PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed June 25, 2021

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	SBC-19-O-30564
	)	
STEELE LANPHIER,	)	OPINION
	)	
State Bar No. 146163.	)	
	)	

This is Steele Lanphier's second discipline case. A hearing judge found him culpable of five counts of misconduct for his lack of supervision of two employees that negatively affected two client matters. Lanphier was charged with two counts of failure to perform with competence, failure to refund unearned fees, failure to render accounts of client funds, and failure to notify the State Bar of his employment of an attorney on disciplinary suspension. The judge recommended discipline, including that he be actually suspended for six months.

Lanphier appeals, disputing the legal basis for culpability. The Office of Chief Trial Counsel of the State Bar (OCTC) does not appeal and supports the hearing judge's decision. Upon independent review of the record (Cal. Rules of Court, rule 9.12), we affirm the judge's culpability, discipline, and most aggravation and mitigation findings. We also recommend an actual suspension of six months as appropriate under our disciplinary standards to protect the public, the courts, and the legal profession.

I. PROCEDURAL BACKGROUND

On October 16, 2019, OCTC filed a five-count Notice of Disciplinary Charges (NDC) charging Lanphier with: (1) two counts of failing to perform with competence, in violation of

rule 3-110(A) of the Rules of Professional Conduct;[1] (2) failing to refund unearned fees, in violation of rule 3-700(D)(2); (3) failing to render accounts of client funds, in violation of rule 4-100(B)(3); and (4) failing to notify the State Bar of employment of a suspended attorney, in violation of rule 1-311(D). On January 31, 2020, the parties filed a Stipulation as to Facts and Admission of Documents (Stipulation). A two-day trial was held on February 7 and 10, and posttrial closing briefs followed. The hearing judge issued her decision on May 21, 2020.

II. FACTUAL BACKGROUND[2] AND CULPABILITY[3]

A. The Lanphier Firm Background

Lanphier is a civil practitioner and the sole owner of Lanphier and Associates (the Lanphier firm). He has been licensed to practice law since June 1990 and has one prior record of discipline. The Lanphier firm primarily handled bankruptcy and personal injury matters until late 2016 when it began taking on immigration cases. The disciplinary charges in this case involve Lanphier's misconduct in two separate immigration cases for clients Herber Gomez and Carlos Ordonez. Both clients sought asylum and hired the Lanphier firm for representation in removal proceedings in Immigration Court. OCTC alleges that Lanphier failed to perform competently and did not properly supervise associate attorneys Richard Kwun and David Engel[4]

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

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

[3] Attempting to re-argue the merits of the underlying litigation, Lanphier argues certain factual challenges that are not outcome-determinative as to culpability. Having independently reviewed all arguments set forth by Lanphier, those not specifically addressed have been considered and rejected as without merit.

[4] Further references to David Engel are to his first name only to differentiate him from his father, Julius Engel; no disrespect is intended.

in the Gomez and Ordonez matters. Lanphier was also charged with trust account violations in the Gomez matter.

Kwun was an experienced bankruptcy attorney who rejoined the Lanphier firm in April 2016.[5] The testimony of Immigration Judge Rebecca Jamil and Lanphier's former employees Rosa Guzman and Keegan Brown during Lanphier's disciplinary trial established that Kwun had a difficult personality and was not diligent in working on his cases. Kwun testified that before he rejoined the firm in April 2016, Lanphier never discussed Kwun's lack of immigration law experience nor how Kwun would learn immigration law. Kwun also testified that nearly one-third of his caseload from 2016 to 2017 involved immigration matters. Lanphier acknowledged that he did not provide training for associate attorneys but maintained what he considered an "open door" policy with employees.

David was a newly admitted attorney and the son of Julius Engel.[6] Julius and Lanphier have been acquaintances for several years, once shared office space, and Julius previously worked as an associate attorney at the Lanphier firm. He was experienced in immigration law, but he was suspended from practicing law for six months as of July 8, 2016, for misconduct unrelated to this case. Lanphier employed Julius in December 2016 to assist with administrative work and client intake during his suspension. Lanphier stipulated to culpability in count five for his failure to notify the State Bar of Julius's employment as a suspended attorney by the Lanphier firm.

[5] Kwun previously handled bankruptcy matters for the Lanphier firm from February to November 2013. The record is unclear as to the reason Kwun's employment ended, but the testimony suggests that the firm was unable to support his salary.

[6] Further references to Julius Engel are to his first name only to differentiate him from his son, David Engel; no disrespect is intended.

B. The Gomez Matter

1. Facts

On September 2, 2016, Herber Gomez hired the Lanphier firm to represent him in removal proceedings in Immigration Court. Gomez had entered the United States in December 2015 and was seeking asylum. He retained the Lanphier firm and signed a fee agreement identifying Kwun as lead counsel. The fee agreement provided for a flat fee of $6,000. Gomez paid $2,000 upon signing, with the condition that he would pay $300 per month for the balance. In sum, Gomez paid $5,600 in fees between September 2016 and September 2017.

On September 13, 2016, Kwun filed a Notice of Entry of Appearance in Immigration Court as Gomez's primary attorney of record. On December 21, Lanphier filed an appearance, designating himself as a non-primary attorney in the case. He testified that he did so to be able to make appearances on Gomez's behalf in Kwun's absence if necessary.

