PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed September 21, 2018

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. 15-O-14554
	)	
ALBERT MIKLOS KUN,	)	OPINION AND ORDER ON
	)	SUMMARY REVIEW
A Member of the State Bar, No. 55820.	)	
	)	

Albert Miklos Kun appeals a hearing judge's recommendation of disbarment in this, Kun's fourth, disciplinary matter. The judge found Kun culpable of six of the 12 counts charged in the Notice of Disciplinary Charges (NDC): (1) misleading a judge, in violation of section 6068, subdivision (d) of the Business and Professions Code;[1] (2) moral turpitude, in violation of section 6106[2]; (3) failure to report judicial sanctions, in violation of section 6068, subdivision (o)(3);[3] and (4) failure to obey a court order, in violation of section 6103.[4] The judge found five aggravating circumstances and no mitigating factors, and recommended disbarment as the appropriate discipline. The judge emphasized that Kun's failure to acknowledge his current

[1] All further references to sections are to the Business and Professions Code unless otherwise noted. Section 6068, subdivision (d), provides, in relevant part, that "It is the duty of an attorney to . . . never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law."

[2] Section 6106 provides that "The commission of any act involving moral turpitude, dishonesty or corruption . . . constitutes a cause for disbarment or suspension."

[3] Section 6068, subdivision (o)(3), provides, in relevant part, that "It is the duty of an attorney . . . [t]o report to the [State Bar], … within 30 days of the time the attorney has knowledge of . . . [t]he imposition of judicial sanctions against the attorney, except for . . . monetary sanctions of less than . . . one thousand dollars ($1,000)."

[4] Section 6103 provides that "A wilful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, [constitutes a cause] for disbarment or suspension."

and prior misconduct created an unacceptably high risk that Kun would repeat his misconduct. The judge, therefore, concluded that disbarment was necessary to protect the public, the courts, and the legal profession.

Kun seeks summary review, contending that he is not culpable of any charges. The Office of Chief Trial Counsel of the State Bar (OCTC) asks us to affirm the hearing judge's decision. Upon our independent review of the record (Cal. Rules of Court, rule 9.12), we agree with the judge's culpability findings and discipline recommendation; we thus recommend that Kun be disbarred.

I. PROCEDURAL HISTORY OF SUMMARY REVIEW

On January 4, 2018, we granted Kun's unopposed request for summary review under rule 5.157 of the Rules of Procedure of the State Bar.[5] In summary review proceedings, the hearing judge's material findings of fact are final and binding upon the parties. (Rule 5.157(B).) As such, the issues here are limited to (1) whether the facts support conclusions of law different from those reached by the judge; (2) the appropriate degree of discipline; or (3) other questions of law. (*Ibid.*) If the parties do not raise an issue or contention, it is waived. (Rule 5.157(C).)

II. KUN IS CULPABLE OF SIX COUNTS OF MISCONDUCT[6]

A. Count Three: Section 6068, subd. (d) (Seeking to Mislead a Judge)
Count Two: Section 6106 (Moral Turpitude—Misrepresentation)

The hearing judge found that Kun filed an Application and Order for Appearance and Examination (Application) with the San Mateo County Superior Court on August 15, 2012, in

[5] All further references to rules are to the Rules of Procedure of the State Bar of California unless otherwise noted.

[6] Before trial commenced in this matter, counts one and 11 were dismissed without prejudice. In his decision, the hearing judge dismissed with prejudice counts eight through 10, and 12. This, in effect, dismissed the entirety of the correlated case heard at trial, Case No. 16-O-12726.

David Stone v. Jan-Pro International, Inc. (the *Stone* matter)[7], a case alleging breach of contract and fraud wherein Kun had obtained a default judgment against the defendant on November 6, 2009. The Application asked that Fulton Connor be ordered to appear for examination, *not* Jan-Pro International, Inc.[8] The superior court issued an order on August 15, 2012, requiring Connor to appear for examination as the judgment debtor. According to the hearing judge, Kun was aware at the time he filed the Application that Connor was not synonymous with Jan-Pro International, Inc., and Kun "affirmatively misrepresented and misled" the superior court into believing that Connor was the judgment debtor.[9]

The facts found by the hearing judge show that Kun intentionally sought to mislead the superior court because he knew that Connor was not a party to the lawsuit and the judgment was not against Connor, yet Kun filed the Application for an order for Connor to appear as the

[7] San Mateo County Case No. CIV-477401

[8] Fulton Connor had an interest in a company named Connor-Nolan, Inc., dba Jan-Pro of Silicon Valley, which was a master franchisee of Jan-Pro *Franchising* International, Inc. (JPFI). (Italics added.)

