

STATE BAR COURT OF CALIFORNIA
REVIEW DEPARTMENT

In the Matter of)	SBC-20-O-30782
)	
STANLEY HOWARD KIMMEL,)	OPINION
)	
State Bar No. 77007.)	
_____)	

In his second disciplinary case, Stanley Howard Kimmel was charged with one count of misconduct for violating various conditions of his disciplinary probation. The hearing judge found Kimmel culpable as charged and recommended a 90-day actual suspension. Kimmel appeals and argues that the judge’s factual findings are not supported by clear and convincing evidence, the State Bar is estopped from prosecuting his probation violations, and the recommended discipline is excessive. The Office of Chief Trial Counsel of the State Bar (OCTC) does not appeal and requests that we uphold the judge’s recommendation.

Upon independent review of the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge’s findings, apart from the weight given to the aggravating factors and the amount of monetary sanctions recommended. We also conclude that Kimmel has offered no justification to impose less discipline than the hearing judge recommends. To protect the public, the courts, and the legal profession, we recommend a 90-day actual suspension as warranted under our disciplinary standards.

I. PROCEDURAL BACKGROUND

On November 16, 2020, OCTC filed a one-count Notice of Disciplinary Charges (NDC), charging Kimmel with failing to comply with several conditions of his disciplinary probation in

violation of Business and Professions Code section 6068, subdivision (k).¹ Kimmel filed a response on December 8. On March 8, 2021, the parties entered into a pretrial Stipulation as to Facts and Admission of Documents (Stipulation). On March 9, the hearing judge held a one-day trial and posttrial briefing followed. The judge issued a decision on July 2, 2021.

II. FACTUAL BACKGROUND² AND CULPABILITY

A. Kimmel's Prior Record of Discipline

Kimmel was admitted to practice law in California on December 21, 1977, and he has one prior record of discipline. In the prior matter, Kimmel stipulated to two counts of failing to perform with competence and two counts of failing to keep a client reasonably informed of significant developments. This misconduct involved two clients in four court cases where Kimmel failed to appear for a civil trial, failed to timely file a response to a civil complaint, failed to inform a client that his civil action had been dismissed, and failed to oppose a motion for summary judgment. Kimmel stipulated to a one-year suspension that was stayed, with one year of probation and a 60-day actual suspension. The Hearing Department approved the stipulation and filed it on October 18, 2018.

On February 1, 2019, the Supreme Court issued its order imposing the stipulated discipline (Discipline Order). (S252853.) The Discipline Order was properly served on Kimmel and became effective on March 3,³ 30 days after it was entered (Cal. Rules of Court,

¹ All further references to sections are to the Business and Professions Code.

² We base the factual background on trial testimony, documentary evidence, the Stipulation, and the hearing judge's factual findings, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).) We also give great weight to the judge's credibility findings. (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [hearing judge best suited to resolve credibility issues "because [the judge] alone is able to observe the witnesses' demeanor and evaluate their veracity firsthand"].)

³ Two days before the Discipline Order became effective, on March 1, 2019, Kimmel attempted to file in the Supreme Court a request to modify the Discipline Order because he needed additional time to resolve client matters before his actual suspension would take effect.

rule 9.18(a).) The Discipline Order, in relevant part, required Kimmel to provide to the State Bar's Office of Probation (Probation) proof of passing the Multistate Professional Responsibility Examination (MPRE) and to comply with the probation conditions as recommended by the Hearing Department in the stipulation filed on October 18, 2018. Those conditions included the timely scheduling of a meeting with Probation by March 18, 2019, submitting quarterly reports (on January 10, April 10, July 10, and October 10, 2019) and a final report (by March 3, 2020) to Probation, reviewing the relevant Rules of Professional Conduct and Business and Professions Code sections by April 2, 2019, and submitting evidence of successful completion of the State Bar's Ethics School (Ethics School) to Probation by March 3, 2020.

