

Filed April 8, 2020

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of)	17-O-00833 (17-O-02657; 17-O-03006)
)	
PETER MILES HOFFMAN,)	OPINION AND ORDER
)	[As Modified on June 19, 2020]
State Bar No. 66205.)	
_____)	

This is Peter Miles Hoffman’s third disciplinary proceeding since 2011. The hearing judge found Hoffman culpable of identical ethical violations in 2017 in each of three legal matters—for the unauthorized practice of law (UPL) while suspended and for acts of moral turpitude arising from that UPL. Considering that Hoffman had been reprovved in 2011 and suspended for six months in 2017, and determining that serious aggravating circumstances outweigh the one mitigating factor, the judge recommended disbarment as necessary to protect the public.

While stipulating to the facts of the three matters, Hoffman seeks review contending that he was entitled to practice law because California civil procedure allowed him to, and that his acts did not constitute moral turpitude. The Office of Chief Trial Counsel of the State Bar (OCTC) disagrees and supports the hearing judge’s findings and disbarment recommendation.

On our independent review of the record, we uphold the hearing judge’s overall decision and her recommendation. Before Hoffman committed any of the misconduct revealed by this record, he had stipulated in 2017, in his second disciplinary proceeding, that, inter alia, he did not have a reasonable belief that California civil procedure allowed him to represent parties in arbitrations while suspended from practice. Yet, in this proceeding, he contends that he did not so stipulate, contrary to the written record. Moreover, Hoffman’s 2017 stipulation correctly

reflects the ethical law governing attorneys. In order to protect the public, the courts, and the legal profession, we also recommend disbarment.

I. THE FACTUAL FINDINGS ARE UNDISPUTED

Shortly before the March 7, 2019 trial in this matter, Hoffman and OCTC stipulated to the basic facts of Hoffman's acts in each of the three UPL matters at issue. Hoffman's testimony, and the exhibits he agreed could be admitted in evidence, established that he had sent the electronic mail messages or taken the legal positions represented by those exhibits in the three separate matters, and that he had done so while suspended from the practice of law.

The stipulated facts and undisputed evidence led the hearing judge to make the following factual findings, which we summarize below. On our independent review of the record (Cal. Rules of Ct., rule 9.12), we adopt the hearing judge's findings. We start by noting that, during all key times in this record when Hoffman was found culpable of practicing law, he was indisputably under suspension from practice.¹

A. The Paradise Film Arbitration

Hoffman was a vice-president of two film companies, collectively referred to in the record as MGN. They are affiliates of Paradise Film Company (Paradise), a corporation organized in the Russian Federation. In early 2017, a dispute was arbitrated in California between Paradise and IMF Sales Company (IMF Sales), a licensor of film distribution rights.

In the arbitration, Paradise was represented by counsel, Alexandra Krakovsky, licensed to practice law in California, and her acts are not before us in this proceeding. Hoffman acted as a

¹ We suspended Hoffman interimly, effective September 28, 2015, after OCTC filed a certified copy of his conviction of federal felony crimes. (Bus. & Prof. Code, § 6102, subd. (a); Cal. Rules of Ct., rule 9.10(a).) Although Hoffman's conviction has not yet become final, his interim suspension has remained in effect since we imposed it. Effective July 23, 2017, in his second prior discipline case, the Supreme Court suspended Hoffman from practice for six months as final discipline for misconduct we discuss *post*.

non-attorney advisor for Paradise. Hoffman informed the arbitration tribunal and counsel for IMF Sales of his interim suspension.

Between February 17 and 28, 2017, Hoffman sent counsel for IMF Sales, Jeremiah Reynolds, a total of four email messages.² Collectively, these messages addressed Paradise's legal objections to discovery, the state of the evidence supporting an issue in the arbitration, that the hearing would be based on mixed questions of law and fact, the effect of applicable California law, issues of document production, the contract terms underlying the dispute, Paradise's position on a continuance of the arbitration, and the adequacy of IMF Sales's discovery responses.

B. The Comerica Bank Post-Arbitration Matter

Prior to April 2017, MGN had a film rights dispute with Comerica Bank or its affiliate or assignee. The matter was arbitrated and a final award was entered against MGN.