[9] The record demonstrates Kun knew that Connor was not synonymous with Jan-Pro International, Inc., because JPFI wrote a letter to Kun, dated February 16, 2012, informing him that (1) no company named Jan-Pro International, Inc., existed; (2) service of process in the *Stone* matter had not been made on JPFI; (3) JPFI had no business operations in California; and (4) JPFI never had a business relationship with Stone or had ever been aware of him before Connor-Nolan, Inc. advised JPFI of Kun's actions. Further, on June 7, 2013, JPFI sent a letter to the superior court clerk, with a copy to Kun, complaining that Kun was "erroneously pursuing execution of a judgment against [it] or against one of [its] master franchisees," and making the same points it had made to Kun in the February 16, 2012 letter. Despite receiving both letters, Kun continued in his legal actions against Connor.

judgment debtor.[10] We find that the judge's factual findings support the charge in count three that Kun intentionally sought to mislead the superior court, in violation of section 6068, subdivision (d).

Count two, charging Kun with moral turpitude under section 6106, is based on the same facts as count three. The California Supreme Court has long considered that a violation of section 6068, subdivision (d), necessarily involves moral turpitude, and thus also constitutes a willful and intentional violation of section 6106. (*Bach v. State Bar* (1987) 43 Cal.3d 848, 855 [attorney has duty never to seek to mislead judge and, as matter of law; "[a]cting otherwise constitutes moral turpitude"]; *Grove v. State Bar* (1965) 63 Cal.2d 312, 315 [misleading judge constitutes "'act involving moral turpitude'" condemned by § 6106].)

Since the same misconduct underlies the violations of sections 6106 and 6068, subdivision (d), we also find culpability for count two, but consider both counts as a single offense involving moral turpitude (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1060; *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211, 221). We thus assign "no additional weight to such duplication in determining the appropriate discipline." (*In the Matter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430, 435, fn. 4.)

B. Count Four: Section 6106 (Moral Turpitude—Misrepresentation)
Count Five: Section 6068, subd. (d) (Seeking to Mislead a Judge)

The hearing judge found that Kun filed an Ex Parte Application for Order for Sale of Dwelling and Issuance of Order to Show Cause (OSC) (Ex Parte Application) on July 16, 2013,

[10] Kun argues that no judge was misled because the Application bore only the stamp of the clerk, even though the superior court judge signed the order located on the same page as the Application. We reject Kun's contention as it contravenes the hearing judge's finding of fact. By requesting summary review, Kun acknowledged the finality of the facts found by the hearing judge. (Rule 5.157(B).) Also, Kun's assertion erroneously assesses the evidence. Lastly, the law is well settled that a violation of section 6068, subdivision (d), occurs when an attorney presents a false statement of fact; culpability does not require proof that the court was actually misled. (See, e.g., *In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166, 174.)

in the *Stone* matter. The Ex Parte Application indicated that Stone had obtained a judgment against the judgment debtor and sought an order to sell all of the judgment debtor's "right, title, and interest in the real property commonly known as 1551 Winchester Boulevard, Los Gatos, California," which, in fact, belonged to Connor and not the named defendant. Kun's proposed OSC, signed by the superior court the same day, was specifically addressed to Connor and required him to show cause why his property should not be sold to satisfy the default judgment in the *Stone* matter.

According to the hearing judge, while the Ex Parte Application itself never expressly stated that Fulton Connor was the judgment debtor, it never disclosed that he was not. The judge also found that, because the Ex Parte Application identified Connor as an owner of the property and the proposed OSC was specifically directed at him, Kun improperly implied that the judgment was against Connor when it was not. This OSC was then executed and filed by the superior court on July 16, 2013. When the judge determined that Kun failed to disclose that the default judgment was only against Jan-Pro International, Inc., and not Connor, he concluded that the proposed OSC finding that Connor was the judgment debtor was a "knowing and intentional concealment of a material fact."

