PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed December 27, 2022

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	SBC-20-N-30846; SBC-21-O-30479 (Consolidated)
DOUGLAS GORDON ILER,	)	
State Bar No. 235350.	)	AMENDED OPINION

This is Douglas Gordon Iler's second discipline case. Before trial of this consolidated disciplinary proceeding, Iler stipulated to certain facts supporting the two charges against him: that he willfully violated California Rules of Court, rule 9.20,[1] by untimely filing his required compliance declaration, and that he willfully violated Business and Professions Code, section 6068, subdivision (k),[2] by failing to timely comply with certain probation conditions ordered by the Supreme Court in his prior disciplinary matter. After the trial, the hearing judge found Iler culpable of both counts and recommended discipline that included 18 months of actual suspension and until he proves rehabilitation under standard 1.2(c)(1) of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.[3]

Iler appeals. While he stipulated to facts that support both charges, he argues an 18-month actual suspension is unjust. He seeks a trial de novo and requests less discipline. The Office of Chief Trial Counsel of the State Bar (OCTC) does not appeal and supports the hearing

[1] All further references to rules are to the California Rules of Court unless otherwise noted.

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

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

judge's decision. Upon independent review of the record under rule 9.12, we affirm the judge's culpability findings, along with most of the judge's aggravation and mitigation findings. However, we recommend discipline that includes 15 months of actual suspension and until he proves rehabilitation under standard 1.2(c)(1) as the appropriate discipline in view of the totality of the circumstances, which we conclude adequately protects the public, the courts, and the legal profession.

I. RELEVANT PROCEDURAL BACKGROUND

On December 9, 2020, OCTC filed a Notice of Disciplinary Charges (NDC) in case number SBC-20-N-30846 against Iler, alleging he willfully violated rule 9.20(a) by failing to complete the required acts involving the notification of his impending suspension and rule 9.20(c) by failing to file a compliant declaration with our court by January 10, 2020. On March 29, 2021, Iler responded to the NDC, and, on May 12, the matter was abated.

On June 29, 2021, OCTC filed a second NDC in case number SBC-21-O-30479. In this NDC, OCTC alleged Iler willfully violated section 6068, subdivision (k), related to his prior discipline by failing to (1) submit four quarterly probation reports by the due dates of January 10, July 10, and October 10, 2020, and January 10, 2021; and (2) provide proof of enrollment in State Bar Ethics School (Ethics School) and passage of the test given at the conclusion of Ethics School by December 1, 2020.

On July 20, 2021, the hearing judge terminated the abatement of the proceedings related to the first NDC and ordered both matters consolidated for trial. Iler subsequently filed a response to the second NDC on July 26, 2021.

On September 20, 2021, the parties filed a comprehensive stipulation as to facts and the admission of documents (Stipulation)[4] in the consolidated matter. A one-day trial was held on October 1, and the hearing judge issued her decision on January 12, 2022**.**

II. ILER'S PRIOR RECORD OF DISCIPLINE

Iler was admitted to practice law in California on January 10, 2005, and has one prior record of discipline. His prior discipline involved 19 counts of misconduct in three separate client matters. On November 1, 2019, the Supreme Court issued its order imposing the Hearing Department's recommended discipline (Discipline Order).[5] The Discipline Order required Iler to comply with the notification provisions of rule 9.20(a)[6] within 30 calendar days of its effective date and with the reporting requirements of rule 9.20(c)[7] within 40 calendar days of the effective date. The Discipline Order warned that failure to comply "may result in disbarment or suspension." Rule 9.20(b) imposes strict mailing requirements for notification.[8]

In connection with his prior discipline, Iler testified that he attempted to appeal the Hearing Department's decision. Our review of the record reveals that the Review Department

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[4] The parties entered into a prior stipulation on May 11, 2021, before OCTC filed the second NDC, which only pertained to case number SBC-20-N-30846.

[5] Supreme Court No. S256771 (State Bar Court Nos. 16-O-13006; 16-O-15077; 17-O-02973).

[6] Rule 9.20(a)(1) and (4) require an attorney to notify clients being represented in pending matters, along with any cocounsel, of a suspension and consequent disqualification to act as an attorney after the suspension's effective date; notify clients to seek other legal advice if there is no cocounsel; notify opposing counsel in pending litigation; if no opposing counsel, notify adverse parties of the suspension and consequent disqualification to act as an attorney after the suspension's effective date; and file a copy of the notice with the court, agency, or tribunal before which the litigation is pending.