B. Probation's Reminder Letter and Kimmel's Belated Meeting with Probation

On February 21, 2019, a Probation case specialist sent Kimmel an email at his membership records e-mail address informing him that Probation had uploaded a courtesy reminder letter to his My State Bar Profile on the State Bar website. Probation received a delivery confirmation email that the email was successfully delivered. The reminder letter restated the terms and conditions of Kimmel's disciplinary probation and provided him with the compliance dates for each requirement. The Discipline Order was enclosed with the letter and portions of the stipulation containing the discipline and conditions of probation. Also, the letter clearly indicated that any request for an extension of time or modification of the terms of probation must be filed with the State Bar Court. Based on the effective date of the Discipline Order, Kimmel was required to schedule a meeting with Probation by March 18, 2019, and participate in the required meeting no later than April 2. Kimmel did not open and review the case specialist's email until May 1, when he was cleaning out his inbox. That same day, Kimmel

He was informed by a clerk of the Supreme Court that the request could not be filed with the Supreme Court. The Supreme Court did not file or rule on Kimmel's request. Kimmel contacted OCTC regarding his request but did not file a request in the State Bar Court.

immediately called Probation to schedule his required initial meeting. Probation sent Kimmel an email confirming May 3 as the date for their initial meeting and informed him that he was not compliant with the terms of his probation because the meeting was untimely. Kimmel received the email and reviewed it. He also asked Probation how to achieve compliance but was informed that he could not.

Kimmel participated telephonically in the required meeting with Probation on May 3, 2019. He again asked Probation how he could cure his reported noncompliance and was told that he did not need to do anything. After the meeting, Probation sent Kimmel an email with a copy of the meeting record attached. Probation received a delivery confirmation and receipt that the email had been read.

C. Kimmel's Probation Violations

According to his probation conditions, Kimmel was required to review the Rules of Professional Conduct and certain sections from the Business and Professions Code by April 2, 2019, and provide a declaration of compliance with his first quarterly report due by July 10. The hearing judge found that Kimmel credibly testified that he printed the rules and sections, placed them in a binder, and read them as it had been 40 years since he attended law school and he wanted to make sure he was abreast of the latest rules. He testified that, after reviewing the quarterly report form, he realized he was only required to read specific sections. Accordingly, on July 7, he read again Business and Professions Code sections 6067, 6068, and 6103 through 6126.

Kimmel's first quarterly report was due on July 10, 2019. He submitted the report to Probation on July 7, and included a declaration that he did not read the rules and specified sections by the due date of April 2, 2019, but he did so belatedly on July 7. Probation deemed the report compliant. Kimmel's second and third quarterly reports were submitted timely, on

October 2, 2019, and January 8, 2020, respectively. Probation deemed these reports compliant. Kimmel's final probation report was due by March 3. Kimmel calendared the wrong deadline and filed his final report on March 9. Probation deemed the report noncompliant because it was filed six days late.

Kimmel was required to provide Probation proof of his completion and passage of the required test at the end of Ethics School by March 3, 2020. On October 10, 2019, Kimmel registered for Ethics School and submitted the required payment. OCTC sent him a letter dated October 16, 2019, notifying him that his session was scheduled for December 10, between 9:00 a.m. and 4:00 p.m. Kimmel planned to attend on December 10, but, as he was driving to downtown Los Angeles for the class, he realized he would not make it on time. He called the number provided on the letter from OCTC and left a voicemail requesting a callback to reschedule. Kimmel testified that he expected to receive a callback, but he did not. Kimmel did not make any other attempts to reschedule his Ethics School class by the March 3, 2020 deadline.

On March 30, 2020, Probation sent Kimmel a letter and email summarizing his compliance and noncompliance with the conditions of his probation. The letter specified that Kimmel was compliant in filing three quarterly reports and with submitting his compliance declarations with the first quarterly report on July 7, 2019. Kimmel was also compliant with taking and passing the MPRE. However, the letter noted that he was not compliant in timely scheduling and participating in his required initial meeting, timely reading the rules and relevant sections, and timely submitting his final report. Kimmel was also not compliant with the requirement that he successfully complete Ethics School and submit proof of completion to Probation by March 3, 2020. Kimmel received and read the letter.