In February 2017, MGN filed a petition in Los Angeles County Superior Court to vacate the arbitration award. In April 2017, the opposing party filed a separate petition in Los Angeles County Superior Court to confirm the award.

Hoffman did not appear as an MGN representative before the arbitration tribunal or the Superior Court. At all times MGN was represented by counsel Krakovsky, who had represented Paradise in the Paradise Film arbitration.

However, between April 13 and 14, 2017, after each side to this Comerica Bank arbitration had filed post-arbitration Superior Court petitions referred to *ante*, Hoffman wrote two emails to opposing counsel, Gary Gans. Hoffman's April 13 email informed Gans that Hoffman: considered Gans's conduct sanctionable under California law for relying on the

² Hoffman's February 17, 2017 email was addressed jointly to opposing counsel Reynolds and to Krakovsky, who represented Paradise.

incorrect legal authority, considered Gans's conduct frivolous as it violated the "first to file" California rule, and made a demand to Gans to withdraw the petition to confirm the award.

The next day, Gans repeated to Hoffman an earlier, unanswered question about whether Hoffman was licensed to practice law in order to determine whether Gans could communicate with him. Hoffman replied the same day that he was an "authorized non-attorney agent" as he claimed that he had repeatedly told Gans. Hoffman then repeated his legal position on the dispute and the respective liability of the parties. He reiterated his position that Gans's petition to confirm the arbitration award was frivolous and that counsel Krakovsky would serve a motion for sanctions on Gans's client in due course.

Gans's reply to this email was that he assumed that Hoffman was not currently licensed to practice law in California and, therefore, communicating with opposing counsel about substantive legal matters constituted practicing law. Hoffman replied, characterizing Gans as an "idiot."

C. The United Care Network Arbitration

At all key times, Hoffman was an officer of United Care Network (UCN). Prior to his suspension in 2015, Kelly Bascom, a nurse practitioner engaged by UCN, had claimed that UCN violated state law by failing to pay her required overtime compensation and compensation for missed meal periods.

While in good standing in September 2015, Hoffman represented UCN by filing a Los Angeles County Superior Court action to compel arbitration. In May 2015, the Superior Court ordered arbitration of Bascom's claims and retained jurisdiction over the matter.

Hoffman continued to appear in the arbitration in 2015 and discussed substantive legal matters with opposing counsel before and after he was suspended from practice on September 28, 2015. As will be discussed *post*, Hoffman's 2015-2016 post-suspension acts formed part of the basis for his second imposition of discipline and were founded on his 2017

written stipulation that he had, inter alia, held himself out as entitled to practice law while suspended and also committed acts of moral turpitude.³

Between May and November 2017, while suspended from practice, Hoffman resumed his active representation of UCN in the Bascom arbitration as a non-attorney representative. His acts found in the current matter included his May 9, 2017 email to opposing counsel and to a staff member of the arbitration organization. This message provided Hoffman's legal opinion of the arbitrator's jurisdiction and the merit of UCN's and opposing counsel's legal positions.

On September 22, 2017,⁴ Hoffman submitted a pre-hearing memorandum to the arbitration tribunal. This discussed legal standards and principles applicable to the arbitration cited case law, provided other legal discussion, and argued the merits of UCN's case.

Three days later, Hoffman appeared at the arbitration hearing as an officer of UCN and as its non-attorney representative. During the hearing, Hoffman examined and cross-examined witnesses, objected repeatedly to evidence admissibility, cited to statutes and court decisions, and provided legal analysis, opinion, and argument on the issues before the arbitrator, including the doctrine of judicial notice and the reason a cross-claim should be precluded.

On about November 16, 2017, Hoffman filed a post-hearing memorandum in the arbitration. This document addressed the applicable legal standard, discussed legal doctrine, cited relevant court decisions, and argued the merits of UCN's case.

³ As we discuss *post*, Hoffman's 2015-2016 UPL and moral turpitude acts, which he admitted and which led to his 2017 discipline, were of the same type as his undisputed acts here and in the Paradise Film arbitration. The only procedural difference between the 2017 prior discipline record and this one is that, in the present matter, Hoffman has not stipulated to his culpability of violations of the State Bar Act for holding himself out as entitled to practice law while suspended and engaging in moral turpitude, as he had done in his 2017 disciplinary proceeding.

