its burden of proof that Isola's statement amounted to moral turpitude. Isola had not reviewed his file for the Hahn case before appearing at the deposition. He asserts that his testimony was based on his experience with these cases generally, not a specific memory of speaking with Gregory. At trial in this case, he characterized the "five to ten" statement as a "guess" at the time of the deposition, which he later corrected in his interview with the New Jersey Office of Attorney Ethics. The record supports a reasonable inference that Isola was simply mistaken when he testified and that his testimony reflected his recollection of the case at the time. OCTC argues on review that Isola's statement was an intentional lie to cover up the fact that he had acted without authority and failed to communicate. However, this is based on OCTC's conjecture and not substantial evidence. Further, a reasonable inference exists that Isola was simply mistaken. Therefore, we reject OCTC's claim, and dismiss count fifteen with prejudice. (*In the Matter of Kroff*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

L. Counts Sixteen and Seventeen: Conflicts (Rule 3-310(C)(1) & (C)(2))

Counts sixteen and seventeen alleged violations of rule 3-310(C), which requires informed written consent from each client if an attorney represents more than one client in a

matter in which the interests of the clients potentially or actually conflict. These counts were premised on the allegation that Isola had an attorney-client relationship with the Grecos, which was not established at trial. Accordingly, the hearing judge dismissed counts sixteen and seventeen with prejudice. Neither party challenges these dismissals on review, and we affirm them with prejudice.[33] (*In the Matter of Kroff*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

M. Count Eighteen: Failure to Perform with Competence (Rule 3-110(A))

Count eighteen alleged Isola failed to perform with competence in his representation of Min-Ku in violation of rule 3-110(A). Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. The hearing judge found OCTC was unable to establish by clear and convincing evidence that Isola failed to perform with competence; the judge dismissed count eighteen with prejudice. Neither party challenges this dismissal on review, and we affirm it with prejudice. (*In the Matter of Kroff*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

N. Count Twenty-One: Failure to Inform Client of Significant Developments (§ 6068, subd. (m))

Count twenty-one alleged that Isola violated section 6068, subdivision (m), which requires an attorney to "keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services." Count twenty-one alleged that Isola should have informed Min-Ku of the following events: (1) that on or about October 21, 2011, Travelers stated it would not provide coverage in the absence of litigation; (2) that the 2012 environmental lawsuit was filed against Min-Ku and Cameo Cleaners of Fair Lawn; (3) that Isola agreed to accept service on behalf of Min-Ku in the 2012 environmental

[33] OCTC does not dispute the dismissals because it asserts that Isola never represented the Hahns, which we reject *ante*.

lawsuit; (4) that Isola filed an answer in the 2012 environmental lawsuit; (5) that Isola filed a third-party complaint against Travelers; (6) that Isola dismissed the third-party complaint; (7) that Isola executed a tolling agreement; and (8) that from December 2016 through April 2017, Isola engaged in settlement negotiations on behalf of Min-Ku. The hearing judge found that Isola should have informed his client regarding Travelers' denial of coverage in October 2011, that the 2012 environmental lawsuit was filed, and that Isola filed an answer and a third-party complaint, which he also dismissed. Neither party challenges this finding on review. Rather, Isola admits that he failed to communicate significant developments and acknowledges culpability. Thus, we affirm culpability under count twenty-one.

O. Counts Nineteen and Twenty-Three: Breach of Fiduciary Duty (§ 6068, subd. (a))

Counts nineteen and twenty-three alleged Isola breached his common law fiduciary duties to Min-Ku. Section 6068, subdivision (a), provides that an attorney has a duty to support the Constitution and laws of the United States and California. An attorney's duties to his client are governed by the Rules of Professional Conduct and other law relating to fiduciary relationships. (*Day v. Rosenthal* (1985) 170 Cal.App.3d 1125, 1147; *David Welch Co. v. Erskine & Tulley* (1988) 203 Cal.App.3d 884, 890.)

1. Count Nineteen

Count nineteen alleged that Isola breached his fiduciary duties to Min-Ku by writing on the LSRP form that Min-Ku was responsible for the remediation at 31-01 Broadway. OCTC alleged this was an admission of liability or responsibility and occurred without Min-Ku's permission. The hearing judge held that Isola's actions in placing Min-Ku before the NJDEP and signing the LSRP form without client knowledge or consent was a breach of fiduciary duties.