After receiving Probation's March 30, 2020 letter, Kimmel registered to attend the next available Ethics School class that was scheduled for June 2. He attended and successfully

completed the session. Kimmel believed OCTC would provide the proof of completion to Probation; however, OCTC did not. Kimmel was later advised by Probation that he still had not submitted proof of his completion of Ethics School. On September 23, Kimmel sent an email advising OCTC that he completed Ethics School, and he submitted his proof of completion to Probation on October 9, 2020.

D. Kimmel is Culpable of Violating Section 6068, subdivision (k) (Failure to Comply with Probation Conditions)

Section 6068, subdivision (k), provides that an attorney must comply with all conditions attached to any disciplinary probation. Based on his multiple probation violations, the hearing judge found that Kimmel willfully violated section 6068, subdivision (k), by failing to timely schedule and participate in the required meeting with Probation by March 18 and April 2, 2019, respectively; read the rules and relevant sections by April 2; submit a final quarterly report to Probation by March 3, 2020; and submit to Probation evidence of completing Ethics School by the same date. We agree with the judge's conclusions for the reasons discussed *post*.

Kimmel raises two arguments on review in an attempt to excuse his multiple late acts, but both are unavailing.⁴ First, he claims that OCTC fails to make any distinction between “the level of compliance or non-compliance of [a] respondent attorney [and OCTC believes that] failing to comply with any condition of probation is the same as failing to comply with all [probation] conditions.” He further “admits to several violations of the strict terms of his probation but denies any disregard for the seriousness of his duty to comply with probation conditions,” and therefore concludes he should not face any additional discipline. Kimmel is wrong on both points.

⁴ Having independently reviewed all arguments set forth by Kimmel, those not specifically addressed have been considered and rejected as without merit.

In determining culpability, case law makes clear that an attorney who fails to *fully comply* with probation conditions is in willful breach of probation. (*In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81, 86; see *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 537 [“it is misguided to distinguish between ‘substantial’ and ‘insubstantial’ or ‘technical’ violations of . . . probation conditions”].) While the level or extent of compliance versus non-compliance may affect the degree of discipline ultimately recommended to the Supreme Court, a violation of section 6068, subdivision (k), occurs when an attorney fails to comply with *any* condition of probation. Thus, Kimmel’s argument, which we interpret as he “substantially complied” with his probation conditions, is meritless.

Further, Kimmel’s belief that he has not disregarded the seriousness of his duty to comply with the probation conditions is irrelevant. The salient point here is that Kimmel’s actions in not following the Discipline Order, of which he was aware, until May 1, 2019, are willful acts.⁵ Willfulness in this context means that the attorney purposely committed an act or omitted to do an act; it does not require any intent to violate the probation condition and does not necessarily involve bad faith. (*In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302, 309.) Consequently, the record establishes by clear and convincing evidence⁶ that Kimmel willfully failed to timely schedule and attend his initial meeting with Probation, read the Rules of Professional Conduct and relevant Business and Professions Code sections, submit his

⁵ Kimmel asserts that he did not receive proper notice of the terms of his obligations because Probation sent its initial reminder letter via email, and he was late in reading it because he did not understand its importance. As OCTC aptly points out in its brief, Probation’s courtesy reminder email was exactly that, a courtesy. Kimmel had actual knowledge of his compliance duties and timelines from the Discipline Order, which he was bound to follow. Therefore, we reject his arguments.

⁶ 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.)

final quarterly report to Probation, and submit proof of completion of Ethics School. He is culpable as charged in the NDC. Therefore, we reject his argument that the hearing judge's factual findings are not supported.