[7] Rule 9.20(c) requires an attorney to file an affidavit with the Clerk of the State Bar Court showing compliance with the provisions of the order entered under this rule within the time prescribed in the order after the effective date of the suspension.

[8] Pursuant to rule 9.20(b), all notices must be by registered or certified mail, return receipt requested, and must contain an address for the suspended attorney.

received his request for review on June 11, 2019. However, it was rejected on June 13 because of procedural defects. Iler testified that, a few days after receiving notice of the rejection, he submitted a second request for review.[9] He testified he was unaware that his second request was also rejected and claims he was under the mistaken impression that his request for review was pending until he received the Supreme Court's Discipline Order.

III. FACTS[10] AND CULPABILITY[11]

A. Factual Background

At some point in August 2019, Thomas "Tique" Davis contacted Iler by phone to inquire about retaining him to file a civil lawsuit against Davis's former attorney. Iler testified that he met with Davis in person on August 27, 2019, to discuss the case. During their initial meeting, Iler became aware of a statute of limitations issue related to one of Davis's claims and informed Davis he would send a proposed retainer agreement to him as soon as possible, which he did. Shortly after that meeting, Davis was hospitalized, unbeknownst to Iler. Iler testified he attempted to reach Davis via email and phone throughout the month of September to confirm whether Davis wanted to follow through with retaining him. After weeks of not hearing from Davis, Iler assumed Davis was no longer interested or had found another attorney. Davis

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[9] Iler's second request for review was received on June 19, 2019, and again rejected on June 20, 2019, due to procedural defects because Iler failed to properly serve OCTC.

[10] The facts are based on the Stipulation, the trial evidence, and the hearing judge's factual findings, to which we give great weight. (Rules Proc. of State Bar, rule 5.155(A).)

[11] On review, Iler raised several procedural arguments. Specifically, he argues that (1) the hearing judge gave inadequate weight to his client's declaration regarding Iler's reasons for not withdrawing as counsel of record; (2) OCTC's late lodging of exhibits caused him prejudice; and (3) the judge improperly relied on testimony from Edward Esqueda, a case specialist with the State Bar's Office of Probation (Probation), regarding Iler's untimely rule 9.20(c) compliance declaration filed June 23, 2021, and Probation's rejection of Iler's declaration. We have independently reviewed each argument set forth by Iler and reject them as having no merit. We find that the judge did not abuse her discretion and Iler suffered no actual prejudice resulting from the rulings. (See *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233, 241 [standard of review for procedural rulings].)

eventually contacted Iler on September 30, eight days before the statute of limitations would run on his claims, and informed Iler that he had become unexpectedly ill with a severe medical condition and was hospitalized in the intensive care unit. Concerned about preserving Davis's claims, Iler filed the civil complaint on Davis's behalf in the Los Angeles County Superior Court on October 4.[12]

When Davis first contacted Iler in August 2019, Iler testified he informed Davis about his impending suspension, but Davis elected to continue seeking Iler's legal counsel. After Iler filed Davis's complaint, Iler made at least two unsuccessful attempts to substitute other attorneys as counsel of record in the matter,[13] believing that he could not simply withdraw as the attorney of record and place Davis in in propria persona status, because Davis's company, Starz on the Rise, LLC, was required to have an attorney.[14]

On November 1, 2019, the Supreme Court issued its Discipline Order stating that Iler must "comply with California Rules of Court, rule 9.20, and perform the acts specified in subdivision (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of this order." After Iler received notice of the Discipline Order, he informed

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[12] Davis and his company, Starz on the Rise, LLC, were both plaintiffs in the case.

[13] Iler's attempts to find substitute counsel were unsuccessful, partially due to Davis's ongoing health issues. On January 9, 2020, Iler arranged for attorney Derrick Smalls to meet with Davis in the hospital to discuss substituting into the case, but Smalls and Davis could not reach an agreement. In February 2020, Iler hired special appearance attorneys on Davis's behalf to cover case management conferences—one of those attorneys, Najmah Brown, also agreed to discuss substituting into Davis's case. However, around July 2020, Brown informed Iler that she was no longer available because she had closed her practice and started working at a new law firm. In December 2020, Smalls and Davis had more discussions around Smalls substituting into the case but the substitution was not finalized. Iler lost contact with Davis again due to his health conditions and found him in a resident care facility a few months later. Shortly after Iler re-established contact with Davis, Davis agreed to dismiss the case, which Iler did on June 16, 2021.