On January 5, 2017, Kwun improperly submitted an asylum application for Gomez with the United States Citizenship and Immigration Services (USCIS), which lacked jurisdiction over the matter; Gomez's case was pending in the Immigration Court in San Francisco. Judge Rebecca Jamil presided over Gomez's case, and held a hearing on September 14, 2017. Kwun appeared with Gomez at the hearing. During the hearing, it became evident to Judge Jamil that Kwun had not properly consulted with his client or reviewed the Notice to Appear[7] and the specific charges in the case. As a result, the court ordered Kwun to file a written pleading in response to the Notice to Appear by October 16, including a certificate confirming that he had personally reviewed the

[7] The Notice to Appear is the charging document in removal proceedings in Immigration Court.

notice with Gomez using a Spanish interpreter.[8] Kwun was also ordered to file the asylum application by October 16. The next hearing in the case was scheduled for December 14. Kwun did not submit either filing ordered by the court. Lanphier was not aware of the court's order. At the disciplinary trial, Judge Jamil testified she recalled this hearing because Kwun attempted to change Gomez's plea, which resulted in Gomez admitting that he had entered the country illegally. She found the admission to be significant with far-reaching consequences because it could have led to Gomez being removed from the country.

On October 24, 2017, Kwun untimely filed a defective asylum application that was rejected by the Immigration Court because it used an outdated version of the application. On October 30, the Immigration Court rejected a second asylum application filing because Kwun did not properly sign it. The court's rejection notices were sent to the Lanphier firm, but Lanphier did not have a policy requiring staff to inform him of such documents. Guzman, who handled incoming mail, testified that the notices would have been forwarded to Kwun.[9] On November 4, Kwun stopped working for the Lanphier firm. Prior to his departure, Kwun did not substitute out of the Gomez matter or successfully file an asylum application on Gomez's behalf.

On November 30, 2017, the Immigration Court sent the Lanphier firm an order denying a request for a telephonic appearance. The court's order also stated that the asylum application and written pleading, ordered to be filed by October 16, still had not been received. The court's order was addressed to the Lanphier firm and Kwun. Guzman testified that since Kwun had left the firm, the notice would have been forwarded to Lanphier. Lanphier asserts that it would not have

[8] Lanphier testified that a judge ordering a written response to a Notice to Appear was unusual. He was "perplexed and quite surprised," and he believed the judge must have been "quite upset."

[9] Lanphier testified that the firm's policy on incoming mail was later changed because of the issues that arose in this case. He stated that his staff is instructed to inform him of rejection notices.

gone to him but instead to Kwun since he was still the primary attorney of record in the case. Lanphier claims that although Gomez was a Lanphier firm client, Kwun still had obligations to the client as primary counsel for Gomez in Immigration Court even though Kwun no longer worked for the firm.

On December 6, Lanphier attempted to file Gomez's asylum application with the Immigration Court; it was rejected because Kwun was still listed as counsel of record. The court's order directed Lanphier to either file a motion to substitute or annotate his Executive Office for Immigration Review (EOIR)[10] Form to reflect an on-behalf-of or co-counsel appearance. Under 8 Code of Federal Regulations part 292.4(a) (2011),[11] an attorney is required to execute, file, and serve the appropriate form (Form EOIR–28), as prescribed by the Department of Homeland Security, to be authorized to represent an undocumented immigrant in Immigration Court.

On December 12, Lanphier filed a Notice of Entry of Appearance stating that he was Gomez's primary counsel; he appeared on behalf of Gomez at the December 14 hearing. During the hearing, the Immigration Court informed Lanphier that his Notice of Entry of Appearance, designating himself as primary counsel, was not entered by the court because Kwun was still listed as primary counsel. For the purposes of that hearing, the court allowed Lanphier to appear but again instructed him to file a motion to substitute as counsel.

Lanphier testified that based on their prior conversations, he expected Kwun to submit a filing to the Immigration Court substituting himself out of the case. He claims that Kwun periodically visited the office after leaving the firm to collect information from case files, and that Kwun assured him that he would substitute out of the Gomez case. Kwun never did so. During

[10] The EOIR is the federal agency that oversees the Immigration Court.

[11] The rules and procedures for the immigration courts established by the Attorney General and set forth in the Code of Federal Regulations have the force and effect of law. (*United States ex rel. Accardi v. Shaughnessy* (1954) 347 U.S. 260, 265.)

the disciplinary trial, Judge Jamil testified that Lanphier could have simply filed a proper motion to substitute without Kwun's participation if he also filed the proper EOIR form. Further, this substitution process is explained in the Immigration Court's practice manual that Lanphier testified that he had read.

On December 18, Lanphier attempted to file a motion to substitute into the case as primary counsel. The Immigration Court rejected his motion and again stated that Lanphier needed to include the proper EOIR form since Kwun was still listed as primary counsel of record. On December 21, Lanphier attempted to file Gomez's asylum application; however, he still failed to include the proper attachments to substitute into case. Again, the court rejected the filing and stated that Lanphier needed to "either file a motion to substitute or annotate [the] Form EOIR-28." On December 27, Lanphier attempted to file a Notice of Entry of Appearance but it was rejected, since Kwun was still primary counsel of record. On February 26, 2018, Lanphier submitted Gomez's asylum application to EOIR. The filing was received but deemed "untimely."