We also reject Kimmel's second argument that OCTC is estopped from initiating this proceeding against him. While Kimmel acknowledges that he did not timely comply with each of his probation conditions, he argues that, since Probation marked his first quarterly report filed on July 7, 2019, as "compliant," it caused him to believe that he was in fact compliant with all the actions stated in his first quarterly report. As a matter of policy, estoppel arguments are not persuasively considered in attorney disciplinary proceedings. (*In the Matter of Taggart, supra*, 4 Cal. State Bar Ct. Rptr. at p. 309 ["goals of attorney discipline—protection of the public, courts, and legal profession—are strong public policy considerations that militate against applying the doctrine"].)

Moreover, Kimmel has not established a credible basis to support an estoppel claim as the evidence in the record establishes Kimmel was aware of the terms of his probation. (*Bib'le v. Committee of Bar Examiners* (1980) 26 Cal.3d 548, 552 [party invoking estoppel against agency must show ignorance of the true state of facts and agency intended for him to act on conduct to his injury].) The Discipline Order imposed conditions to which Kimmel had stipulated in October 2018. After the Supreme Court issued its Discipline Order, Kimmel received a copy of the order in the mail on February 4, 2019. The fact that Kimmel was aware of his probation's terms is further established based on his unsuccessful attempt to file a request to modify the Discipline Order in the Supreme Court on March 1, 2019.

Probation emailed Kimmel, as a courtesy, on February 21, 2019, and reminded him of the duties and obligations of his probation. Kimmel was careless in not regularly checking his email and therefore did not read the email until May 1, which was over a month after the first deadline

to schedule a meeting with Probation. Kimmel asserts that the Probation case specialist assured him that he did not need to do anything when he asked how to cure his reported noncompliance for failing to timely schedule his initial meeting and that she “deemed him compliant.”

However, the record does not support Kimmel’s assertions. Kimmel called Probation on May 1 to schedule his initial meeting when he was required to do so by March 18. Cheung sent Kimmel an email shortly after the call to confirm their initial meeting for May 3, and in the email she stated that Kimmel’s “scheduling is late and not compliant.” Kimmel could not reasonably believe that his failure to comply was waived. The communication and reminders from Probation should have made clear that strict compliance with the terms of probation was required. Kimmel has failed to demonstrate that he justifiably relied on any communications from Probation contrary to his probation’s terms. (*Kelley v. R. F. Jones Co.* (1969) 272 Cal.App.2d 113, 120-121 [justifiable reliance essential element of estoppel doctrine].) Accordingly, we find ample evidence of Kimmel’s failure to comply with all conditions attached to his disciplinary probation in willful violation of section 6068, subdivision (k).

III. AGGRAVATION AND MITIGATION

Standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct⁷ requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Kimmel to meet the same burden to prove mitigation.

A. Aggravation

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

The hearing judge assigned substantial weight in aggravation for Kimmel’s one prior record of discipline. The judge determined that Kimmel’s prior and current discipline involved

⁷ All further references to standards are to this source.

similar misconduct, finding that both instances of misconduct relate to his ability to timely perform and adequately communicate with respect to his obligations as an attorney. OCTC supports the judge's reasoning. Kimmel, without citing authority, argues that no aggravation is warranted.

We differ with the hearing judge in that we find Kimmel's prior misconduct is not similar enough to his current misconduct to justify substantial weight in aggravation. In his prior discipline, Kimmel received a 60-day actual suspension for two counts of failing to perform with competence and two counts of failing to keep a client reasonably informed of significant developments. We acknowledge some similarity in Kimmel's prior and current misconduct because both relate to his diligence as an attorney overall; however, his previous discipline did not include a probation violation. Nonetheless, the judge correctly determined that Kimmel's prior record, which underlies this probation revocation proceeding, is an aggravating circumstance. (Std. 1.5(a) [prior record of discipline is aggravating circumstance]; see also *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619 [prior discipline aggravating because it indicates recidivist attorney's inability to conform conduct to ethical norms].) 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.) We find that moderate weight is appropriate for this circumstance because the prior and current misconduct are not so similar as to deserve substantial weight and no other facts support more significant aggravation under standard 1.5(a).