⁴ At this time and through the remainder of his activities in the UCN arbitration, Hoffman was under our 2015 interim suspension, as well as the six-month actual suspension ordered by the Supreme Court.

II. THE RECORD AND LAW SUPPORT THE HEARING JUDGE'S CONCLUSIONS THAT HOFFMAN PRACTICED LAW WHILE SUSPENDED AND COMMITTED ACTS OF MORAL TURPITUDE

A. The Procedural History of This Proceeding

On August 16, 2018, OCTC filed a Notice of Disciplinary Charges (NDC) alleging Hoffman's misconduct in each of the three matters discussed *ante*, and charging him with violating Business and Professions Code, section 6068 subdivision (a),⁵ by his violations of the particular statutes prohibiting UPL. (*Id.*, §§ 6125-6126.) This NDC also charged Hoffman in each of those three matters with committing an act of moral turpitude, dishonesty, or corruption. (*Id.*, at § 6106.)

After trial, the hearing judge concluded that Hoffman was culpable of all the charged violations. Reviewing applicable statutory and decisional law, she determined that in each of the three matters, Hoffman's acts constituted UPL, notwithstanding that non-lawyers could represent parties to arbitrations; and he violated section 6126 by engaging in the practice of law while suspended. She also concluded that in each of the matters, Hoffman engaged in moral turpitude, either by intentional acts or by gross negligence.

On review, Hoffman disputes the hearing judge's culpability conclusions, essentially repeating the same arguments he made below. While not specifically disputing that the individual acts he performed involved the practice of law, he makes two essential claims as to the hearing judge's legal conclusions. First, citing Code of Civil Procedure, sections 1282.4, subdivision (h), and 1297.351,⁶ he claims that he was immunized from lawyer discipline by

⁵ Unless noted otherwise, all references to sections are to those of the Business and Professions Code.

⁶ Code of Civil Procedure section 1282.4, subdivision (h), states that in arbitration arising under collective bargaining agreements governed by state or federal law, notwithstanding any law, including section 6125, a party may be represented in the proceedings regardless of whether that person is licensed to practice law. Code of Civil Procedure section 1297.351 provides that,

validly acting as a non-attorney representative of a party in each of the arbitration matters at issue here. He distinguishes key authorities cited by the hearing judge in finding him culpable. Finally, he argues the evidence that he committed acts of moral turpitude was not clear and convincing; that he had a good faith belief that he could act as a non-lawyer representative in these arbitration matters; and the conclusion of moral turpitude deprived him of due process.

OCTC opposes Hoffman's claims, supporting the hearing judge's conclusions of law. It also claims that Hoffman's 2017 stipulated disposition has res judicata effect as to the UPL charges in the present proceeding, since Hoffman stipulated in 2017 that he committed the same form of UPL that he was later charged with in this proceeding.

On our independent review, we agree with the hearing judge's conclusions, except we find that Hoffman's acts of moral turpitude were willful. We address the hearing judge's conclusions, starting with the applicable law.

B. Hoffman's Acts in All Three Matters Constituted UPL and He Could Not Seek to Immunize his Practice of Law, While Suspended, by Designating Himself as a Non-Attorney Representative

Review of Hoffman's claims about the law show, collectively, that he is misinformed both as to the ethical duties of attorneys in this state and as to the facts not subject to dispute.

Although the Legislature has formulated the State Bar Act and limited exceptions to it as to the practice of law, the definition of law practice over time has been largely judicial. (E.g., *Birbrower, Montalbano, Condon & Frank v. Superior Court* (1998) 17 Cal.4th 119, 128–131; *People v. Merchants Protective Corp.* (1922) 189 Cal. 531, 535.) As pertinent here, that definition of law practice includes both representation of others in court proceedings as well as “legal advice and counsel and the preparation of legal instruments and contracts by which legal

in international arbitrations, a person may be represented by any person of their choice, who need not be licensed to practice law in California.

rights are secured” without regard to whether a court proceeding is pending. (*Baron v. City of Los Angeles* (1970) 2 Cal.3d 535, 542–543.)