On March 14, 2018, Lanphier filed a motion for telephonic appearance for a hearing with the Immigration Court the following day. The court rejected the filing, asserting that Lanphier had not properly substituted into the case. On March 15, Lanphier failed to appear in Immigration Court on behalf of Gomez. No other attorney from the Lanphier firm appeared. Attorney Martha Cordoba was in Immigration Court for unrepresented parties on the day of the hearing and agreed to appear on Gomez's behalf. On May 9, Cordoba filed a motion for substitution of counsel. The Immigration Court granted the motion and Cordoba became Gomez's attorney of record.

On May 3, 2018, Gomez called the Lanphier firm to terminate their services and request a refund. Gomez testified that he and his wife also visited the office at least twice to request a refund. He stated that the office staff informed him that the firm would prepare an accounting of the amount of work performed on the case. On January 15, 2019, Gomez mailed a letter to

Lanphier, again requesting a refund. On review, Lanphier asserts that the firm earned all of the fees paid under the flat fee agreement. Gomez never received an accounting or a refund.

2. Culpability

Count One: Failure to Perform with Competence (Rule 3-110(A))[12]

Count one alleges that Lanphier failed to perform with competence in violation of rule 3-110(A) by failing to adequately supervise Kwun; failing to file at least five documents with the Immigration Court in the Gomez matter; and failing to appear in Immigration Court on March 15, 2018, for continued removal proceedings on behalf of Gomez. The hearing judge found Lanphier culpable of willfully violating rule 3-110(A) and determined that his failure to supervise Kwun led to grave deficiencies in the handling of Gomez's case. We agree. The record establishes, as analyzed below, that the Gomez matter was not handled competently and Lanphier failed to supervise Kwun or perfect any remedy for Gomez resulting from Kwun's deficiencies. Further, Lanphier's own mishandling of Gomez's case after Kwun left the firm further exhibited a failure to perform legal services competently.

Lanphier failed to supervise Kwun, allowing Gomez's case to be mishandled.

Lanphier argues that he cannot be held culpable for failing to supervise Kwun because it would impose a strict liability standard on all supervisory attorneys. He relies on *Vaughn v. State Bar* (1972) 6 Cal.3d 847, to assert that an attorney cannot be held liable for the mistakes of his staff. His argument is not well founded. The Supreme Court in *Vaughn* stated that "even though an attorney cannot be held responsible for every detail of office procedure, he must accept responsibility to supervise the work of his staff." (*Id*. at p. 857.) And contrary to Lanphier's argument, the discussion in rule 3-110(A) states that an attorney has "the duty to

[12] Former rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence.

supervise the work of subordinate attorney[s] and non-attorney employees or agents." (Rule 3-110(A); see also *Crane v. State Bar* (1981) 30 Cal.3d 117, 123 ["An attorney is responsible for the work product of his employees which is performed pursuant to his direction and authority"].)

In September 2016, Gomez hired the Lanphier firm to represent him in removal proceedings and to file an asylum application on his behalf. Lanphier did not perform competently because he failed to properly supervise Kwun, the associate attorney handling Gomez's case. In count one, the NDC specifically alleged five instances that reveal Lanphier's failure to supervise Kwun, including a failure to file an asylum application with the Immigration Court by December 10, 2016; a failure to file the asylum application that Kwun submitted to USCIS on January 5, 2017; a failure to file a responsive pleading to the Notice to Appear as ordered by the Immigration Court on September 14, 2017; a failure to file a certification that Lanphier or Kwun had personally reviewed the Notice to Appear with Gomez through a Spanish interpreter, as ordered by the Immigration Court on September 14, 2017; and a failure to file the asylum application that Kwun submitted to the Immigration Court on October 24, 2017, which was rejected for filing because Kwun failed to properly sign and paginate the application and failed to use the current version of Form I-589.

Lanphier argues he should not be held responsible as he had no knowledge of Kwun's mishandling of the Gomez matter. However, an attorney's acts need not be shown to be willful where there is a repeated failure of the attorney to attend to the needs of the client. (*Kapelus v. State Bar* (1987) 44 Cal.3d 179, 188.) Lanphier claims that Kwun concealed his lack of familiarity with immigration law and that the evidence establishes "beyond any doubt that by all counts Kwun exhibited expertise." We reject Lanphier's arguments as discussed below.

The evidence shows that Kwun was clearly unable to properly handle Gomez's matter. Kwun did not have any immigration law experience and he testified that Lanphier never discussed with him how he would learn this area of law that represented one-third of his caseload. From January through October 2017, Kwun caused Gomez's asylum application to be improperly submitted on three separate occasions: on January 5, he submitted the application to USCIS, which lacked jurisdiction, instead of the Immigration Court, and he submitted the asylum application to the Immigration Court twice, which was rejected both times—on October 24, because Kwun used an outdated version of the form, and on October 30 because it was not properly signed. The Immigration Court sent the rejection notices to the Lanphier firm. Lanphier claims that he was not aware of the rejection notices although he testified that he checked with Kwun on a weekly basis regarding the status of those cases.[13] His testimony is contradicted by Kwun's testimony that Lanphier never checked to see how he was handling immigration cases nor did they regularly discuss the status of his cases. (*In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657, 681–683 [attorney has duty to reasonably supervise staff by taking steps to guide employees and by reviewing client files to determine whether staff work has been appropriate].) We adopt the hearing judge's findings and credibility determinations as supporting Kwun's testimony and rejecting Lanphier's on this subject.[14]

[13] Although Lanphier claims he regularly checked with Kwun regarding the status of his immigration cases, Lanphier also testified that he does not recall having any discussion with Kwun regarding Gomez's case.