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

The hearing judge found that Kimmel committed multiple acts of wrongdoing and assigned moderate weight in aggravation because Kimmel violated the terms of probation on three separate occasions. The judge treated Kimmel's failure to timely schedule and participate

in a meeting with Probation (in March and April 2019, respectively) and his failure to timely review the Rules of Professional Conduct and relevant Business and Profession Code sections by April 2, 2019, as a singular act deriving from his failure to timely review the reminder email from Probation. Kimmel also failed to timely submit his final quarterly report by March 3, 2020, and failed to submit to Probation evidence of his completion of Ethics School, which was due on the same day. Kimmel asserts that no aggravation should be assigned. OCTC does not challenge this finding on review.

We agree that aggravation is warranted for Kimmel's multiple violations of his probation conditions. (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 529 [multiple acts for failing to cooperate with probation monitor and failing to timely file two probation reports].) However, because all of Kimmel's misconduct stems from violating the terms of his probation from a single prior discipline, we assign only limited weight under standard 1.5(b). (*In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348, 355 [multiple acts of misconduct found for violating three separate conditions of public reproof; modest weight as violations concerned single reproof order]; *In the Matter of Amponsah, supra*, 5 Cal. State Bar Ct. Rptr. at p. 653 [modest aggravating weight for violating two conditions of probation and Cal. Rules of Court, rule 9.20].)

B. Mitigation

1. Extreme Emotional Difficulties (Std. 1.6(d))

Standard 1.6(d) provides that mitigation may be assigned for extreme emotional difficulties where (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. The hearing judge afforded limited mitigation based on stressors that Kimmel expressed through his testimony. We agree.

Kimmel testified that he suffered greatly from stressful family circumstances between December 10, 2019, and March 30, 2020, which was around the time he was due to complete Ethics School. In 2019, his mother-in-law was diagnosed with congestive heart failure and was under hospice care until her death on January 6, 2020. This greatly impacted him and his wife. Like the hearing judge, we note that the emotional difficulties suffered by Kimmel only account for a limited period and are not related to his failure to fully comply with all the probation conditions—such as not timely scheduling and attending his initial meeting with Probation. Kimmel argues he is entitled to “considerable weight,” but his contention is not supported under the standard because evidence of his emotional stress was not established by expert testimony. However, some mitigation may be available for extremely stressful family circumstances even when no expert testimony was presented. (See *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1364 [lay testimony of marital difficulties considered in mitigation]; *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332, 338 [lay testimony regarding family concerns mitigating].) Accordingly, we assign limited mitigation for Kimmel’s emotional difficulties that occurred during some of the time he committed misconduct.

2. Cooperation with the State Bar (Std. 1.6(e))

Standard 1.6(e) provides that mitigation may be assigned for cooperation with the State Bar. The hearing judge assigned moderate mitigation credit for Kimmel’s cooperation because he entered into the pretrial Stipulation, which conserved judicial time and resources. Neither party challenges this finding on review. Because Kimmel did not admit culpability, we find that this cooperation was not extensive enough to warrant full mitigating weight. (*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].) Accordingly, we agree with the judge that Kimmel is entitled to moderate weight for his cooperation.

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

Standard 1.6(f) entitles Kimmel 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.” Kimmel presented testimony and character letters from three witnesses, which included one attorney and two clients. The hearing judge concluded that the witnesses spoke highly of Kimmel’s excellent character and were sufficiently aware of the extent of his misconduct. However, the judge only afforded Kimmel limited weight because the witnesses did not represent a wide range of references. Neither OCTC nor Kimmel challenge this finding. We find that, while the three witnesses testified to having a positive opinion of him, their testimony was not fully informed, and the witnesses did not constitute a wide range of references from the legal and general communities. (*In re Aquino* (1989) 49 Cal.3d 1122, 1131 [testimony of witnesses unfamiliar with details of misconduct not given significant weight in mitigation]; *In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469, 476–477 [character evidence entitled to limited weight where it was not from wide range of references].) Thus, we also assign limited weight in mitigation for good character.