[14] Notwithstanding his belief that he could not withdraw as Davis's attorney, Iler did not file any motions with the State Bar Court requesting an extension of time to comply with rule 9.20.

Davis about his suspension period, effective on December 1, 2019.[15] On November 26, the Office of Probation (Probation) emailed and uploaded a courtesy letter to Iler's attorney profile page on the State Bar's website outlining the terms and conditions of his probation. The letter specifically informed Iler of his quarterly probation report due dates as well as the December 1, 2020 deadline for him to provide Probation with proof of successful completion of Ethics School. On December 2, Iler sent an email to Probation confirming receipt of its letter and scheduled his initial probation meeting for the following day. The requirements of rule 9.20 were discussed with Iler during his initial meeting.

Iler did not file the rule 9.20(c) compliance declaration (9.20 Declaration) with the State Bar Court by January 10, 2020. He also did not submit the timely and compliant quarterly report due January 10, 2020. On January 13, Iler emailed Probation Case Specialist Esqueda. He acknowledged and apologized for being late with his 9.20 Declaration and attached it to the e-mail. Esqueda instructed Iler to file the 9.20 Declaration directly with the State Bar Court as required by the Discipline Order. Also on January 13, Iler submitted his untimely quarterly report to Esqueda, who advised him that the report was defective because it failed to indicate the reporting period. Iler submitted a revised report on January 15.

On January 16, 2020, Iler filed the 9.20 Declaration with the State Bar Court. This 9.20 Declaration was not compliant because he was still in possession of a former client's file and still the attorney of record in the Davis matter. He attached a written declaration explaining the reasons for these circumstances and stated he expected to be substituted out of the pending matter later that week. On January 22, Terri Goldade, a supervising attorney in Probation, mailed Iler a letter of non-compliance to his official State Bar address. The letter informed him that his 9.20 Declaration was not compliant and provided several reasons for the non-

[15] Iler did not provide written notice by certified mail to Davis as required by rule 9.20(a).

compliance. A blank compliance declaration form was included with the letter. Iler did not receive Goldade's letter until April 2020 because he failed to update his official address with the State Bar.

On April 3, 2020, Esqueda emailed (and mailed) Iler another letter of non-compliance. That same day, Iler emailed Esqueda and stated that he had filed a rule 9.20 Declaration. Esqueda then asked if Iler had filed his 9.20 Declaration after the first non-compliance letter was mailed to him on January 22 and attached a copy of Goldade's January 22 letter to the email. Iler then informed Esqueda that he had not received Probation's letter and indicated he would re-file the declaration.

On April 6, 2020, Iler emailed Esqueda a copy of a second 9.20 Declaration and his quarterly report that was due on April 10. On April 9, he filed the declaration with the State Bar Court. Again, he failed to state his unequivocal compliance with rule 9.20. He admitted he was still in possession of the former client's file and stated he was still the attorney of record in an active matter and included reasons as to why he had not substituted out of the case.

On April 15, 2020, Goldade sent Iler an email informing him that his 9.20 Declaration filed on April 9 was not compliant. In the email, it stated the reasons for non-compliance and included a blank compliance declaration form. Goldade also stated ". . . it is of concern that you state that you are still attorney of record for one active case." On April 20, she mailed Iler a non-compliance letter, which contained the same information as the April 15 email and included a blank compliance declaration form. On April 21, Iler stated he would submit a revised declaration clarifying the issues Goldade identified. On April 22, Iler emailed Goldade and suggested speaking with her over the phone regarding revisions to his 9.20 Declaration. On April 24, Goldade informed him that Probation could not provide legal advice with respect to his 9.20 Declaration, and he may wish to consult with an attorney regarding his compliance

obligations. Later that day, Iler denied making any request for legal advice and stated he would file another 9.20 Declaration.

Shortly after Davis's case was dismissed, as discussed *ante*, Iler filed a third 9.20 Declaration on June 23, 2021, that stated his unequivocal compliance with rule 9.20, but it was rejected by Probation as untimely.[16] Iler was unaware that his filing was rejected, and he never received a rejection notice from Probation.