The facts as found show that Kun intentionally sought to mislead the superior court when he filed a document seeking the sale of Connor's property to satisfy a default judgment when Connor was not the judgment debtor. Therefore, we find that the hearing judge's factual findings support the charge in count four that Kun intentionally committed an act involving moral turpitude, dishonesty, or corruption, in violation of section 6106.

Count five, charging Kun with seeking to mislead a judge under section 6068, subdivision (d), is based on the same facts as found in count four. As discussed above, such a violation necessarily involves moral turpitude, and thus also constitutes a willful and intentional

violation of section 6106. (*Bach v. State Bar*, *supra*, 43 Cal.3d at p. 855; *Grove v. State Bar*, *supra*, 63 Cal.2d at p. 315.)

Since the same misconduct underlies the violations of sections 6106 and 6068, subdivision (d), we find culpability for count five, but, again, treat both counts as a single offense involving moral turpitude (*Bates v. State Bar*, *supra*, 51 Cal.3d at p. 1060; *In the Matter of Jeffers*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 221), and assign no additional weight. (*In the Matter of Katz*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 435, fn. 4.)

C. Count Six: Section 6068, subd. (o)(3) (Failure to Report Judicial Sanctions)
Count Seven: Section 6103 (Failure to Obey Court Order)

The hearing judge also found culpability for Kun's failure to report judicial sanctions, as alleged in count six, and failure to comply with the sanctions order, as alleged in count seven. The judge found that Kun and his client were sanctioned $3,000, jointly and severally, by a San Mateo County superior court judge in the *Stone* matter on August 14, 2015. The sanction was to be payable to Connor within 10 days of the notice of entry of the order, which was served by mail on Kun and Stone on August 24, and filed on August 25, 2015. Neither Kun nor his client paid the sanctions, nor did Kun report the sanctions to the State Bar. However, on September 1, he appealed the sanctions order, but only on behalf of his client. In November 2015, Kun filed for bankruptcy. Stone's appeal was denied by the Court of Appeal on February 15, 2017.

Kun argues four points regarding count six, all of which are unpersuasive. First, he contends that the sanctions order was stayed by the appeal, and, thus, he was not required to report it within 30 days of becoming aware of it. This argument is unsuccessful for two reasons. As the hearing judge noted, the appeal was made on Kun's client's behalf only, and not for Kun himself. Therefore, it had no effect on Kun's obligations under the order. (*Kentfield v. Kentfield* (1935) 4 Cal.2d 585, 587.) Further, under our case law, even if Kun had appealed on his own behalf, he was still required to notify the State Bar of the sanctions. (*In the Matter of*

Respondent Y (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 866–867 [sanctions against attorney must be reported even if appealed].) Second, Kun contends that the sanctions were to be paid to a private party rather than the court, but cites no authority establishing that this fact relieves him of the obligation to report the sanctions, nor can we find any supporting authority for his contention. Third, his argument that he was not required to report the sanctions because he filed bankruptcy is simply untenable factually as Kun filed for bankruptcy long after his duty to report the sanctions arose. Finally, Kun argues that the superior court was required to notify the State Bar of the sanctions under section 6086.7, subdivision (a), and under California Rules of Court, rule 10.1017, which replaced his independent duty to notify the State Bar. His interpretation of the relevant statutes and rule is wholly inaccurate and unsupported by case law. (*In the Matter of Riordan* (Review Dept. 1994) 5 Cal. State Bar Ct. Rptr. 41, 47–48 [attorney has independent duty to report judicial sanctions under § 6068, subd. (o)(3)].) We therefore affirm the judge's culpability findings on this count as supported by the facts.

As to count seven, the hearing judge found that Kun violated a court order by not paying the $3,000 sanctions. Kun argues that his bankruptcy discharged his duty to pay the sanctions and, thus, he cannot be disciplined for failing to comply with the order. Kun's argument is based on *In re Scheer* (9th Cir. 2016) 819 F.3d 1206),[11] which is inapplicable here for two reasons discussed in count six: he appealed the sanctions order only on behalf of his client Stone, and his

[11] In *Scheer*, the court found that the recommendation of suspension until Scheer made full restitution to her client was not a non-dischargeable government fee exception under Title 11 United States Code section 523, subdivision (a)(7). (*Id*. at pp. 1209–1211.) Since the restitution could be discharged via bankruptcy, the State Bar could not refuse Scheer's reinstatement solely on the basis that she did not pay that debt. (*Id*. at p. 1212 [citing U.S.C. § 525(a)].)

deadline to comply occurred well before he ever filed for bankruptcy.[12] We affirm the judge's culpability findings on this count as supported by the facts.