4. Remorse and Recognition of Wrongdoing (Std. 1.6(g))

Standard 1.6(g) provides mitigation credit where an attorney takes “prompt objective steps, demonstrating spontaneous remorse and recognition of the wrongdoing and timely atonement.” The hearing judge assigned substantial weight in mitigation for this circumstance because Kimmel worked quickly to rectify his noncompliance with probation upon being reminded of his failure to meet obligations. For instance, Kimmel immediately contacted Probation to schedule his initial meeting after reading Probation’s initial email and reminder letter on May 1, 2019. He also attempted, albeit unsuccessfully, to reschedule his Ethics School session by leaving a voicemail when he realized that he would not make it on time. Kimmel

admitted that he made mistakes and was candid with Probation and OCTC about his shortcomings. While OCTC noted in its brief that the judge found substantial weight for this circumstance, it did not indicate if it opposed or supported the judge's finding. Like the judge, we conclude the record supports substantial mitigation because Kimmel demonstrated remorse and recognition of wrongdoing through his belated compliance. (See *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 150.)

5. No Additional Mitigation is Warranted

Kimmel appears to seek additional mitigation for an excessive delay caused by the State Bar in conducting the disciplinary proceedings against him, as well as for OCTC initiating this proceeding as an original discipline matter rather than a probation revocation proceeding. We do not find clear and convincing evidence to prove any additional mitigation. OCTC correctly points out that, pursuant to rule 5.310 of the Rules of Procedure of the State Bar,⁸ it has discretion to charge an attorney's probation violation as an original disciplinary proceeding under section 6068, subdivision (k). Further, upon our review of the record, we do not find Kimmel has demonstrated an excessive delay by the State Bar. For a delay to constitute a mitigating circumstance, "an attorney must demonstrate that the delay impeded the preparation or presentation of an effective defense. [Citation.]" (*In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 361.) Kimmel presented no such evidence here. Therefore, Kimmel has failed to meet his evidentiary burden to prove any additional mitigation.

IV. A 90-DAY ACTUAL SUSPENSION IS APPROPRIATE DISCIPLINE

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

⁸ All further references to rules are to the Rules of Procedure of the State Bar unless otherwise noted.

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 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.) In determining an appropriate level of discipline, we also weigh factors in aggravation and mitigation. (Std. 1.7(b), (c).) Finally, we look to comparable case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.)

Standard 2.14 provides that actual suspension is the presumed sanction for Kimmel’s misconduct in violating the conditions attached to his disciplinary probation. Standard 2.14 further provides that the degree of sanction depends on the nature of the condition violated and the attorney’s unwillingness or inability to comply with disciplinary orders. To determine the appropriate discipline, 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 hearing judge recommended discipline that included a 90-day actual suspension. OCTC asks that we affirm the judge’s recommendation based on standard 1.8(a)’s principle of progressive discipline, considering that a 60-day actual suspension was imposed in Kimmel’s prior disciplinary case.⁹ Kimmel argues that a 90-day actual suspension is excessive.¹⁰

⁹ Standard 1.2(c)(1) states, in relevant part, “Actual suspension is generally for a period of thirty days, sixty days, ninety days, six months, one year, eighteen months, two years, three years, or until specific conditions are met.”

¹⁰ Kimmel has also argued that he should not receive any discipline because he should not be found culpable of the section 6068, subdivision (k), charge, and he has, at times, argued that he should receive a private reproof, a stayed suspension, or a 30-day actual suspension.