As indicated in the Stipulation, Iler failed to timely file his quarterly probation reports that were due on January 10, July 10, and October 10, 2020, and January 10, 2021. Iler submitted a defective quarterly report on January 13, 2020, that did not include the correct reporting period. He corrected and resubmitted the report on January 15, 2020. He submitted a non-compliant quarterly report on July 13, 2020. He was notified by Probation of his non-compliance on July 27, by email and letter, but Probation did not receive the report until September 17. Similarly, Iler submitted a non-compliant quarterly report on October 13. He was notified by Probation of his non-compliance on November 17, by email and letter, but

[16] During the disciplinary trial, Iler testified that he filed a 9.20 Declaration by mail on April 26, 2020. Esqueda testified there was no record of the April 26 filing being received. The judge found Esqueda's testimony credible. A judge's credibility findings are accorded great weight because the judge presided over the trial and heard the testimony. (Rules Proc. of State Bar, rule 5.155(A) [great weight given to hearing judge's factual findings]; see *McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [hearing judge best suited to resolve credibility questions "because [she] alone is able to observe the witnesses' demeanor and evaluate their veracity firsthand"].) The judge rejected Iler's testimony and noted that he did not provide any evidence to support proof of his method of delivery for the alleged filing of his 9.20 Declaration on April 26. Upon our independent review of the record, we find no reason to reverse the judge's findings on review.

Probation did not receive the report until November 30. Esqueda testified that Probation had no record of Iler ever submitting the quarterly report due January 10, 2021.[17]

Iler also was required to submit proof that he successfully attended Ethics School by December 1, 2020, yet he failed to do so. Iler did not successfully complete Ethics School until September 14, 2021.

B. Culpability

1. Iler Violated Rule 9.20 (Case No. SBC-20-N-30846)

OCTC alleged that Iler failed to file a compliance declaration in conformity with the requirements of rule 9.20(a) and 9.20(c) by January 10, 2020, as ordered by the Supreme Court. The hearing judge found him culpable as charged. We agree with the judge's findings.

Pursuant to rule 9.20(a), Iler was required to provide written notice to clients, opposing counsel, and the courts by certified mail within 30 calendar days of the Discipline Order becoming effective. Iler never provided proper notice to each of the parties indicated under rule 9.20(a).[18] And although Iler informed Davis of his impending suspension during their initial meeting, no evidence exists that he satisfied the written notice and mailing requirements of rule 9.20(a).

Rule 9.20(c) requires an attorney to file an affidavit with the clerk of the State Bar Court showing compliance with the provisions of the Supreme Court's order within the time prescribed in the order after the effective date of suspension. He was required to file a 9.20 Declaration by January 10, 2020, but failed to do so. Instead, on January 16, he filed an untimely

[17] During the disciplinary trial, Iler attempted to proffer a January 2021 quarterly probation report that was executed on February 11, 2021; however, the hearing judge did not admit the report into evidence. The judge found that Iler's belated attempt did not rebut Esqueda's testimony that Probation never received the report. Iler does not challenge this finding on review.

[18] We note that Iler was not required to send a notice to opposing counsel because he never had the lawsuit served.

9.20 Declaration which indicated he was not compliant with the rule because he was still in possession of a former client's file, and he was still attorney of record in an active case. As noted *ante*, Iler made an additional but unsuccessful attempt to file his 9.20 Declaration on April 9, which was in response to Probation's emails and letters. However, he did file a compliant 9.20 Declaration on June 23, 2021, although untimely.

We disagree with Iler's argument that his "timely and honest" 9.20 Declaration was only deemed non-compliant because he "refused to abandon his hospitalized client." While his first two declarations were "honest," and his desire to protect Davis's interests was laudable, we cannot overlook that his first attempt at filing a 9.20 Declaration was itself three days late and he did not file a compliant 9.20 Declaration until shortly after Davis's case was dismissed, making a compliant declaration over 17 months late. The Supreme Court has firmly established that an attorney is required to strictly comply with rule 9.20 obligations. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187 [no distinction between "substantial" and "insubstantial" violations of rule].) Though Iler made attempts to comply, and was ultimately successful, his failure to timely and unequivocally comply with the requirements of 9.20(a) and 9.20(c) nonetheless demonstrates a willful failure to perform his rule 9.20 obligations. (*Id*. at p. 1186 [willfulness requires neither bad faith nor actual knowledge of the rule].) Thus, Iler is culpable under count one in case number SBC-20-N-30846, as charged.