Hoffman unquestionably was engaged in law practice in each of the three matters, which are the subject of this proceeding, while he was suspended from practice. Collectively, he made legal demands on the opposing parties’ counsel on behalf of his corporations; and he briefed and advocated a wide variety of legal issues, such as judicial notice, discovery and admissibility of evidence questions, procedures for pursuing relief from alleged frivolous litigation, the preclusion of cross-claims, and the legal effect of contract terms. He has never disputed that he had so acted.

Hoffman could not have transformed himself in 2017—or now—into a person never licensed to practice law merely based on his claim that the Legislature enacted laws allowing non-attorneys to represent persons in certain arbitrations. The Supreme Court has recognized that even if services may be performed by non-lawyers, if a lawyer performs them, they are not transformed into non-legal activities. (*Crawford v. State Bar* (1960) 54 Cal.2d 659, 668 [disbarred attorney’s actions constituted law practice when conferring directly with clients, on his own, as to preparation of deeds, probate matters, escrows, real estate ventures, mining claims, and dissolution of partnership while working as tax consultant in son’s law office]; *In the Matter of Huang* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296, 304 [in residential loan modification practice, attorney enabled non-lawyer staff to practice law by directly advising clients and negotiating loan modification terms and settlements with opposing lenders without attorney supervision].)

Moreover, Hoffman “must conform to the professional standards in whatever capacity he may be acting in a particular matter.” (*Baron v. City of Los Angeles, supra*, 2 Cal.3d at p. 542, quoting *Libarian v. State Bar* (1943) 21 Cal.2d 862, 865.) One of those duties is the one charged

in this proceeding, compliance with section 6126, subdivision (b), which prohibits practicing law or holding out as entitled to practice law, while, inter alia, suspended from law practice.

Neither of the civil procedure statutes which Hoffman relies on exempts suspended attorneys from compliance with section 6126. Code of Civil Procedure, section 1282.4, does allow arbitration parties to be represented by out-of-state attorneys, but imposes a number of prerequisites on them, including that any out-of-state attorney who seeks to represent a party in an arbitration must be in good standing in each jurisdiction admitted and may not be suspended or disbarred in any jurisdiction in which admitted. (Code Civ. Proc. § 1282.4, subd. (c)(4)-(5).)⁷

Hoffman's argument that he could represent parties to arbitrations while suspended, under statutes that disallow that representation by out-of-state suspended attorneys, would lead to the highly dubious, if not absurd, result that California's legislature intended to afford greater protection to parties in this state represented by out-of-state attorneys, than those represented by California-licensed attorneys. Hoffman provided no legislative intent evidence to support his view of the law, and we avoid a construction of these statutes that would lead to such a result. (E.g., *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 616–617, quoting *Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 165–166.)

We hold that a key authority relied on by the hearing judge, *Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, is persuasive as to Hoffman's status as a suspended attorney. Benninghoff was an attorney who resigned while charges were pending against him. He contended that, after resigning from State Bar membership, the State Bar could not assume jurisdiction over his law practice under section 6180, because he was not practicing law when representing parties in state administrative proceedings. The court decided that, whether or not non-lawyers could represent persons in California administrative procedures, Benninghoff could

⁷ Effective January 1, 2019, the same essential requirements were imposed on out-of-state attorneys seeking to represent parties in international arbitrations. (*Id.*, § 1297.185, subd. (c).)

not do so, as he was subject to the consequences of section 6126, subdivision (b), as a resigned attorney. As noted *ante*, this section also applies, inter alia, to Hoffman, as a suspended licensee. Applying the authorities defining the practice of law, which we have cited *ante*, the court concluded that Benninghoff did practice law while resigned from law licensure. (*Benninghoff v. Superior Court, supra*, 136 Cal.App.4th at pp. 68–70.)

Hoffman seeks to distinguish *Benninghoff* on several grounds, but they are unavailing, either because section 6126, subdivision (b), does apply to suspended as well as resigned or disbarred attorneys, or the type of activities which Hoffman engaged in are clearly the practice of law, whether or not Hoffman acted as counsel of record. In that vein, we note that Hoffman's actions in the Comerica Bank matter occurred after the arbitration had concluded, and while the matter was pending in Superior Court.