[14] The judge found inconsistencies in Lanphier's testimony because he changed his testimony on at least three occasions after a firm employee testified contrary to his position. First, he claimed to be unaware that Kwun did not adhere to the firm's policy of maintaining his case notes in the Best Case software until after Kwun left the firm, but later testified he was aware of it before Kwun's departure. Second, he testified that he hired Kwun in April 2016, after being impressed by his court performance in bankruptcy court and based on Julius's recommendation, yet failing to acknowledge that Kwun was previously employed by the Lanphier firm in 2013. Third, Lanphier testified that the firm did not receive complaints about

Where there is a conflict in the testimony, the hearing judge is "in a particularly appropriate position to resolve that conflict. [Citation.]" (*In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 627; accord, *Gary v. State Bar* (1988) 44 Cal.3d 820, 826.) "[O]ur rules on review require that we give great weight to the judge's findings in such a matter and we are given no good reason to reach a different result." (*In the Matter of Koehler, supra,* 1 Cal. State Bar Ct. Rptr. at p. 627.)

Upon our independent review of the record, we make additional findings where the evidence demonstrates that Lanphier's trial testimony lacked credibility. Lanphier asserts that he had reasonable protocols in place to monitor or review Kwun's work but did not provide any supporting evidence. Lanphier did not review Gomez's case file or become aware of the deficiencies in Gomez's case until after Kwun left the firm. Guzman, a legal assistant, testified that she did not believe Lanphier adequately supervised Kwun. She testified that Lanphier did not discuss Kwun's cases with him on a regular basis. She only remembers them discussing cases if Kwun brought an issue to Lanphier's attention, and Kwun rarely asked for assistance. Guzman also testified that she had a very negative opinion of Kwun and did not consider him to be an ethical or competent attorney. This is contrary to Lanphier's assertion that his staff regularly informed him that Kwun "was up-to-date on the things he was supposed to be doing." Even Kwun testified that he did not adhere to the firm's policy of maintaining his case notes in Best Case but instead used handwritten notes on folders and maintained notes in his cell phone and through email. At trial, Lanphier admitted that Kwun's failure to document his work frustrated him although he did not take any corrective action aside from occasionally admonishing Kwun.

Kwun until after his departure, but he later acknowledged that his staff had informed him on multiple occasions that clients complained about Kwun's negative behavior and arrogance.

Under these circumstances, we find that Lanphier failed to take reasonable steps to insure Kwun was performing competently when he knew or should have known of Kwun's repeated failures to file Gomez's asylum application and to adhere to office policies. When "an attorney has been alerted to problems and does not adequately address them, then such gross neglect may be disciplinable as a failure to perform services competently." (*In the Matter of Hindin, supra,* 3 Cal. State Bar Ct. Rptr. at p. 682.)

After Kwun's departure, Lanphier continued to act incompetently and missed a hearing.

Kwun never submitted Gomez's asylum application prior to leaving the firm in November 2017. And after Kwun's departure, Lanphier unsuccessfully attempted to substitute into the case and file the asylum application on December 6, 18, 21, and 27, 2017, and February 26, 2018. The application was rejected due to Lanphier's own incompetence by failing to properly substitute into the case as primary counsel. On four occasions, the Immigration Court issued orders explaining that Lanphier needed to properly substitute in as Gomez's counsel or file an annotated Form EOIR-28 prior to submitting Gomez's asylum application. Lanphier did not timely submit Gomez's asylum application. These repeated failures to perform establish culpability for violation of rule 3-110(A). (*McMorris v. State Bar* (1981) 29 Cal.3d 96, 99 [repeated inattention to client's needs have long been grounds for discipline].) On review, Lanphier claims he never properly substituted into the case because he found the procedures required by the Immigration Court to be tedious and he did not fully understand them. This is no excuse. Lanphier could not simply fail to take appropriate action on Gomez's behalf to perform legal services required by the Immigration Court, and, if he lacked the ability to perform diligently, he was obligated to withdraw from the representation. (See *Segal v. State Bar* (1988) 44 Cal.3d 1077, 1084.)

The record also establishes that Lanphier failed to attend a hearing in Immigration Court on behalf of Gomez on March 15, 2018. On March 14, after Lanphier's several failed attempts to

properly substitute into the case, he filed a motion to appear telephonically at the March 15 hearing. The court rejected the request since Lanphier still had not properly substituted into the case. Since no attorney appeared on Gomez's behalf at the hearing, Cordoba, a standby attorney for unrepresented parties who was present that day in Immigration Court, appeared on Gomez's behalf. Lanphier was aware of Gomez's immigration status and his dire need for asylum when Gomez retained the firm. Over the course of the representation, both Kwun and Lanphier failed to successfully file an asylum application in the Immigration Court on multiple occasions and thus failed to provide any services of value to Gomez. Accordingly, the evidence clearly and convincingly[15] demonstrates Lanphier's failure to perform with competence. (*In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547, 554 [attorney who continues to represent client has obligation to take timely, substantive action on client's behalf].)

Count Two: Failure to Refund Unearned Fees (Rule 3-700(D)(2))
Count Three: Failure to Render Accounts of Client Funds (Rule 4-100(B)(3))

Count two alleged that Lanphier failed to promptly refund any advance fees after Gomez terminated the Lanphier firm in May 2018. Similarly, count three alleged that Lanphier failed to render Gomez an appropriate accounting after he terminated the firm and after Gomez's January 15, 2019 request for an accounting. The hearing judge found Lanphier culpable as charged. We agree.