III. KUN'S LEGAL DEFENSES TO ALL COUNTS HAVE NO MERIT

As Kun states in his appeal, the primary issue here is whether any disciplinary proceeding against him, based on the hearing judge's factual findings, is time-barred by the statute of limitations set forth in section 340.6, subdivision (a), of the Code of Civil Procedure. Kun also argues two additional points: (1) his misconduct in an action involving an adverse party cannot be the basis for discipline; and (2) the counts for which he was found culpable in this case should have been charged in *Kun III*,[13] and the failure to do so violates his due process rights under the Fifth and Fourteenth Amendments to the United States Constitution. None of these arguments is successful, as we explain below.

A. The Limitations Period for Disciplinary Proceedings Is Governed by Rule 5.21

Kun argues that the limitations period in section 340.6, subdivision (a), of the Code of Civil Procedure[14] governs State Bar Court disciplinary proceedings, and thus "mandates the dismissal" of any charges for which he was found culpable by the hearing judge. This argument is without merit. The statute's wording makes clear that its limitations period applies only to civil litigation matters: "[a]n action against an attorney" in which there is a "plaintiff." As OCTC correctly points out, disciplinary proceedings do not resolve actions, but are regulatory matters intended to protect the public. The Supreme Court recognizes that State Bar Court

[12] We note that the hearing judge found only that Kun filed for bankruptcy protection, not that he received an order of discharge from a bankruptcy court.

[13] *In the Matter of Kun* (Review Dept. 2017) Case No. 14-O-05418.

[14] Section 340.6, subdivision (a), of the Code of Civil Procedure provides, in relevant part, that "An action against an attorney for a wrongful act or omission . . . arising in the performance of professional services shall be commenced within one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or four years from the date of the wrongful act or omission, whichever occurs first."

disciplinary proceedings are different from proceedings in other courts. (*Emslie v. State Bar* (1974) 11 Cal.3d 210, 225–226 [State Bar disciplinary proceedings not governed by rules of procedure that apply to civil or criminal litigation].)

Contrary to Kun's contention, rule 5.21 determines when a disciplinary proceeding is time-barred.[15] As all of his misconduct occurred on or after August 14, 2012, and the NDC was filed on November 14, 2016, Kun's charges are not time-barred.

B. Discipline May Be Imposed for Misconduct Arising from Action Involving Adverse Parties

Kun contends that the State Bar's purpose in protecting the public precludes it from disciplining attorneys for misconduct against adversaries. He bases this claim on his belief that "The law says an attorney has no duty at all to an adverse party." Kun cites no authority for this position, and he is mistaken. (See generally *Wasmann v. Seidenberg* (1988) 202 Cal.App.3d 752, 756 ["As officers of the court, attorneys enjoy both privileges and responsibilities, among which is the duty to deal honestly and fairly with adverse parties and counsel"].)

Standard 1.1 states that, together with protecting the public, the purposes of discipline are to protect "the courts and legal profession; . . . [maintain] the highest professional standards; and… [preserve] public confidence in the legal profession." (*In re Silverton* (2005) 36 Cal.4th 81, 91.) The charges of moral turpitude by misrepresentation, seeking to mislead a judge, failure to report judicial sanctions, and failure to obey a court order do not affect only Kun's adverse party in the *Stone* matter. Dishonesty to the court and the legal system requires discipline to protect the court's integrity, apprise those in the profession that such conduct will not be tolerated, and foster trust and confidence in the legal profession. (See *In re Morse* (1995) 11 Cal.4th 184, 208–209.)

[15] Generally, rule 5.21 provides that a disciplinary proceeding must begin within five years from the date of the violation if based solely on a complainant's allegations of a violation of the State Bar Act or Rules of Professional Conduct.

C. Kun's Due Process Rights Were Not Violated by Bringing This Case Separate from *Kun III*

Kun claims that the Fifth and Fourteenth Amendments to the United States Constitution prohibit OCTC from "[i]ndiscriminate charging," and specifically contends that these constitutional rights were violated when some of the misconduct alleged in the November 14, 2016 NDC took place in 2012 and 2013 and the misconduct in his previous discipline, *Kun III*, took place in 2014. Kun's argument falls short, considering his lack of citation to either case law or specific constitutional language. We are unpersuaded since Kun fails to cite specific legal authority as to how his due process rights were violated. (See *Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 928 [Supreme Court has "long recognized the regulatory ability of the State Bar, and found that the procedural safeguards provided by the Rules of Procedure of the State Bar are adequate to ensure that administrative due process will be observed"].)