C. Hoffman's 2017 Factual Stipulation, That He Had an Unreasonable Belief That He Was Exempted from the Reach of Section 6126, Subdivision (b), in UPL, Is Binding on Him in This Proceeding Concerning Later, but Similar Misconduct

Beyond the UPL authorities discussed *ante*, we have concluded that Hoffman's factual stipulation in his 2017 prior disciplinary proceeding should preclude his claim that he had a reasonable belief that he could practice law in arbitrations, although suspended.

In most cases, an attorney's prior discipline is considered only as an aggravating circumstance to the degree of discipline to consider in a later proceeding (see *post*). But it may also be considered if it tends to prove a fact in issue in determining culpability. (Rules Proc. of State Bar, rule 5.106(D).) This is such a case.

In Hoffman's 2017 proceeding, he entered into a comprehensive stipulation to facts and conclusions of law, and an agreement to be suspended for six months. That document was introduced in evidence in the present record as Exhibit 1002, after the hearing judge tentatively determined that Hoffman was culpable. His 2017 stipulation admitted that between November 13,

2015 and March 1, 2016, in the same UCN arbitration matter involved in this proceeding, and while suspended from practice, Hoffman, inter alia, represented a party to the arbitration, communicated with opposing counsel and the arbitration tribunal regarding substantive legal matters in that arbitration, and submitted an Opposition of Claimant to the arbitration tribunal.

We set forth the salient factual portion of this 2017 Stipulation, found in the Attachment to the pre-printed State Bar Court form for this stipulated disposition:

“FACTS:

4. At the time he was suspended, [Hoffman] was representing a party in *United Care Network LLC v. Baskom [sic]* . . .” [Hoffman] was of the unreasonable belief that his representation did not constitute holding himself out as entitled to practice law, as Code of Civil Procedure section 1282.4(h) allows non-attorneys to represent a party in such matters as does [American Arbitration Association] Rule 26. [Hoffman] now admits he held himself out to practice law when he was not entitled to do so, after his suspension took effect, by the following conduct:

(a) Between November 4, 2015 and November 12, 2015, [Hoffman] communicated with opposing counsel via email regarding substantive legal matters in [the UCN matter].

(b) Between November 4, 2015 and March 1, 2016, [Hoffman] communicated with the [American Arbitration Association] tribunal regarding substantive legal matters in [the UCN matter].

On November 20, 2015, [Hoffman] submitted an Opposition of Claimant to [Hoffman’s] Motion for Judgment on the Pleadings to the [American Arbitration Association] tribunal in [the UCN matter] while under suspension.”

The Supreme Court has bound attorneys to their factual stipulations as part of an agreed stipulated set of facts, conclusions, and disposition, even if the Court is considering imposing greater discipline. However, in that situation, the Supreme Court will only relieve an attorney of the admitted conclusions of law. (*Giovanazzi v. State Bar* (1980) 28 Cal.3d 466, 470–471; *Inniss v. State Bar* (1978) 20 Cal.3d 552, 555.) Applying this doctrine, we are fully justified in holding Hoffman to his *factual* stipulation in 2017 that he was of the unreasonable belief that civil procedure statutes allowing non-lawyers to represent parties to arbitration immunized him from

discipline. However, we deem it unwarranted to also follow OCTC's position that principles of res judicata and collateral estoppel compel us to give binding effect in this proceeding to the 2017 stipulated *conclusions of law* that Hoffman had practiced law while suspended and had engaged in acts of moral turpitude.

Rather than be governed or guided in this proceeding by his 2017 factual stipulation in his prior proceeding, Hoffman has advanced two points on review: first, that the reach of this stipulation did not extend to UPL merely by representing a party to an arbitration; rather, the stipulation was focused on his failure to comply with his duties under rule 9.20, California Rules of Court; and second, that the actual language of the stipulation did not contain his agreed-upon language expressed during the settlement negotiation process in his prior proceeding. Neither of Hoffman's points has merit.