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned. Lanphier paid $5,600 for the Lanphier firm to represent him in removal proceedings in Immigration Court. Lanphier does not challenge that Gomez was primarily seeking asylum, although his firm never successfully filed

[15] 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.)

an asylum application on Gomez's behalf. Gomez testified that he regularly called the Lanphier firm to inquire about the status of his case and was assured by staff that "it's going fine." Gomez later discovered that his asylum application was not timely submitted to the Immigration Court and because of the firm's repeated failures to perform, he terminated its employment and hired attorney Cordoba. Based on these facts, the hearing judge correctly concluded that when Gomez terminated the Lanphier firm in May 2018, it had provided no legal services of value to him. Since Gomez retained the firm in December 2016, Lanphier had ample time to file the asylum application properly. By repeatedly misfiling it, he did not provide any service of value to Gomez, failed to refund any portion of the $5,600, and thus willfully violated rule 3-700(D)(2).

Rule 4-100(B)(3) provides that an attorney must maintain records of all client funds, securities, and other properties coming into the attorney's possession and render appropriate accounts to the client about such property. Gomez paid the Lanphier firm a total of $5,600 in fees. After terminating the firm, Gomez requested an accounting orally and in writing but Lanphier failed to provide it as required by the rule. We thus find Lanphier culpable of violating rule 4-100(B)(3).

C. The Ordonez Matter

1. Facts

Carlos Ordonez originally hired Julius of Engel Law Group in August 2015 to represent him in removal proceedings in Immigration Court. Ordonez entered into a written fee agreement with Engel Law Group. However, when Julius was suspended from the practice of law on July 8, 2016, the Lanphier firm took over Ordonez's case with Kwun as lead counsel.[16]

On July 13, 2016, Kwun submitted an asylum application to USCIS; however, the application should have been submitted to the Immigration Court. On December 7, Kwun filed a

[16] Ordonez and the Lanphier firm did not execute a written fee agreement.

request for a telephonic appearance in Immigration Court on behalf of Ordonez. Immigration Judge Dana Marks denied the request due to Kwun's "previous poor communication" with the client. The court required an in-person appearance to "assure preparedness" by Kwun. Lanphier testified that he never saw the court's order.

When Kwun left the firm in November 2017, David took over Ordonez's case. On April 16, 2018, David filed an untimely motion to recuse Judge Marks arguing that she was biased against counsel. On April 23, David filed an untimely request to appear telephonically at the recusal motion hearing, which was set for the following day. The court granted the request, but David failed to appear. At the time of the scheduled hearing, the court called the firm but since David was unavailable, Lanphier took the call. Lanphier informed the court that he did not know the status of the case. Ordonez was present in court and had expected David to appear with him. Judge Marks denied the motion to recuse and also admonished the Lanphier firm for repeatedly failing to communicate with Ordonez and declared that the issues in the case were "attributed to the low quality of legal service that he [was] being provided."

Sara Izadpanah, an attorney with over 12 years of experience handling immigration matters, was the pro bono attorney in Immigration Court during the recusal hearing. Ordonez informed Izadpanah that he was unrepresented and asked for her assistance. Izadpanah testified during the disciplinary trial that she was surprised by the motion to recuse Judge Marks, who has a positive reputation among immigration practitioners for her rulings.

David ended his employment with the Lanphier firm in April 2018. On May 4, Lanphier filed a request to substitute into the Ordonez matter as primary counsel. The Immigration Court denied Lanphier's request stating that he failed to file a Form EOIR-28 Notice of Appearance. In June 2018, Ordonez terminated the Lanphier firm and hired Izadpanah to represent him. Izadpanah testified that she obtained Ordonez's file and learned that his asylum application was

never filed with the Immigration Court. Kwun had prepared an asylum application on Ordonez's behalf but failed to promptly file it. The hearing judge found that Izadpanah credibly testified that the prejudice Ordonez suffered was extreme because asylum applications are required to be filed within one year of entry into the country.

2. Culpability

Count Four: Failure to Perform with Competence (Rule 3-110(A))

Count four alleges that Lanphier failed to perform with competence in the Ordonez matter by failing to file the asylum application Kwun prepared for Ordonez on July 11, 2016, and failing to appear in Immigration Court on behalf of Ordonez on April 24, 2018.[17] The hearing judge found Lanphier culpable as charged.

As noted above, after Kwun left the firm, Lanphier appointed David to handle the Ordonez matter. David was an inexperienced, new attorney, without any immigration law training. He filed a meritless and untimely motion to recuse Judge Marks, which ultimately delayed Ordonez's case. As a result, Ordonez's ability to get a work permit was also delayed. Lanphier testified he was unaware that David planned to file the motion and did not learn about it until the day of the scheduled telephonic hearing when the Immigration Court called the firm since David failed to appear. Since Lanphier did not review the case file after Kwun left and prior to David taking over the matter, he could not reasonably supervise David. By failing to supervise David, a newly admitted attorney without sufficient learning and skill to act completely on his own, Lanphier violated his duty. The duty of reasonable attorney supervision encompasses supervising the

[17] We find that Lanphier failed to perform with competence, but we do not find that he failed to appear at the hearing on behalf of Ordonez on April 24, 2018. Lanphier appeared telephonically at the hearing when the Immigration Court called the firm, but his appearance was not substantive in any manner because he was not familiar with the file.

associate while he or she is employed as well as reviewing a client file after the associate departs. (*In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354, 368.)