However, the judge did not assign additional weight in discipline because she found the facts underlying count nineteen were the same as those underlying count twelve.[34]

On review, we find that OCTC failed to establish that Isola's actions related to the LSRP form amounted to a breach of fiduciary duties. The record shows that the Hahns did have some responsibility for remediation at 31-01 Broadway. Isola's representation strategy was to engage the NJDEP, involve Travelers, and obtain insurance coverage for the remediation. Isola asserts that the form does not admit sole responsibility because the Grecos, as owners of the site, also had responsibility. The form simply indicates who is taking charge of conducting the remediation, which is not an indication of sole liability. Further, the NJDEP was already aware of the Hahns as the Grecos stated in a remediation timeframe extension request that they were working to find insurance coverage from the Hahns as they were a previous tenant and also responsible for remediation. Additionally, OCTC argues on review that Isola breached a duty of loyalty to Min-Ku. Our review of the record, however, points to a reasonable inference that Isola was acting in the best interests of Min-Ku and the Hahns and that he was following the representation strategy discussed at the Diner Meeting. Therefore, we dismiss count nineteen with prejudice. (*In the Matter of Kroff*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

2. Count Twenty-Three

Count twenty-three alleged that Isola committed several acts that amounted to overreaching and a breach of fiduciary duties in violation of section 6068, subdivision (a). The following actions were alleged under count twenty-three: failing to represent the interests of Min-Ku rather than the interests of the Grecos, causing Min-Ku and the Hahns to admit to the NJDEP responsibility for environmental contamination, settling a third-party complaint without

[34] Count twelve alleged a section 6106 moral turpitude misrepresentation charge for signing the LSRP. As discussed *ante*, we do not find culpability under count twelve.

communicating with Min-Ku, prompting Min-Ku and the Hahns to agree to liability of $1.5 million to the Grecos, causing Min-Ku and the Hahns to lose their insurance policy asset, providing legal advice to the Grecos that was not in Min-Ku's interest, and failing to communicate with Min-Ku for over six years.

"The relationship between an attorney and client is a fiduciary relationship of the very highest character." (*Clancy v. State Bar* (1969) 71 Cal.2d 140, 146.) Typical discipline cases for overreaching and breach of fiduciary duties involve business transactions where the attorney uses his position to unfairly exert influence over a client. (See, e.g., *Beery v. State Bar* (1987) 43 Cal.3d 802, 812-815 [discussion of cases involving breach of fiduciary duty]; see also *Rodgers v. State Bar* (1989) 48 Cal.3d 300, 317 [repeated evasions and deceit surrounding attorney's business transaction with client are inconsistent with high degree of fidelity owed by attorney to profession and public]. Overreaching is often found where an attorney exploits a vulnerable client. (See, e.g., *In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 959 [attorney used technical legalese in fee agreement to disadvantage of clients who spoke limited English].)

Here, the ANDC made several allegations that were not proven at trial, including that Isola represented the interests of the Grecos, that he gave legal advice to the Grecos, and that he caused the Hahns to admit to liability to the Grecos and lose their insurance policy asset. Instead, the trial showed that Isola acted in the best interests of the Hahns by obtaining a release of liability to the Grecos and finding coverage for the remediation. Isola's actions aligned with his presentation at the Diner Meeting. No evidence demonstrates that Isola overstepped the bounds of his representation or overreached in a way that was unfair to the Hahns. He negotiated the settlement and then handed the matter to Kim to discuss with Gregory, who approved the settlement agreement. (Cf., *In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct.

Rptr. 308, 314 [overreaching when attorney signed releases for clients without their knowledge or consent].)

The hearing judge found culpability was established under count twenty-three because Isola dismissed the third-party complaint. The judge did not assign additional weight in discipline because these facts also underlie count twenty. As discussed *ante*, we disagree that Isola committed misconduct by dismissing the third-party complaint.

The hearing judge also determined that Isola's "failure to communicate *at all* with his client over six years while pursuing litigation on the client's behalf constitute[d] an egregious breach of fiduciary duties, amounting to overreaching." We find no evidence of overreaching here. There is no evidence of deceit or that Isola negotiated terms of the settlement agreement to the detriment of the Hahns. While it is true that Isola did violate his ethical obligations by failing to inform his client of significant developments, this failure alone does not equate to overreaching.[35] He did not stop working on the case nor did he abandon the Hahns; instead, he competently completed the representation. (See *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657, 680 [inadequate communication may be element in violations of other attorney duties].) Further, the ANDC was charged as an assortment of actions that, taken together, alleged overreaching and a breach of fiduciary duties; the failure to communicate allegations were already alleged under the more specific subsection—section 6068, subdivision

[35] A breach of an attorney's fiduciary duty to a client involving failure to communicate was found in *Van Sloten v. State Bar* (1989) 48 Cal.3d 921. Van Sloten failed to perform the legal services for which he was hired, did not withdraw from the case, and then failed to communicate with the client. The failure to communicate was tied to Van Sloten's inaction on the case and demonstrated a breach of the good faith and fiduciary duty owed by an attorney to a client. (*Id*. at pp. 931-932.) The facts here are not similar as Isola acted in good faith to advance his clients' interests.