As to Hoffman's first point, his 2017 stipulation concerning the UCN arbitration acts in 2015 and 2016 expressly and without limitation admits on its face that he had an unreasonable belief that he could represent a party to an arbitration while suspended.

As to his second point, Hoffman had an opportunity to timely request the correction or modification of the 2017 stipulation, or withdraw from it and proceed to trial, if he deemed it an inaccurate reflection of agreement in order to dispose of the matter. (Rules Proc. of State Bar, rule 5.58(F).) He presented no evidence that he had timely done so. Rather, he let the stipulation which bore his signature be approved both by a State Bar Court hearing judge and by the Supreme Court in 2017 when imposing the agreed discipline. Only at trial of *this* matter, did he raise this argument for the first time. Under these circumstances, Hoffman has waived any of the timely opportunities he had to remedy any disagreement he had with the form of the stipulation. (See *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349, 357 [accused attorney's failure to timely raise and seek resolution of a procedural issue waived that issue].)

D. Hoffman's Practice of Law While under Suspension also Involved Intentional Acts of Moral Turpitude

The hearing judge had two reasons for determining that Hoffman committed acts of moral turpitude. First, Hoffman was aware of this court's order of his interim suspension from law practice when it became effective in September 2015, and of the Supreme Court's order of a six-month disciplinary suspension, effective July 23, 2017. Second, by Hoffman resolving his second disciplinary proceeding via a stipulated disposition, he admitted that he had improperly practiced law and engaged in acts of moral turpitude in the pre-2017 arbitration phase of the UCN arbitration.

Hoffman claims that the record lacks sufficient evidence of moral turpitude acts on his part. He asserts that his acts of good faith in a disputed legal area as to accepted lay representation of parties to certain arbitrations should overcome the hearing judge's conclusions of moral turpitude. OCTC disagrees, pointing out the hearing judge's findings that Hoffman stipulated in his 2017 second disciplinary proceeding in which he agreed to be disciplined for the same type of misconduct in the UCN arbitration. We agree with OCTC and uphold the hearing judge's moral turpitude conclusion, but find that Hoffman's conduct shows intentional acts of moral turpitude, rather than, as the hearing judge concluded, moral turpitude acts made *either* intentionally or through gross neglect.

As we discussed *ante*, Hoffman's 2017 stipulation shows he had an "unreasonable belief" that he could practice law as a non-attorney representative of UCN. In that stipulation, he agreed that he willfully violated section 6068, subdivision (a), by violating sections 6125 and 6126, and that he committed moral turpitude barred by section 6106.

Thus, by his own admissions in a recent prior disciplinary proceeding, Hoffman was clearly on notice that his further acts of this same type of misconduct were disciplinable and contrary to the good faith belief that he urges in the present proceeding. On occasion, we have

found that a suspended attorney who violated sections 6125 and 6126 also committed acts of moral turpitude. (*In the Matter of Burke* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448, 459 [suspended attorney appeared at deposition after learning of his suspension]; *In the Matter of Mason* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639, 641–642 [attorney appeared in court knowing of his suspension; willful misconduct found].) Hoffman had prior knowledge not only of his 2015 interim suspension, but in February 2017, that his conduct of appearing for parties in arbitration while suspended was grounds for discipline. Thus, we are justified in concluding that his acts of moral turpitude in the three matters before us were intentional.

Hoffman’s due process claims that he was not fairly on notice from 2017 that his conduct could involve moral turpitude and that his 2017 prior discipline was effectively reopened to now find him culpable of moral turpitude, are without merit. They are incorrect factually and belied by his 2017 voluntary stipulation.

III. SIGNIFICANT AGGRAVATION OUTWEIGHS MITIGATION

A. Mitigating Circumstances

At trial, Hoffman presented evidence of only one mitigating circumstance. He showed cooperation with the State Bar by stipulating with OCTC before trial as to all of the essential facts and the admissibility of documentary evidence. (Std. 1.6(e).)⁸ We agree with the hearing judge’s assessment that Hoffman’s cooperation is worthy of moderate weight in mitigation.