Also, Kwun had prepared an asylum application on behalf of Ordonez but David never filed it. When David took over the case, Lanphier should have known that Ordonez's asylum application was prepared but not filed and he should have instructed David to file it. (*In the Matter of Kaplan*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 554.) Thus, we agree with the hearing judge that Lanphier failed to perform with competence, in willful violation of rule 3-110(A).

D. Julius Engel's Employment at the Lanphier Firm

Count Five: Failure to Notify State Bar of Suspended Licensee Employment (Rule 1-311(D))

Rule 1-311(D) provides that it is the duty of an attorney to report to the State Bar the employment, prior to or at the time of employment, of a person an attorney knows or reasonably should know is disbarred, suspended, resigned, or an involuntarily inactive member. Lanphier stipulated, and the hearing judge found, he willfully violated the rule by failing to notify the State Bar in December 2016 of his employment of Julius Engel. We agree. The Supreme Court ordered that Julius Engel be actually suspended for six months, effective July 8, 2016. Julius began working for the Lanphier firm in December 2016 and Lanphier never notified the State Bar of Julius's employment as a suspended attorney. Lanphier is culpable as charged in count five.

III. AGGRAVATION AND MITIGATION

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

A. Aggravation

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

Lanphier has one prior record of discipline. On February 6, 2014, the Supreme Court ordered that he be placed on two years' probation and actually suspended from the practice of law for 90 days. Between September 2011 and February 2012, Lanphier misused his client trust account (CTA) as an operating account, in violation of rule 4-100(A). In aggravation, Lanphier committed multiple acts of misconduct and showed indifference. In mitigation, he had no prior record of discipline during 10 years of practice, cooperated with the State Bar, had good character, and he did not harm any clients.

The hearing judge found Lanphier's prior record of misconduct to be a moderate factor in aggravation. (Std. 1.5(a) [prior discipline record is aggravating].) Lanphier argues that his prior discipline should not be an aggravating factor because it was only a "minor technical violation." We reject this argument. Notably, Lanphier attempts on review to dispute culpability for his prior disciplinary case, arguing the CTA violations were his accountant's fault. We view Lanphier's past misconduct as serious because it shows his prolonged disregard of his ethical responsibilities. Lanphier was ordered to attend Ethics School in his prior matter yet he continues to demonstrate a failure to take responsibility for his wrongdoing. The fact that his current misconduct began just over two years after his prior misconduct further renders his previous record serious. (See *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619 [prior discipline aggravating because it is indicative of recidivist attorney's inability to conform his conduct to ethical norms].) Under these circumstances, the hearing judge correctly found that Lanphier's prior record of discipline warrants moderate weight in aggravation.

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

The judge found Lanphier's five ethical violations in two client matters aggravating. We agree and assign moderate weight. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646–647 [three instances of misconduct considered multiple acts].)

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

The hearing judge assigned aggravation for the significant harm that Lanphier caused to clients and to the administration of justice. (Std. 1.5(j) [significant harm to client, public, or administration of justice is aggravating circumstance].) We agree and assign substantial weight to this factor. Lanphier significantly harmed Gomez, who paid $5,6000 to the firm and did not receive any services of value while seeking asylum. Gomez testified that it was difficult for him to afford the $5,600 fee. He also testified about the harm he suffered due to the Lanphier's firm not successfully filing his asylum application; Gomez was not able to receive asylum or a work permit until he hired new counsel. Lanphier also significantly harmed Ordonez. By failing to perform competently on Ordonez's behalf in Immigration Court proceedings, Ordonez's application for asylum was delayed, which affected his ability to obtain a work permit.

Finally, Lanphier's misconduct burdened the Immigration Court system. It is clear from the detailed discussions in the record that Lanphier and his associates repeatedly missed hearings, lacked knowledge and preparedness, and submitted improper and incomplete filings that caused considerable additional work for the court. (*In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206, 217 [wasting judicial time and resources is harmful to administration of justice].) Judge Jamil testified that she had grave concerns about Kwun, which were shared by other Immigration Court judges. She testified it was apparent and concerning to her that attorneys from the Lanphier firm were not being properly trained and supervised and had

little to no knowledge of immigration law and practice. As such, we assign substantial weight in aggravation based on the significant harm that Lanphier's misconduct caused.

4. Indifference Toward Rectification or Atonement for the Consequences of the Misconduct (Std. 1.5(k))

The hearing judge found that Lanphier was indifferent toward rectification or atonement for the consequences of his misconduct and assigned substantial weight. The judge concluded that Lanphier did not recognize his wrongdoing by asserting that he "acted ethically at all times" and maintained that he did not "know how much more [he] could have done." We find clear and convincing evidence in the record to support aggravation under standard 1.5(k).

Rather than accept responsibility for his failure to supervise and perform competently in the Gomez and Ordonez matters, Lanphier shifted all blame to Kwun and David. (See *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 444 [blaming others demonstrates indifference and aggravates misconduct].) As discussed above, during oral argument, Lanphier refused to acknowledge culpability for his prior disciplinary record by arguing that his accountant caused the misconduct. Lanphier argues he is not indifferent but instead disagrees with the interpretation of the law in the present case. While he is entitled to defend himself, his conduct goes beyond this, demonstrating no understanding of his wrongdoing. (*In re Morse* (1995) 11 Cal.4th 184, 209 [unwillingness to consider appropriateness of legal challenge or acknowledge its lack of merit is aggravating factor].) Lanphier claims that Kwun "concealed" his lack of experience in immigration law, when, in fact, the evidence shows that Lanphier was aware of many of Kwun's failures to monitor his cases. Lanphier's demonstrated lack of insight into the seriousness of his actions is especially troubling because it suggests that his misconduct could recur. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 781–782.) We find that the record amply demonstrates Lanphier's indifference, and we assign substantial weight in aggravation. (See *In the Matter of Moriarty* (Review Dept. 2017)

5 Cal. State Bar Ct. Rptr. 511, 526 [significant aggravation assigned when indifference causes concern that attorney will repeat misconduct and be ongoing danger to public and profession].)