IV. AGGRAVATION AND MITIGATION

Standard 1.5[16] requires OCTC to establish aggravating circumstances by clear and convincing evidence;[17] standard 1.6 requires Kun to meet the same burden to prove mitigation. The hearing judge found five aggravating circumstances: prior discipline, multiple acts of misconduct, significant harm, lack of insight and remorse, and lack of candor. He found no mitigating circumstances.

On review, Kun seeks only less aggravation for his prior discipline. OCTC does not dispute the hearing judge's aggravation findings. As discussed below, we affirm the findings of the judge, except that we do not find a lack of candor.

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[16] Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct. All further references to standards are to this source.

[17] 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. Prior Discipline (Std. 1.5(a))

Standard 1.5(a) provides that a prior record of discipline may be an aggravating circumstance. Kun has been disciplined on three prior occasions for his misconduct spanning from 1997 to 2014. The hearing judge found his discipline record to be an "extremely serious aggravating circumstance," and we agree.

In *Kun I*,[18] Kun stipulated to five violations: (1) failure to respond to his client's requests for information, in violation of section 6068, subdivision (m); (2) willful failure to maintain his client's confidentiality by disclosing personal information about his client to a member of the client's family, in violation of section 6068, subdivision (e); (3) conditioning a fee arbitration settlement on dismissal of the client's State Bar complaint against him, in violation of section 6090.5, subdivision (a)(2); (4) failure to return his client's file and medical photographs after the client terminated his services, in violation of rule 3-700(D)(1) of the Rules of Professional Conduct; and (5) failure to avoid prejudice to his client when he promised to file an appeal, abandoned his client, and attempted to mislead him, in violation of rule 3-700(A)(2) of the Rules of Professional Conduct. One aggravating circumstance (multiple acts of wrongdoing) and one mitigating circumstance (no prior discipline) were established. The NDC in this matter was filed on August 29, 2002, alleging misconduct that occurred between April 1997 and February 2002. Kun stipulated to a private reproval, which was ordered on September 30, 2002.

In *Kun II*,[19] the Supreme Court entered an order (S123260) on July 10, 2004, suspending Kun for one year, stayed, and placing him on probation for one year, subject to conditions including a 30-day actual suspension. Kun stipulated to culpability on four counts: (1) for failing to perform legal services with competence by not filing pleadings in his client's case, in violation of rule 3-110(A) of the Rules of Professional Conduct; (2) for failing to keep his client informed

[18] *In the Matter of Kun* (2002) Case Nos. 01-O-04505 and 01-O-04646.

[19] *In the Matter of Kun* (2003) Case No. 02-O-14481.

of significant developments, in violation of section 6068, subdivision (m); (3) for acts involving moral turpitude, dishonesty, or corruption, by misleading his client into believing that her appeal was pending when it had been dismissed, in violation of section 6106; and (4) for failing to provide any services of value and failing to refund unearned fees after he was terminated, in violation of rule 3-700(D)(2) of the Rules of Professional Conduct. Aggravating circumstances included a prior record of discipline, dishonesty, significant harm, and multiple acts of misconduct. No mitigating circumstances were established. The NDC in this matter was filed on September 5, 2003, and most of the misconduct underlying this case occurred between April 2001 and July 2002. Kun's client requested, and was paid, a refund of unearned fees in January 2003.

In *Kun III*, the Supreme Court filed an order (S242289) on August 9, 2017, suspending Kun for three years, stayed, and placing him on probation with conditions including a period of actual suspension for a minimum of two years and until he made restitution to a former client and provided proof of his rehabilitation, fitness, and present learning and ability in the general law. Kun was found culpable of three violations: (1) failing to maintain funds in his client trust account, in violation of rule 4-100(A) of the Rules of Professional Conduct; (2) misappropriation of $459.99 in filing fees, in violation of section 6106; and (3) commingling, in violation of rule 4-100(A) of the Rules of Professional Conduct. The misconduct in this matter began in 2014, and the NDC was filed on October 2, 2015. Four aggravating circumstances were found: prior record of discipline, multiple acts of misconduct, indifference, and failure to make

restitution of misappropriated funds. Mitigating circumstances were limited to candor and cooperation in providing pretrial factual stipulations.[20]