(m)—in count twenty-one.[36] No additional facts in the record support culpability for overreaching or a breach of fiduciary duties. Therefore, we dismiss count twenty-three with prejudice. (*In the Matter of Kroff*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

P. Count Twenty-Two: Failure to Communicate Settlement Offer (Rule 3-510)

Count twenty-two alleged that Isola learned of written settlement offers in the 2016 environmental lawsuit around January to March 2017 and failed to promptly communicate them to Min-Ku. Rule 3-510 requires an attorney to promptly communicate to a client all written offers of settlement, regardless of their significance or whether they are binding under contract law. (*In the Matter of Yagman* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788, 795.) Isola did not communicate the offers to Gregory or Kim. Instead, he waited until the settlement agreement was drafted in April 2017 and sent a copy to Kim. The hearing judge found that Isola should have communicated these offers to his client and found Isola culpable under count twenty-two.

On review, Isola argues that the hearing judge discounted the fact that he reported significant settlement developments to Travelers. We agree with the judge that this fact is irrelevant to the charge under count twenty-two as Travelers was not his client. Further, Isola's argument under count twenty-two conflicts with his assertion that Travelers' objection was not material to the settlement agreement. Isola's duties are clear under the Rules of Professional Conduct; he was required to inform his client of a written offer regardless of whether it was

[36] Section 6068, subdivision (m) was not added until 1986, and became effective in 1987. (See *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439, 450.) Before the enactment of subdivision (m), there was a "common law" duty to communicate, and it was proper to base culpability under subdivision (a). (*Ibid*.; see also *In the Matter of Hindin*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 680.) Now, it is improper to find violations for the same facts under both subdivisions (a) and (m) of section 6068. (*In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354, 369.) The specific statute should be charged instead of using the broader subdivision (a). (*Ibid*.)

significant or likely to be accepted. He did not do so. His emails show that he was discussing proposals for the settlements for months. He waited until the settlement agreement was ready for signature before sending it to Kim to share with Gregory. We reject Isola's argument that the earlier written offers did not have to be communicated. Therefore, we affirm culpability under count twenty-two.

Q. Count Twenty-Six: Moral Turpitude—Misrepresentation (§ 6106)

Count twenty-six alleged Isola made several misrepresentations in emails to Kim regarding Travelers' position and objection to the settlement agreement between the Grecos and the Hahns in the 2016 environmental lawsuit. The hearing judge found that Isola acted negligently by sending Kim a draft of the settlement agreement that stated that Travelers did not object to the settlement agreement. However, the judge found that Isola should have informed Kim about Travelers' objection and determined that his failure to do so amounted to moral turpitude by intentional misrepresentation. The judge found culpability under count twenty-six.

1. Isola acted negligently by sending drafts of the settlement agreement to Kim with the erroneous statement regarding Travelers' objection.

We agree with the hearing judge that Isola acted negligently when he sent Kim drafts of the settlement agreement containing the erroneous statement that Travelers had not objected to the settlement. Isola and Milun credibly testified that they used multiple versions of the agreement, accidentally sending Kim the wrong one. Isola did not notice the oversight and maintains that he was not aware that the version being provided contained the erroneous statement. Therefore, we agree with the finding that this was simple negligence and not a disciplinable offense.

2. Isola's failure to tell Kim that Travelers had objected was not intentional misrepresentation.

We do not agree with the hearing judge's finding that Isola's March 27 and April 12, 2017 emails to Kim, omitting Travelers' objection, amounted to intentional misrepresentations. The March 27 email did not mention Travelers at all. The April 12 email summarized Isola's report to the judge at an April 10 settlement status conference. Isola disclosed that Travelers had been provided a copy of the proposed settlement agreement. His email does not mention Travelers' response. Resolving reasonable doubts in Isola's favor, we must conclude that culpability for an intentional misrepresentation was not established here. Isola believed the settlement agreement did not contain Travelers' position, as he had not carefully read the drafts with the erroneous statement sent to Kim. Isola had no indication that would lead him to believe that Kim thought that Travelers had not objected. As such, it cannot be determined that his omissions in the emails to Kim constituted intentional misrepresentation, especially as the April 12 email was only a summary of the status conference and Isola asserts Travelers' position was not discussed at the status conference. A reasonable interpretation of the facts is that Isola was unaware that Kim believed that Travelers had not objected. Therefore, Isola had no reason to mention Travelers' objection in his emails. For these reasons, we find that OCTC did not prove by clear and convincing evidence that Isola made misrepresentations to Kim regarding Travelers' objection to the settlement agreement. Accordingly, we dismiss count twenty-six with prejudice. (*In the Matter of Kroff*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