2. Iler Violated Additional Probation Conditions (Case No. SBC 21-O-30479)

OCTC charged Iler with willfully violating section 6068, subdivision (k), by (1) failing to submit four quarterly reports by the due dates of January 10, July 10, and October 10, 2020, and January 10, 2021, and (2) failing to provide proof of enrollment in and successful passage of the test given at the conclusion of Ethics School by December 1, 2020.

Section 6068, subdivision (k), provides that it is the duty of an attorney to comply with all conditions attached to a disciplinary probation.

On November 26, 2019, Probation sent Iler an email and letter reminding him of his disciplinary obligations, which included submitting (1) written quarterly reports no later than each January 10, April 10, July 10, and October 10 within the probation period, as well as a final report; and (2) satisfactory evidence of completion of Ethics School and passage of the test given at the conclusion of Ethics School within one year after the effective date of the Supreme Court's order imposing discipline. Iler stipulated that he did not submit four timely and compliant quarterly reports, nor did he submit proof that he successfully completed Ethics School by the deadline. His untimely quarterly reports were submitted on January 15, September 17, and November 30, 2020, and he did not file the probation report that was due on January 10, 2021. Finally, he did not provide evidence of his completion of Ethics School until September 14, 2021. Iler is culpable for failing to timely comply with his probation terms, in willful violation of section 6068, subdivision (k). (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536–537 [substantial compliance with probation conditions is not defense to probation violation].)

IV. AGGRAVATION AND MITIGATION

Standard 1.5 requires OCTC to establish aggravating circumstances by clear and convincing evidence.[19] Standard 1.6 requires Iler to meet the same burden to prove mitigation.

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

A. Aggravation

1. Prior Record of Discipline (Std. 1.5(a))

Iler has one prior record of discipline involving 19 counts of misconduct in three client matters that resulted in the Supreme Court ordering him placed on two years' probation with conditions and actually suspended from the practice of law for one year. His prior discipline involved failing to perform legal services with competence, failing to inform clients of significant developments, committing acts involving moral turpitude, failing to cooperate and participate in State Bar investigations, failing to obey a court order, improper withdrawals from employment, failing to respond promptly to written client status inquiries, and failing to return client papers and property. His misconduct was aggravated by multiple acts, significant harm to clients and the administration of justice, and indifference, and mitigated by his cooperation, 10 years of discipline-free practice, extreme emotional difficulties, and good character.

The hearing judge assigned substantial weight in aggravation to Iler's prior record and concluded that some of his past misconduct was similar in nature to the current proceeding. OCTC asserts that Iler's failure to obey court orders and act diligently in his prior discipline is similar to his failure to comply with probation conditions in this matter. We do not find Iler's prior and current misconduct particularly analogous; however, the judge correctly determined that Iler's prior record, which underlies this probation revocation proceeding, is an aggravating circumstance. Every attorney found culpable of disciplinary probation violations will necessarily have a prior record of discipline. (See, e.g., *In the Matter of Amponsah* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 646, 653.) Given the serious nature of Iler's prior misconduct which involved multiple acts including five counts of moral turpitude and three instances of disobeying court orders, among other misconduct, significant harm, and indifference—coupled with the

proximity in time between his prior and current misconduct—we find substantial aggravating weight appropriate for this circumstance.

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

The hearing judge assigned substantial aggravating weight to Iler's multiple acts of misconduct, reasoning that he committed multiple probation violations in addition to his rule 9.20 violation. However, since Iler's present misconduct arises from failing to comply with one Supreme Court order, we find that less weight should be afforded. Moderate aggravating weight is appropriate for Iler's acts of wrongdoing from his rule 9.20 violations and his five probation violations. (See *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348, 355 [modest weight for violation of three terms within one reproval order].)

3. Indifference (Std. 1.5(k))

Standard 1.5(k) provides that an aggravating circumstance may include "indifference toward rectification or atonement for the consequences of the misconduct." The hearing judge assigned substantial aggravation, finding that Iler exhibited a lack of insight into his misconduct by repeatedly arguing he failed to comply with the requirements of rule 9.20(c) because of his concern that Davis would potentially be harmed if he withdrew from the representation. The judge also found Iler's failure to seek an extension to file his 9.20 Declaration and to seek extension of his other probation conditions as evidence of his indifference.