In recommending a 90-day actual suspension, the hearing judge found *In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567 and *Conroy v. State Bar* (1990) 51 Cal.3d 799 to be instructive. In *Gorman*, this court found a 30-day actual suspension appropriate where an attorney violated two conditions of his probation by paying restitution nine months late and failing to timely attend Ethics School. Gorman had one prior record of discipline for failing to maintain trust funds in his client trust account and for failing to update his official State Bar record's address for which he received a stayed suspension. We found that Gorman's failure to make restitution was related to his trust account violation in his prior discipline. Like in *Gorman*, Kimmel's prior misconduct (failing to act competently and keep a client informed) and failure to adhere to his probation conditions for the prior discipline demonstrate concern regarding his ability to timely, efficiently, and competently handle his ethical obligations as an attorney. In *Conroy*, the attorney received a 60-day actual suspension for violating conditions attached to a reproof by failing to timely take and pass the MPRE. Conroy, unlike Kimmel, received aggravation for his failure to participate in the disciplinary proceedings and lack of remorse. We agree that both cases used by the judge provide some guidance in making a discipline recommendation, in that, in each case, the attorney received greater discipline than had been imposed in the first discipline, which reflects standard 1.8's requirement of progressive discipline.

We find that Kimmel's primary failing, as an attorney and an officer of the court, is his inattention to ethical duties and obligations which has resulted in him disobeying the Supreme Court's Discipline Order. We are mindful of Kimmel's remorse, candor, and cooperation during the investigation and these proceedings, which saved time and resources. Nevertheless, the 60-day suspension Kimmel suffered in his prior discipline case should have placed him on heightened notice that he must strictly comply with ethical obligations, especially involving court orders.

(See *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389, 403 [obedience to court orders intrinsic to respect attorneys and their clients must accord judicial system].)

Even though his mitigation outweighs his aggravation, we find no compelling reason to depart from the need for progressive discipline as set forth in standard 1.8(a). Consequently, the next level of progressive discipline is 90 days' actual suspension, which we conclude is the appropriate discipline to protect the public, the courts, and the legal profession. This discipline reflects our increasing concern about Kimmel's failure to comply with his ethical obligations. Therefore, we affirm the hearing judge's discipline recommendation.

V. RECOMMENDATIONS

We recommend that Stanley Howard Kimmel, State Bar Number 77007, 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.** Kimmel must be suspended from the practice of law for the first 90 days of the period of his probation.
- 2. Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions.** Kimmel must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of probation.
- 3. Review Rules of Professional Conduct.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Kimmel 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 Kimmel's first quarterly report.
- 4. Complete E-Learning Course Reviewing Rules and Statutes on Professional Conduct.** Within 90 days after the effective date of the Supreme Court order imposing discipline in this matter, Kimmel must complete the e-learning course entitled "California Rules of Professional Conduct and State Bar Act Overview." Kimmel must provide a declaration, under penalty of perjury, attesting to Kimmel's compliance with this requirement to the Office of Probation no later than the deadline for Kimmel's next quarterly report due immediately after course completion.
- 5. 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, Kimmel 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. Kimmel 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.

- 6. Meet and Cooperate with Office of Probation.** Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Kimmel must schedule a meeting with his assigned Probation Case Coordinator 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, Kimmel may meet with the Probation Case Coordinator in person or by telephone. During the probation period, Kimmel 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.
- 7. State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court.** During Kimmel's probation period, the State Bar Court retains jurisdiction over him to address issues concerning compliance with probation conditions. During this period, Kimmel 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, Kimmel must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.
- 8. Quarterly and Final Reports.**

 - a. Deadlines for Reports.** Kimmel 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, Kimmel 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.** Kimmel 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.** Kimmel 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. Kimmel is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.
- 9. State Bar Ethics School Not Recommended.** It is not recommended that Stanley Howard Kimmel be ordered to attend the State Bar Ethics School because he has completed the Course within the last two years of the decision in this matter. (See Rules Proc. of State Bar, rule 5.135(A).)
- 10. 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 Kimmel has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.
- 11. Proof of Compliance with Rule 9.20 Obligation.** Kimmel 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 Kimmel 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.