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

A. Aggravation

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

We find that Isola committed multiple acts of wrongdoing related to his failures to communicate. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646-647 [three instances of misconduct considered multiple acts].) He failed to keep his client informed of significant developments, including that the Grecos had sued the Hahns, that he filed and dismissed a third-party complaint, and that he had received written settlement offers. He filed several pleadings and participated in court hearings without informing his client. These numerous failures to communicate over several years warrant moderate weight in aggravation under standard 1.5(b).[38] (*In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 279 [aggravation for multiple acts not limited to counts pleaded].) Isola committed multiple acts of wrongdoing—it does not matter for aggravation purposes under standard 1.5(b) that the acts were done in a single client matter.

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

[38] The hearing judge found substantial weight in aggravation for multiple acts, but included counts of culpability that we have determined should be dismissed. Therefore, we assign less aggravating weight and reject OCTC's argument for substantial aggravation for multiple acts.

2. No Aggravation for Indifference (Std. 1.5(k))

Indifference toward rectification or atonement for the consequences of misconduct is an aggravating circumstance. While the law does not require false penitence, it does require an attorney to accept responsibility for wrongful acts and show some understanding of his culpability. (See *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) The hearing judge found substantial weight in aggravation for Isola's failure to accept responsibility.[39] However, this was based on culpability that we do not now find. We also reject the judge's finding of "overwhelming evidence of [Isola's] dishonesty" as not supported by the record. Isola admitted at trial that he should have used a written retainer agreement with Gregory and should have regularly reported to him on the status of the case. As Isola admitted to his failure to communicate, we do not find clear and convincing evidence of indifference because he has accepted responsibility for his actions. (Cf. *In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1, 14 [attorney who fails to accept responsibility for actions and instead blames others demonstrates indifference].) Therefore, we do not assign aggravation under standard 1.5(k).

3. No Aggravation for Failure to Make Restitution (Std. 1.5(m))

OCTC argues on review that the hearing judge should have assigned aggravation for Isola's failure to return the "unauthorized" $26,085.69 in fees he received from Travelers. OCTC asserts that Isola falsely represented to Travelers that he represented Min-Ku when he had no authority to do so. As discussed *ante*, we find that Isola had authority to do the defense work for the Hahns and he earned the fees from Travelers. Accordingly, we do not assign aggravation under standard 1.5(m).

[39] OCTC supports this finding.

B. Mitigation

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

Mitigation includes "absence of any prior record of discipline over many years coupled with present misconduct, which is not likely to recur." (Std. 1.6(a).) Prior to his misconduct, Isola practiced law for approximately 21 years without discipline. However, the hearing judge assigned moderate weight in mitigation due to his indifference.[40] Given Isola's admission to culpability for failing to communicate and his testimony that he would do things differently, we do not agree that the misconduct will likely recur. Accordingly, we find that Isola has established that he is entitled to substantial weight in mitigation for his 21 years of discipline-free practice. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [significant mitigation where attorney practiced over 10 years before first act of misconduct and misconduct not likely to recur].)[41]

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

Isola 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).) Six witnesses, including one attorney, a client, friends, and a family member, testified at trial and provided declarations attesting to Isola's good character. Four other character witnesses, including another attorney, submitted declarations. The witnesses observed that Isola is a remarkable friend, honest, and trustworthy. The attorney who testified has worked with Isola and stated that he is ethical, has high integrity, and goes above and beyond

[40] OCTC does not dispute the hearing judge's finding.

[41] Isola asserts in his responsive brief that the hearing judge should have also given him mitigation for the period of post-misconduct practice without further misconduct. We have considered this fact in our finding under standard 1.6(a) that further misconduct is unlikely to recur.

for his clients. (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [serious consideration given to attorneys' testimony due to their "strong interest in maintaining the honest administration of justice"].) Two witnesses discussed Isola's community involvement, including fundraising. Isola also testified regarding his community service. He stated he organized a coat drive for needy children and helped to establish a science museum in Lodi. He testified about his church activities, including fundraising and serving on the executive committee.