A lack of insight may not be used in aggravation if the attorney's "attitude is based on an honest, although mistaken, belief in his innocence." (*Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 932-933.) As discussed *ante*, Iler began his representation of Davis to preserve Davis's lawsuit and then attempted to find substitute counsel both before and after the January 10, 2020 compliance deadline, although his efforts were unsuccessful. He also attempted to comply with rule 9.20 on multiple occasions and was in regular communication with Probation in order to

correct his filings. While these facts do not relieve Iler of culpability, as discussed *ante*, they provide sufficient context such that we do not see that OCTC has met its burden in proving this aggravating circumstance.[20]

B. Mitigation

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

The hearing judge assigned substantial mitigation for Iler's cooperation because he entered into a stipulation that admitted facts establishing culpability, which conserved judicial time and resources. OCTC does not challenge this finding and we agree. Iler demonstrated cooperation through the Stipulation, which merits substantial mitigation. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive weight in mitigation for those who admit culpability and facts].)

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

Iler is entitled to mitigation if he establishes "extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct." (Std. 1.6(f).) The hearing judge declined to assign mitigation under this circumstance. The judge reasoned that Iler's four declarants—an attorney and three of his former clients—did not represent a wide range of references in the legal and general communities as required under the standard. She also concluded the declarants were not fully aware of his misconduct and that three of the declarants did not opine on Iler's good character. OCTC requests we affirm the judge's findings. We assign limited weight in mitigation, as analyzed below.

[20] Since we have already considered Iler's failure to timely perform probation conditions, we do not consider these failures again to establish indifference. (*In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 133 [finding of aggravation inappropriate for conduct that formed basis for culpability].)

Though Iler presented positive letters from four character references, including an attorney, two business owners, and a retired airline pilot and military officer, they did not reflect a wide spectrum of the community. (*In the Matter of Myrdall* (Review Dept.1995) 3 Cal. State Bar Ct. Rptr. 363, 387 [testimony of three clients and three attorneys warranted limited mitigation because not broad range of references].) The three non-attorney declarants, all former clients of Iler, described him as an effective attorney, diligent, hard-working, and a family man. While the non-attorney declarants were familiar with Iler's rule 9.20 violation, only the attorney declarant expressed full awareness of Iler's additional probation violations. We give serious consideration to character evidence from attorneys. (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319.) Since three of Iler's character references did not establish that they were aware of the full extent of his misconduct, he does not meet the standard to qualify for full mitigation. (*In re Aquino* (1989) 49 Cal.3d 1122, 1131 [testimony of witnesses unfamiliar with details of misconduct not given significant weight in mitigation].) Accordingly, we assign limited mitigating weight under standard 1.6(f).

3. No Mitigation for Lack of Client Harm (Std. 1.6(c))

On review, Iler requests mitigation for lack of harm. Standard 1.6(c) provides for mitigation where there is a lack of harm to clients, the public, or the administration of justice. The hearing judge did not find Iler was entitled to any mitigation for lack of harm. She concluded that by accepting the Davis representation—when Iler knew he was facing an impending suspension and would need to withdraw or substitute other counsel—he harmed Davis at a time when Davis was ill and needed to find new counsel to pursue his civil matter. However, the judge concluded the harm was not significant and thus not considered in aggravation. We find that standard 1.6(c) is not relevant because Iler's misconduct involved his probation violations and client harm was never an issue.

4. No Mitigation for Extreme Emotional Difficulties or Physical and Mental Disabilities (Std. 1.6(d))

On review, Iler requests mitigation for financial and emotional difficulties he suffered during the time of his misconduct. In his brief, Iler stated he has been unemployed since 2018 and was dealing with his mother's worsening dementia and ultimate passing, and finalizing the dissolution of his marriage. During the disciplinary trial, he briefly testified about his financial difficulties. Standard 1.6(d) provides that mitigation may be assigned for extreme emotional difficulties or physical or mental disabilities if (1) the attorney suffered from them at the time of the misconduct, (2) they are established by expert testimony as being directly responsible for the misconduct, and (3) they no longer pose a risk that the attorney will commit future misconduct. We may consider extremely stressful family circumstances as mitigation. (*In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 701-702 [depression due to stress induced by son's emotional turmoil considered as mitigation].) Financial difficulties may be mitigating if they are extreme and result from circumstances that are not reasonably foreseeable or that are beyond the attorney's control. (See *In re Naney* (1990) 51 Cal.3d 186, 196-197.)