B. Aggravating Circumstances

OCTC presented evidence of three aggravating circumstances, each found by the hearing judge. We agree with the judge’s view that Hoffman’s prior record of discipline is entitled to significant weight in aggravation. (Std. 1.5(a).)

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

Hoffman was privately reproved in 2011. In 2017, he was suspended from practice for one year, stayed, on conditions of one year of probation and an actual suspension of six months. Both priors arose from dispositions agreed to by Hoffman's stipulation as to his culpability.

Hoffman's private reproof was based on four litigation steps he took in 2006 and 2007, in California and federal courts, after receiving a judgment arising from an arbitration award. Hoffman stipulated that he willfully violated section 6068, subdivision (c) [maintaining actions or proceedings not legal or just], by filing a new state action after the first had been removed to federal court; by seeking remand of an action that had been removed to federal court;⁹ by filing a third state court action against the same defendant earlier sued, alleging deceit;¹⁰ and, finally, by appealing the third action after the sustained demurrer.¹¹ Hoffman stipulated in aggravation that his misconduct significantly harmed the administration of justice. In mitigation, Hoffman had no prior discipline, was candid and cooperative during the disciplinary proceedings, and established good character.

Hoffman's 2017 suspension was based on his stipulated acts between October and November 2015. He admitted that, in two matters, he failed to notify all required of his suspension as required by rule 9.20(a), California Rules of Court. He agreed that in the two matters, he committed moral turpitude by being grossly negligent in not knowing that his rule 9.20(a) compliance document falsely stated his compliance with rule 9.20.

We find, as we discussed *ante*, that Hoffman's prior suspension was also based on his admitted UPL violations and moral turpitude in the same UCN arbitration matter underlying the

⁹ In denying the motion to remand, the federal court concluded that Hoffman's state court complaint was frivolous and intended to harass the defendants.

¹⁰ The California Superior Court sustained the opposing party's demurrer to Hoffman's third action without leave to amend, based on binding, previous determination of the issue.

¹¹ The Court of Appeal affirmed the ultimate dismissal of the third action, finding it frivolous.

current matter, but arising between late November 2015, and March 2016, more than a year before he engaged in the acts found in the current proceeding. Further, our analysis of the record of Hoffman's prior discipline shows that he and OCTC had filed their stipulated disposition with the State Bar Court on February 6, 2017, prior to any misconduct in any of the three current matters in this third proceeding.

We agree with the hearing judge that Hoffman's priors have substantial weight in aggravation, especially because they showed Hoffman's repeated acts in defiance of his duty to comply with the requirements of his law license while suspended.

We also agree with the hearing judge's assessment of significant aggravation by Hoffman's engaging in multiple acts of UPL and moral turpitude in each of three matters in the current proceeding. (Std. 1.5(b); *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646–647 [three instances of misconduct considered multiple acts].)

Finally, we uphold the hearing judge's conclusion that Hoffman lacks insight into his wrongdoing. (Std. 1.5(k).) Not only did he continue to engage in UPL in multiple matters in this record after stipulating to those offenses in his second disciplinary proceeding, but he has also taken the position at trial, and before us, that he was not culpable of that misconduct in his prior proceeding, despite his clear, written admissions to the contrary.¹² This serious aggravating circumstance portends poorly for Hoffman's adherence to professional standards in the future.

IV. DISBARMENT IS THE APPROPRIATE DISCIPLINE

Our purpose in recommending attorney discipline is not punishment, but rather protection of the public, the courts, and the legal profession; preservation of public confidence in the profession; and maintenance of high professional standards for attorneys. (Std. 1.1.) Our

¹² Although the hearing judge did not expressly quantify the weight of this aggravating circumstance, it is apparent from her discussion of it that she considered it seriously aggravating, as do we.

disciplinary analysis begins with these standards. While they are guidelines for discipline and are not mandatory, we give them great weight to promote consistency. (*In re Silvertown* (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 considering 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].) Here, both standard 2.11, which addresses an act of moral turpitude, and standard 2.10(a), which addresses UPL while on suspension from practice, provide that disbarment or actual suspension is the presumed sanction.