The hearing judge assigned substantial weight in mitigation for Isola's character evidence based on the witnesses' testimony and because they had known Isola for many years, were aware of the charges, and represented a cross-section of the community. OCTC argues on review that the judge should have given less weight in mitigation under this standard because the witnesses did not know about Isola's dishonesty. We reject this argument. The witnesses were aware of the misconduct alleged and we do not find dishonesty.[42] We agree with the hearing judge's finding and assign substantial weight in mitigation for Isola's good character evidence.

3. No Mitigation for Good Faith (Std. 1.6(b))

Mitigation includes a "good faith belief that is honestly held and objectively reasonable." (Std. 1.6(b).) The hearing judge did not find mitigation for good faith based on her determination that Isola could not have reasonably believed he had authority to act as the Hahns' attorney.[43] We disagree because we find Isola did have authority. The judge also held that Isola could not have reasonably believed he had no obligation to communicate with the Hahns about

[42] We also do not rely on the fact that DeArth testified that Isola was unethical, as OCTC requests. DeArth did not explain why he believed Isola to be unethical and the record suggests that they ended their business relationship on poor terms.

[43] OCTC supports this finding.

the significant actions he was taking on their behalf. We agree. Isola unreasonably ignored his ethical responsibilities in failing to communicate. (*In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 653 [attorney must prove beliefs were honestly held and reasonable to qualify for good faith mitigation].) We reject his argument that his regular communications with Travelers absolved him of his obligation to inform the Hahns of significant developments. Therefore, we give no weight in mitigation for Isola's assertion of a good faith belief.

V. DISCUSSION

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. (Std. 1.7(a) [most severe sanction shall be imposed where multiple sanctions apply].) The most severe sanction applicable here is standard 2.7(b) and provides for actual suspension for communication violations.[44] Actual

[44] We find that standard 2.7(b) is most applicable, even though it mentions "multiple client matters," as standard 2.7(c)—the less severe sanction—is for violations limited in scope or time. Isola's failures to communicate were numerous and occurred over several years. The hearing judge analyzed discipline under standards 2.11, 2.12(a), and 2.18 based on culpability for moral turpitude, breach of fiduciary duties, and appearing without authority, which we do not find.

suspension is generally for 30 days, 60 days, 90 days, six months, one year, 18 months, two years, three years, or until specific conditions are met. (Std. 1.2(c)(1).) Given the broad range of discipline suggested by standard 2.7(b), we look to guiding case law, focusing on communication violations.[45]

Attorneys have a duty to communicate adequately with their clients, which is "an integral part of competent professional performance as an attorney." (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 782, 785.) The attorney in *Calvert* failed to adequately communicate with her client, but continued to work on her client's case. Calvert performed competently and obtained good results through the trial phase of the representation, but she did not devote sufficient time to her client's case after the trial. Based on the fact that Calvert continued representation when she knew she did not have sufficient time, the court found she failed to perform legal services with competence. No aggravation was established, and Calvert received mitigation for her pro bono work and community service. She had a prior record of discipline but did not receive aggravation as the misconduct in this case and the "prior" case occurred contemporaneously. She received an actual suspension of 60 days. Isola's case is similar as he also failed to adequately communicate, but Isola continued to work to advance his clients' interests. Isola has substantial mitigation for his lack of a prior record of discipline and good character. However, Isola does have aggravation for his multiple instances of failing to communicate and Calvert had no aggravation. Nonetheless, no facts suggest that Isola failed to perform with competence like Calvert. Rather, he completed the representation for which he was hired and achieved a good result for his clients. Both Calvert and Isola committed serious misconduct. The cases differ in that Isola's failure to communicate was for a greater period of time, but he did not have

[45] OCTC argues Isola should be disbarred based on culpability for moral turpitude and appearing without authority, which we do not find.

performance issues. While *Calvert* is not exactly on point, it serves as a guide for discipline and suggests actual suspension is appropriate here.