We agree with OCTC's main point in its brief that mitigation under this circumstance is not warranted here because Iler has not established a nexus between his personal issues and his probation violations. He also has not provided specific details or a declaration on the extent of his financial troubles. The record does not show that Iler's difficulties caused his misconduct and Iler failed to clearly and convincingly prove that his difficulties no longer pose a risk of future misconduct. Thus, we find he has not presented sufficient evidence to warrant mitigation under this circumstance.

V. DISCIPLINE

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to

maintain high standards for attorneys. (Std. 1.1.) We first look to the disciplinary standards. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92 [standards entitled to great weight]; *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11 [standards to be followed wherever possible].) Additionally, when an attorney commits two or more acts of misconduct in a disciplinary proceeding and different sanctions are specified for each act under the standards, the sanction imposed shall be the most severe of the applicable sanctions. (Std. 1.7(a).) Here, the most severe sanction is related to Iler's rule 9.20 violations, and rule 9.20(d) specifies that a "willful failure to comply with the provisions of this rule is a cause for disbarment or suspension."[21] Finally, we must also consider standard 1.8(a), which provides, "If a lawyer has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust."

The Supreme Court has established that a violation of rule 9.20 is deemed a serious ethical breach for which disbarment has been held to be appropriate. (See *Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) However, each disciplinary case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059.) Discipline less than disbarment has been imposed in rule 9.20 violation cases where the attorney demonstrated, for instance, unsuccessful attempts to file a rule 9.20 compliance declaration, significant mitigation, and little or no aggravation. (*In the Matter of Amponsah*, *supra*, 5 Cal. State Bar Ct. Rptr. 646 [one-year actual suspension for three belated and unsuccessful attempts to file compliance declaration and two additional probation violations; prior record, multiple acts, emotional problems, and cooperation]; *Shapiro v. State Bar* (1990)

[21] Iler's violations of section 6068, subdivision (k), would subject him to discipline under standard 2.14, which is actual suspension.

51 Cal.3d 251 [one-year actual suspension for five-month late-filed compliance declaration after unsuccessful attempt; 16 years of discipline-free practice; physical and emotional problems; and good character].)

We find that the factual circumstances of Iler's case are comparable to the case relied upon by the hearing judge—*In the Matter of Amponsah*, *supra*, 5 Cal. State Bar Ct. Rptr. 646. Amponsah was actually suspended for one year based on his willful violation of rule 9.20 by failing to file a rule 9.20 compliance declaration and his willful violation of section 6068, subdivision (k), by failing to timely comply with two probation conditions. In aggravation, Amponsah received serious aggravating weight for his prior record of discipline and modest weight for multiple acts based on his three acts of misconduct. Amponsah's misconduct was mitigated by substantial weight because of his extreme emotional distress and his cooperation with OCTC by stipulating to facts that established culpability.

Like *Amponsah*, this is not a case where Iler completely ignored his disciplinary obligations nor sought to avoid compliance. Iler took steps to comply with rule 9.20 and also gave Davis notice of his impending suspension. Iler made two unsuccessful attempts to file his rule 9.20 Declaration compared to Amponsah's three unsuccessful attempts. Iler also regularly responded to Probation and has fully participated in these disciplinary proceedings. Also, like Amponsah, his belated rule 9.20 Declaration was eventually filed on June 23, 2021. We also note that Iler stipulated to the facts supporting his untimely compliance and additional probation violations.

Therefore, an actual suspension rather than disbarment is appropriate. OCTC supports the hearing judge's discipline recommendation that includes 18 months of actual suspension and Iler proving his rehabilitation pursuant to standard 1.2(c)(1) before returning to the practice of

law. Although Iler requests that we impose less discipline, he does not specify the level of discipline he believes is appropriate, nor does he cite any case law.