5. High Level of Victim Vulnerability (Std. 1.5(n))

The hearing judge concluded that Gomez and Ordonez had a high level of vulnerability due to their immigration status. We agree and, like the hearing judge, assign substantial weight. Both clients were immigrants seeking asylum with limited English-language skills and facing possible deportation. They depended on assistance from the Lanphier firm to obtain work permits in order to be able to stay in the United States. (See *In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 950 [immigration client status is precarious with potential for serious harm].)

B. Mitigation

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

The hearing judge afforded moderate mitigating weight to Lanphier for entering into the Stipulation. The judge found that Lanphier only admitted culpability to a single, easily provable count. We agree but also note that some of the facts to which Lanphier stipulated assisted OCTC in developing culpability to support other counts, including his failure to supervise Kwun. Like the judge, we also find that Lanphier's pretrial stipulation to facts and culpability is entitled to moderate mitigation. (See *In the Matter of Gadda*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 443 [factual stipulation merits some mitigation]; *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive mitigation for those who admit culpability].)

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

Lanphier is entitled to mitigation if he establishes "extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct." (Std. 1.6(f).) Two witnesses, Lanphier's employees, testified at trial

and submitted accompanying letters regarding his good character. Five other character references, including two attorneys and three clients, submitted testimonial letters on Lanphier's behalf. The hearing judge reduced the weight accorded to the two employee character references determining that their testimony was "inherently biased." The judge assigned minimal weight to this mitigating circumstance by concluding that the seven character witnesses failed to illustrate that they were "aware of the full extent of the misconduct." We disagree with the judge's approach.

The two attorney references maintained a high opinion of Lanphier, describing him as zealous and respectful to clients. We give great weight to the testimony of the two attorneys because they have a "strong interest in maintaining the honest administration of justice." (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319.) Although some of Lanphier's good character testimony was offered by employees, any bias they might have due to their connections should not be disqualifying but considered in weighing the evidence. (*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 592 [testimony of acquaintances, neighbors, friends, associates, employers, and family members, who had broad knowledge of attorney's good character, work habits, and professional skills, entitled to great weight].) One employee witness has worked for Lanphier for over 10 years and attested to his willingness to go above and beyond for clients. Overall, the references consistently portrayed Lanphier as a fair and honest person of high integrity. While we note that the character letters did not establish the signatories' familiarity with the disciplinary charges to afford full mitigation, we find that Lanphier is entitled to moderate weight for establishing good character.

IV. SIX-MONTH ACTUAL SUSPENSION IS PROPER PROGRESSIVE DISCIPLINE

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys. (Std. 1.1.) Our disciplinary analysis begins

with the standards. While they are guidelines for discipline and are not mandatory, we give them great weight to promote consistency. (*In re Silverton* (2005) 36 Cal.4th 81, 91–92.) The Supreme Court has instructed us to follow the standards "whenever possible." (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) We also look to comparable case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310–1311.)

In analyzing the applicable standards, we first determine which standard specifies the most severe sanction for the at-issue misconduct. (Std. 1.7(a) [most severe sanction shall be imposed where multiple sanctions apply].) The hearing judge properly relied on standard 2.7(b), which calls for actual suspension for performance violations in multiple client matters. We also consider standard 1.8(a), which states when a member has a single prior record of discipline, the "sanction must be greater than the previously imposed sanction," subject to certain exceptions not applicable here. Lanphier has not identified an adequate reason for us to depart from applying standard 1.8(a), and we cannot articulate any. As noted, Lanphier received a 90-day actual suspension in his prior discipline case. Thus, considering progressive discipline, a six-month suspension is the next appropriate sanction pursuant to standard 1.2(c)(1) ("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 certain conditions are met").

The hearing judge found guidance from comparable case law including *Gadda v. State Bar* (1990) 50 Cal.3d 344 and *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404. In *Gadda*, the attorney was suspended for six months and until he paid restitution for his misconduct, including competency violations in four immigration matters. In *Bouyer*, the attorney was suspended for six months and until he paid restitution for providing incompetent legal services, trust account violations, not maintaining adequate records, and delayed accountings. While Lanphier's misconduct is similar to Gadda's and Bouyer's, neither of those

cases involved an attorney with a prior record of discipline. Nevertheless, we still find these cases instructive given the nature of Lanphier's competency violations and his substantial aggravation.

OCTC requests that we uphold the six months' actual suspension, citing to *Gadda v. State Bar*, *supra*, 50 Cal.3d 344 and *In the Matter of Seltzer* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263 (six months' suspension for failing to perform legal services with competence plus other violations; no mitigation factors and aggravation for one prior record, uncharged misconduct, and indifference.) Lanphier, not relying on any case law, argues against a period of actual suspension and requests a private reproval if discipline is imposed.