The same is true for *Stuart v. State Bar* (1985) 40 Cal.3d 838, which also involved a failure to communicate. However, the essence of the misconduct was Stuart's negligence and carelessness in handling a personal injury case. Discipline was based on his lack of diligence and concern for his client's interests, his failure to maintain contact with his client, and the loss of the client's file and opportunity to pursue his case. The court was especially concerned that Stuart committed this misconduct shortly after being privately reproved in a separate disciplinary matter. The Supreme Court imposed a 30-day actual suspension to make clear to Stuart that clients are owed a "high degree of care and fiduciary duty." The facts of the instant matter are not exactly comparable to *Stuart*, but we take from *Stuart* that failure to communicate is serious misconduct. Isola did not abandon his client like Stuart, but he did fail to inform Gregory of significant developments in the representation for a substantial period of time—over six years.

Another guiding case is *In the Matter of Respondent C*, *supra*, 1 Cal. State Bar Ct. Rptr. 439. An attorney did not respond to four letters sent during a four-month period requesting status reports on the case until the client threatened to complain to the State Bar. The attorney then responded to the client that he was working on settling the matter. Subsequently, he determined that pursuing the lawsuit further would be pointless, but he failed to inform the client. No further communication occurred between the attorney and the client. We noted that the failure to communicate deprived his client of the benefit of his professional advice and deprived the client of an opportunity to consult with another attorney if she chose to do so. We found that the attorney competently performed the services for which he was hired, exercised good judgment in not pursuing the claim further, and did not cause the client harm. Due to the attorney's significant mitigation for no prior discipline in over 30 years of practice, we

admonished the attorney instead of issuing a private reproval. Isola's failure to communicate is much more extensive than the attorney in *Respondent C*. As such, discipline is warranted here.

Isola presented mitigation evidence of no prior disciplinary record and extraordinary good character, which markedly outweighs the aggravation for multiple acts. Accordingly, a sanction at the lower end of the discipline spectrum specified in standard 2.7(b) is warranted. (Std. 1.7(c).) "[A] lesser sanction is appropriate in cases of minor misconduct, where there is little or no injury to a client, the public, the legal system, or the profession and where the record demonstrates that the lawyer is willing and has the ability to conform to ethical responsibilities in the future." (*Ibid*.) Here, Isola admitted culpability for his communication violations, and he has assured us that he would behave differently in the future. Therefore, a 30-day actual suspension is warranted under standard 2.7(b), as it is the lowest level for actual suspension for communication violations under that standard. (See also std. 1.2(c)(1).) Isola failed to communicate several important developments to the Hahns over several years. Fortunately, Isola performed competently, achieved a good result for the Hahns, and completed the representation. We conclude that a 30-day actual suspension is appropriate given the case law and the standards and it adequately protects the public, the courts, and the legal profession. This suspension considers the seriousness of the misconduct, but also accounts for Isola's admissions to culpability and commitment to doing things differently in the future.

VI. RECOMMENDATIONS

We recommend that David Romano Isola, State Bar Number 150311, be suspended from the practice of law for one year, that execution of that suspension be stayed, and that he be placed on probation for one year with the following conditions:

1. **Actual Suspension.** Isola must be suspended from the practice of law for the first 30 days 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, Isola 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 Isola's first quarterly report.

3. **Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions.** Isola 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, Isola 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. Isola 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, Isola 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, Isola may meet with the probation case specialist in person or by telephone. During the probation period, Isola 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 Isola's probation period, the State Bar Court retains jurisdiction over him to address issues concerning compliance with probation conditions. During this period, Isola must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to his official State Bar record address, as provided above. Subject to the assertion of applicable privileges, Isola 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.** Isola 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, Isola 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. Isola 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. Isola is directed to maintain proof of 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 actual suspension has ended, whichever is longer. Isola 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, Isola must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and he will not receive MCLE credit for attending this session. If he provides satisfactory evidence of completion of the Ethics School after the date of this opinion but before the effective date of the Supreme Court's order in this matter, Isola 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 Isola has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

VII. MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Isola 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 Isola provides satisfactory evidence of the taking and passage of the above examination after the date of this opinion but before the effective date of the Supreme Court's order in this matter, he will nonetheless receive credit for such evidence toward his duty to comply with this requirement.

VIII. MONETARY SANCTIONS

We further recommended that Isola be ordered to pay monetary sanctions to the State Bar of California Client Security Fund in the amount of $500 in accordance with Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar. The sanctions amount is based on the guidelines set forth in rule 5.137. It takes into consideration that Isola is culpable of violations related solely to failure to communicate in a single client matter and that the discipline warranted is the lowest presumed length of time for an actual suspension. 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.

IX. COSTS

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment, and may be collected by the State Bar through any means permitted by law. 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.

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.

No. SBC-20-O-30310

In the Matter of

DAVID ROMANO ISOLA

Hearing Judge
Hon. Manjari Chawla

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