VI. MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION

It is not recommended that Stanley Howard Kimmel be ordered to take and pass the MPRE because Kimmel took and passed the MPRE on August 10, 2019. (*In the Matter of Respondent G* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 181, 183 [public protection and interests of attorney do not require passage of professional responsibility exam where respondent recently took and passed such exam in compliance with prior disciplinary order].)

VII. CALIFORNIA RULES OF COURT, RULE 9.20

We further recommend that Kimmel 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 calendar days, respectively, after the date the Supreme Court order imposing discipline in this matter is filed.¹¹ (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45 [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 imposing discipline].) Failure to do so may result in disbarment or suspension.

VIII. MONETARY SANCTIONS

The hearing judge recommended that Kimmel pay \$1,500 in monetary sanctions. On review, OCTC asks that we affirm the judge's recommendation, and Kimmel argues that monetary sanctions should not be imposed. He asserts that his misconduct occurred before April 1, 2020, the effective date of rule 5.137. Kimmel's reading of the rule is misguided. Rule 5.137(H) explicitly states that the rule regarding monetary sanctions applies "to all disciplinary and criminal conviction proceedings commenced and stipulations signed on or after April 1, 2020." In this case, the disciplinary proceeding commenced when the NDC was filed on November 16, 2020; therefore, the imposition of monetary sanctions is appropriate.

Rule 5.137(E)(1) provides, in part, that this court shall make recommendations to the Supreme Court regarding monetary sanctions in any disciplinary proceeding resulting in an actual suspension. The guidelines recommend a sanction of up to \$2,500 for discipline including

¹¹ Kimmel 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).)

an actual suspension, depending upon the facts and circumstances of the particular case. (Rule 5.137(E)(2).) Rule 5.137(E)(3) further provides that, upon consideration of all the facts and circumstances, we may deviate from the ranges recommended under rule 5.137(E)(2). The hearing judge provided some rationale for his \$1,500 monetary sanctions recommendation, stating Kimmel was found culpable of a single violation not involving client matters. As detailed below, we agree that a downward departure from the guidelines is appropriate in this case but conclude that the amount recommended by the judge is excessive given the facts and circumstances established here.

Kimmel is culpable of one count of violating his disciplinary probation based on various failures related to untimely compliance with the terms of his probation. The seriousness of Kimmel's violation is diminished by his belated efforts to comply with his disciplinary obligations. Once Kimmel was in contact with Probation, he was cooperative and expressed his desire to rectify his noncompliance. He was also candid with Probation about his failure to timely review the Rules of Professional Conduct and relevant Business and Professions Code sections as ordered by the Supreme Court. In making our recommendation, we also consider that Kimmel has cooperated with OCTC by entering into a Stipulation, established limited mitigation for his good character and emotional difficulties, and has substantially proven he is remorseful and recognizes his misconduct. We also note that Kimmel has not proffered any evidence to suggest financial hardship or an inability to pay sanctions. After considering the facts and circumstances of this case, we determine that a \$500 sanction is appropriate because of the single probation violation found, Kimmel's actions when he became aware of his violations, and the mitigation outweighed the aggravation.

Accordingly, we recommend that Kimmel 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. 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.

IX. COSTS

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and such costs 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 section 6086.10, subdivision (c), costs assessed against an attorney who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

McGILL, J.

WE CONCUR:

HONN, P. J.

RIBAS, J.

No. SBC-20-O-30782

In the Matter of
STANLEY HOWARD KIMMEL

Hearing Judge
Hon. Dennis G. Saab

Counsel for the Parties

For Office of Chief Trial Counsel:

Alex James Hackert
Office of Chief Trial Counsel
The State Bar of California
845 S. Figueroa Street
Los Angeles, CA 90017

For Respondent:

Alison Sara Minet Adams
12400 Ventura Boulevard, Suite 701
Studio City, CA 91604