OCTC's offering of *Seltzer* provides the most guidance. In *Seltzer*, the attorney's failure to perform with competence was aggravated by prior misconduct, uncharged misconduct, and indifference, which resulted in a six-month actual suspension. Notably, this court concluded that Seltzer's continued lack of insight remained a serious concern, which is similar to Lanphier's unwavering refusal to accept responsibility for his failure to adequately supervise associate attorneys David and Kwun. The attorney in *Seltzer* did not present any mitigation factors. Although we afford some mitigation based on Lanphier's good character and cooperation, his aggravating factors clearly dominate. Lanphier failed to perform competently in two matters involving highly vulnerable clients with limited English-language skills and who were facing potential deportation. Further, he continues to dispute culpability for these counts on review while blaming others for his wrongdoing. We find Lanphier's indifference particularly serious because Gomez expressed that he had a "difficult" time paying Lanphier since he had to support his family with limited resources and Lanphier also failed to render accounting records or refund unearned fees to Gomez. Lanphier's clients and the administration of justice were significantly harmed because of his multiple acts of misconduct. Since Lanphier served a 90-day actual

suspension in his prior case and because we find aggravation that substantially outweighs mitigation, we recommend discipline that includes a six-month actual suspension and two years' probation. Further, Lanphier should remain suspended until he pays restitution to Gomez. This recommendation is appropriately progressive to protect the public, the courts, and the legal profession.

V. RECOMMENDATIONS

It is recommended that Steele Lanphier, State Bar Number 146163, be suspended from the practice of law for two years, that execution of that suspension be stayed, and that he be placed on probation for two years with the following conditions:

1. **Actual Suspension and Until Restitution.** Lanphier must be suspended from the practice of law for a minimum of the first six months of his probation, and will remain suspended until the following requirement is satisfied:

   > Lanphier makes restitution to Herber Gomez, or to such other recipient as may be designated by the Office of Probation or the State Bar Court, in the amount of $5,600 plus 10 percent interest per year from September 2, 2016 (or reimburses the Client Security Fund, to the extent of any payment from the Fund to such payee, in accordance with Business and Professions Code section 6140.5). Reimbursement to the Fund is enforceable as a money judgment and may be collected by the State Bar through any means permitted by law. Lanphier must furnish satisfactory proof of restitution to the State Bar's Office of Probation in Los Angeles.

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

3. **Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions.** Lanphier must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of probation.

4. **Maintain Valid Official State Bar Record Address and Other Required Contact Information.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Lanphier 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. Lanphier must report, in writing, any change in the above information to ARCR, within 10 days after such change, in the manner required by that office.

5. **Meet and Cooperate with Office of Probation.** Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Lanphier must schedule a meeting with his assigned probation case specialist to discuss the terms and conditions of his discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Lanphier may meet with the probation case specialist in person or by telephone. During the probation period, Lanphier must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.

6. **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court.** During Lanphier's probation period, the State Bar Court retains jurisdiction over him to address issues concerning compliance with probation conditions. During this period, Lanphier 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, Lanphier must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

7. **Quarterly and Final Reports.**

    a. **Deadlines for Reports.** Lanphier 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, Lanphier 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.** Lanphier 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. Lanphier 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. Lanphier is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

8. State Bar Ethics School. Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Lanphier must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and he will not receive MCLE credit for attending this session. If he provides satisfactory evidence of completion of the Ethics School after the date of this Opinion but before the effective date of the Supreme Court's order in this matter, Lanphier will nonetheless receive credit for such evidence toward his duty to comply with this condition.

9. Commencement of Probation/Compliance with Probation Conditions. The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the probation period, if Lanphier has complied with all conditions of probation, the period of stayed suspension will be satisfied, and that suspension will be terminated.

10. Proof of Compliance with Rule 9.20 Obligation. Lanphier 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 Lanphier 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.

MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION

It is further recommended that Lanphier be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension.

(Cal. Rules of Court, rule 9.10(b).) If Lanphier provides satisfactory evidence of the taking and passage of the above examination after the date of this Opinion but before the effective date of the Supreme Court's order in this matter, he will nonetheless receive credit for such evidence toward his duty to comply with this requirement.

CALIFORNIA RULES OF COURT, RULE 9.20

It is further recommended that Lanphier be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter.[18] Failure to do so may result in disbarment or suspension.

MONETARY SANCTIONS

The court does not recommend the imposition of monetary sanctions in this matter, as this matter was submitted for decision in the Hearing Department prior to March 1, 2021, the effective date of amended rule 5.137(H) of the Rules of Procedure of the State Bar, all the misconduct in this matter occurred prior to April 1, 2020, the effective date of former rule 5.137 of the Rules of Procedure of the State Bar, and the Hearing Department did not address monetary sanctions. (See *In the Matter of Wu* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 263, 267 [the rules of statutory construction apply when interpreting the Rules of Procedure of the State Bar]; *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1208–1209 [absent an express retroactivity provision in

[18] For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Lanphier is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court filed 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).)

the statute or clear extrinsic sources of intended retroactive application, a statute should not be retroactively applied]; *Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 841 [where retroactive application of a statute is ambiguous, the statute should be construed to apply prospectively]; *Fox v. Alexis* (1985) 38 Cal.3d 621, 630-631 [the date of the offense controls the issue of retroactivity].)

COSTS

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment, and may be collected by the State Bar through any means permitted by law. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against an attorney who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

HONN, J.

WE CONCUR:

PURCELL, P. J.

McGILL, J.