As noted *ante*, Iler received a one-year actual suspension in his prior discipline case, and we must consider the principle of progressive discipline in making our recommendation. Therefore, a discipline recommendation greater than one year is required and appropriate. Considering the unique facts of this case regarding Iler's reasons to involve himself in the representation of Davis, and the similarity of Iler's facts to those of *Amponsah*, we find Iler's misconduct merits a discipline recommendation which is slightly less than the hearing judge's recommendation. Thus, we recommend discipline that includes a 15-month actual suspension, which is progressive from his prior case. Because Iler has been ineligible to practice since December 1, 2019, except for about six weeks at the end of 2020 and the beginning of 2021, we further recommend that the 15-month actual suspension continue until Iler demonstrates his rehabilitation, fitness to practice, and learning and ability in the general law.

VI. RECOMMENDATIONS[22]

We recommend that Douglas Gordon Iler, State Bar Number 235350, be suspended from the practice of law for three years, that execution of that suspension be stayed, and that he be placed on probation for three years with the following conditions:

1. **Actual Suspension.** Iler must be suspended from the practice of law for a minimum of the first 15 months of his probation and until Iler provides proof to the State Bar Court of his rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

[22] We do not recommend that Iler take and pass Ethics School because he successfully completed the course on September 14, 2021. (Rules Proc. of State Bar, rule 5.135(A).) We also do not recommend that Iler take and pass the Multistate Professional Responsibility Examination (MPRE) because he was previously ordered to do so by the Supreme Court in his prior discipline. (Supreme Court No. S256771; State Bar Court Nos. 16-O-13006; 16-O-15077; 17-O-02973 (Consolidated).) On December 17, 2020, we suspended Iler, effective January 11, 2021, in the prior discipline, pending proof of passage of the MPRE. He remains suspended under that order.

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

3. **Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions.** Iler 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, Iler 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. Iler 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, Iler 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 Probation, he may meet with the probation case specialist in person or by telephone. During the probation period, Iler must promptly meet with representatives 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 Iler's probation period, the State Bar Court retains jurisdiction over him to address issues concerning compliance with probation conditions. During this period, he must appear before the State Bar Court as required by the court or by Probation after written notice mailed to his official membership address, as provided above. Subject to the assertion of applicable privileges, he must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

7. **Quarterly and Final Reports**

    a. Deadlines for Reports. Iler 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, Iler 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. Iler must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by 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 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 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 Probation; (2) personal delivery to Probation; (3) certified mail, return receipt requested, to 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. Iler is directed to maintain proof of his compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of his actual suspension has ended, whichever is longer. He is required to present such proof upon request by the State Bar, Probation, or the State Bar Court.

8. **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 Iler has complied with all conditions of probation, the period of stayed suspension will be satisfied, and that suspension will be terminated.

9. **Proof of Compliance with Rule 9.20 Obligation.** Iler is directed to maintain, for a minimum of one year after commencement of probation, proof of compliance with the Supreme Court's order that he comply with the requirements of California Rules of Court, rule 9.20, subdivisions (a) and (c), as recommended below. Such proof must include: the names and addresses of all individuals and entities to whom Iler sent notification pursuant to rule 9.20; a copy of each notification letter sent to each recipient; the original receipt or postal authority tracking document for each notification sent; the originals of all returned receipts and notifications of non-delivery; and a copy of the completed compliance affidavit filed by him with the State Bar Court. He is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

VII. CALIFORNIA RULES OF COURT, RULE 9.20

We further recommend that Iler be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule

within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter.[23] Failure to do so may result in disbarment or suspension.

VIII. COSTS

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

IX. MONETARY SANCTIONS

We further recommend that Douglas Gordon Iler be ordered to pay monetary sanctions to the State Bar of California Client Security Fund in the amount of $2,000, in accordance with Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar. The guidelines suggest monetary sanctions of up to $2,500 for an actual suspension. However, the hearing judge made a downward deviation and ordered Iler to pay $2,000 in monetary sanctions. After considering the facts and circumstances of the case, we determine that a $2,000 sanction is appropriate due to Iler's claimed financial difficulties. Monetary sanctions are enforceable as a money judgment and may be collected by the State Bar through any means

[23] For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Iler is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

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.

McGILL, J.

WE CONCUR:

HONN, P. J.

WANG, J.*

* Judge of the Hearing Department of the State Bar Court, designated to serve in this matter as a Review Department Judge Pro Tem, pursuant to rule 5.155(F) of the Rules of Procedure of the State Bar.