Given Hoffman’s disciplinary history, we also look to standard 1.8(b), which states that disbarment is appropriate where an attorney has two or more prior records of discipline if: (1) an actual suspension was ordered in any prior disciplinary matter; (2) the prior and current disciplinary matters demonstrate a pattern of misconduct; or (3) the prior and current disciplinary matters demonstrate the attorney’s unwillingness or inability to conform to ethical responsibilities. Hoffman’s case meets the first and third requirements: he previously received a private reproof and a six-month actual suspension; and, like the hearing judge, we find that Hoffman repeatedly failed to comply with his ethical obligations despite having stipulated to suspension in his second disciplinary proceeding for the very type of misconduct which he later committed in the same legal matter—engaging in law practice while suspended. As such, his prior and current misconduct establish his unwillingness or inability to conform to ethical norms. Moreover, the two specified exceptions to standard 1.8(b) do not apply here. Hoffman’s present

misconduct did not occur at the same time as his prior misconduct,¹³ and his limited mitigation for cooperating in the third disciplinary proceeding is neither compelling nor does it predominate over the significant aggravation for two prior discipline records, multiple acts of wrongdoing, and his utter lack of insight into his wrongdoing.

We next consider whether any reason exists to depart from the discipline called for by standard 1.8(b). We acknowledge that disbarment is not mandatory as a third discipline. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 506–507 [disbarment is not mandatory in every case of two or more prior disciplines].) However, if we deviate from recommending disbarment, we must articulate clear reasons for doing so. (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5 [requiring clear reasons for departure from standards].) Hoffman has not offered a cogent reason for us to depart from applying standard 1.8(b), and we cannot articulate any.

Hoffman's two prior disciplines, taken with the present record, show that he has been unable or unwilling to adhere to a variety of duties surrounding his law license: from avoiding frivolous and burdensome litigation tactics, for which he was reprovved, to failing to comply properly with the duties of a suspended attorney. Having stipulated in his second disciplinary proceeding that he had engaged in UPL while suspended, he repeated that misconduct in the very same matter by later acts. He also repeated it in two other legal matters. Before both the hearing judge and on review, he has failed to acknowledge that he had, in 2017, stipulated to his UPL practice misconduct and that it constituted moral turpitude.

We must conclude from this record that further probation and suspension would be inadequate to prevent Hoffman from committing future misconduct that would endanger the

¹³ All of his present misconduct occurred after he and OCTC had stipulated to being suspended for the very same type of misconduct he later committed in the present record. (See *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602 [rationale for considering aggravating impact of prior discipline includes recidivist attorney's inability to conform conduct to ethical norms, so appropriate to consider whether current misconduct is contemporaneous with misconduct in prior case].)

public, clients, and courts. (*Barnum v. State Bar* (1990) 52 Cal.3d 104, 112–113 [disbarment imposed where attorney repeatedly failed to comply with probation conditions since further probation unlikely to prevent future misconduct].) The standards and decisional law support our conclusion that the public and the courts are best protected if Hoffman is disbarred.¹⁴

V. RECOMMENDATION

We therefore recommend that Peter Miles Hoffman be disbarred and that his name be stricken from the roll of attorneys licensed to practice in this state.

We also recommend that he comply with the provisions of rule 9.20 of the California Rules of Court and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court’s order in this matter.

We further recommend that the State Bar be awarded costs in accordance with section 6086.10, such costs being enforceable both 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.

VI. ORDER OF INACTIVE ENROLLMENT

Because the hearing judge recommended disbarment, she properly ordered Hoffman to be involuntarily enrolled as an inactive member of the State Bar, as required by section 6007, subdivision (c)(4). The hearing judge’s order became effective on June 8, 2019, and Hoffman

¹⁴ E.g., *In the Matter of Carver* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 427 [disbarment where attorney with two prior disciplines committed act of moral turpitude and significant aggravation outweighed limited mitigation]; *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63 [disbarment where attorney with two prior disciplines was unable to conform conduct to ethical norms with multiple aggravating factors and no mitigation].

has been on involuntary inactive enrollment since that time. He will remain on involuntary inactive enrollment pending the final disposition of this proceeding.

STOVITZ, J.*

WE CONCUR:

PURCELL, P. J.

MCGILL, J

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