We agree with the hearing judge regarding the serious nature of this prior record, particularly the fact that both *Kun II* and *Kun III* involved moral turpitude. (*In the Matter of Sklar, supra*, 2 Cal. State Bar Ct. Rptr. at p. 619 ["part of the rationale for considering prior discipline as having an aggravating impact is that it is indicative of a recidivist attorney's inability to conform his or her conduct to ethical norms [citation]"].) Notwithstanding the diminished aggravating weight of *Kun III*, we assign substantial weight to this aggravating circumstance.

B. Multiple Acts of Misconduct (Std. 1.5(b))

Kun's multiple (i.e., six) acts of misconduct are an aggravating factor. (See *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646–647 [three wrongful acts considered multiple acts].) We assign moderate weight to this aggravating circumstance.

C. Significant Harm (Std. 1.5(j))

Kun's misconduct significantly harmed Connor, a non-party to the *Stone* matter. Connor had to hire an attorney to resist Kun's inappropriate efforts to collect the default judgment against Jan-Pro International, Inc., from Connor through an attempt to sell his residence. (See *In the Matter of Casey* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117, 126 [significant harm to client occurred when client had to hire another attorney, and incur additional attorney fees, in

[20] As Kun argues in his opening brief, and as the hearing judge provided in his disciplinary discussion, the aggravating effect of *Kun III* as a prior record of discipline should be diminished because Kun's actions in *Kun III* began in 2014, which is after Kun committed his 2012 and 2013 misconduct in the present case. While we consider a prior discipline to be aggravating "[w]henever discipline is imposed" (*Lewis v. State Bar* (1973) 9 Cal.3d 704, 715), diminished weight is appropriate here because Kun did not have an opportunity to heed the import of misconduct in *Kun III* before he committed the misconduct in the present case. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619).

attempt to fix legal problem created by first attorney's misconduct].) We assign substantial weight to this aggravating circumstance.

D. Lack of Insight and Remorse (Std. 1.5(k)

Kun has demonstrated indifference toward rectification of, or atonement for, the consequences of his misconduct. As the hearing judge noted, Kun "remains defiant and has no insight regarding his unethical behavior." We also note with concern that this aggravating circumstance was also found in *Kun III*, his most recent disciplinary case. "The law does not require false penitence. [Citation.] But it does require that a respondent accept responsibility for his acts and come to grips with his culpability. [Citation.]" (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) We assign substantial weight to this aggravating circumstance.

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

Lack of candor and cooperation can be an aggravating factor. Although the hearing judge stated that Kun made "numerous representations and assertions of fact to this court that were demonstrably inaccurate," the judge failed to identify those representations and assertions. The facts indicate Kun's attempts at misleading the superior court, but we can find no evidence in the proceeding below that shows any effort by Kun to mislead the judge or the State Bar in its investigation. Therefore, we find that this circumstance does not apply.

V. DISBARMENT IS WARRANTED

The purpose of attorney discipline is not punishment, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys. (Std. 1.1; *In re Silverton*, *supra*, 36 Cal.4th at p. 91.) Kun contends that his misconduct warrants, at most, a public reproval, while OCTC requests that the hearing judge's disbarment recommendation be upheld.

In determining the appropriate level of discipline, we look first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) We then consider the decisional law. (*Snyder v. State Bar* (1990) 49 Cal. 3d 1302, 1310–1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.) As we noted more than two decades ago in *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 419, even though the standards are not to be applied in a talismanic fashion, they are to be followed unless a compelling reason justifies not doing so. (Cf. *In re Silverton*, *supra*, 36 Cal.4th at p. 91; *Aronin v. State Bar* (1990) 52 Cal. 3d 276, 291.) Ultimately, in determining the appropriate level of discipline, each 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; *Gary v. State Bar* (1988) 44 Cal.3d 820, 828; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

Standard 1.7(a) provides that the most severe sanction must be imposed when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are specified for each act. The presumed sanction for five of Kun's six acts of misconduct is disbarment or actual suspension under standard 2.12(a) (violations of section 6068, subdivision (d) (seeking to mislead a judge), and section 6103(failure to obey court order))[21] and standard 2.11 (violation of section 6106 (moral turpitude—misrepresentation).[22]

[21] Kun argues that standard 2.12(a) cannot apply to him because he discharged his debt to Connor in bankruptcy, and is not culpable of failure to pay the sanctions order. We reject his argument for the same reason discussed earlier—that his duty to comply with the sanctions order arose well before he filed for bankruptcy. Kun also argues that standard 2.12(a) does not apply because he was not found culpable of count five (§ 6068, subd. (d)). However, his argument overlooks the fact that he was found culpable of count three, which is the same section, but based on different facts.

[22] The presumed sanction for Kun's fifth act of misconduct (violation of § 6068, subd. (o)(3)—failure to report judicial sanctions) is reproval.

Notwithstanding those presumed sanctions, standard 1.8(b)[23] is most pertinent in determining the appropriate discipline in this case.[24] This standard applies to Kun's disciplinary proceeding as he was previously disciplined with an actual suspension in *Kun II* and *Kun III*.[25] The record here shows four aggravating factors and none in mitigation, which clearly fails to establish the most compelling mitigation necessary to avoid a disbarment recommendation.

Despite its language, disbarment is not always mandated under standard 1.8(b), even when no compelling mitigating circumstances predominate. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 506–507 (citing *Arm v. State Bar* (1990) 50 Cal.3d 763,778–779, 781).) Additionally, we may depart from the standard where clear reasons to do so can be shown. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.) The ultimate disposition of the charges varies according to the proof. (*In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121, 125.) Ultimately, we are guided by the Supreme Court, which has not applied the standards in a rote fashion. Rather, we "examine the nature and chronology of respondent's record of discipline. [Citation.] Merely declaring that an attorney has [two prior] impositions of

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[23] Standard 1.8(b) provides, in relevant part, that where "a member has two or more prior records of discipline, disbarment is appropriate . . . unless the most compelling mitigating circumstances clearly predominate, [where an a]ctual suspension was ordered in any one of the prior disciplinary matters."

[24] We note that Kun did not raise any issue in this appeal regarding the hearing judge's application of standard 1.8(b). (Rule 5.157(C) [issue or contention not raised by party is waived].) Nonetheless, we may review an issue under our authority of independent review. (Std. 5.157(J)(1) [summary review does not restrict authority to independently review full record of State Bar proceeding].) We choose to review the judge's standard 1.8(b) analysis as it is necessary to determine the proper discipline to recommend.

[25] However, for discipline purposes, we treat Kun's current disciplinary proceeding and *Kun III* as one since they could have been brought as a single case. (*In the Matter of Sklar*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 619 [if misconduct underlying prior discipline occurred during same time period as misconduct in present proceeding, State Bar Court "consider[s] the totality of the findings in the two cases to determine what the discipline would have been had all the charged misconduct . . . been brought as one case"].) Thus, we consider the present proceeding as Kun's third discipline case.

discipline, without more analysis, may not adequately justify disbarment in every case." (*In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, 136.)

We see no reason to depart from the standards. Over the years, Kun has engaged in a plethora of ethical misconduct, including, but not limited to, multiple acts of very serious misconduct that include disclosing client secrets, misappropriation of client funds, four counts of moral turpitude, two counts of seeking to mislead a judge, and failing to obey a court order. We find that his overall record of misconduct presents an unacceptably high risk that future misconduct will recur. Therefore, we recommend that Kun be disbarred.

VI. RECOMMENDATIONS

We recommend that Albert Miklos Kun be disbarred from the practice of law and that his name be stricken from the roll of attorneys admitted to practice in California.

We further recommend that Kun comply with rule 9.20 of the California Rules of Court and 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 in this matter.

We further recommend that costs be awarded to the State Bar in accordance with section 6086.10, such costs being enforceable as provided in section 6140.7 and as a money judgment.

We further recommend that Kun be required to make payment to Fulton Connor of the $3,000 sanctions award issued on August 14, 2015, by the Superior Court of San Mateo County in case number CIV-477401, plus 10 percent interest per year from October 1, 2015.

VII. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

The order that Albert Miklos Kun be involuntarily enrolled as an inactive member of the State Bar pursuant to Business and Professions Code section 6007, subdivision (c)(4), effective

September 29, 2017, will remain in effect pending consideration and decision of the Supreme Court on this recommendation.

McGILL, J.

WE CONCUR:

PURCELL, P. J.

HONN, J.