PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed February 1, 2019

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Nos. 15-O-15994; 16-O-12345;
	)	16-O-13582 (16-O-16844) (Consolidated)
SHEEN MYONG NA,	)	
	)	OPINION
A Member of the State Bar, No. 106541.	)	
	)	

This is Sheen Myong Na's third discipline case since 2013. He is charged with nine counts of misconduct in four immigration matters. A hearing judge found him culpable of all charges, including failing to perform with competence, refund unearned fees, and render accounts of client funds. The judge recommended discipline including a two-year actual suspension continuing until Na repays $5,300 to two clients and proves his rehabilitation, fitness to practice, and learning and ability in the law.

Na appeals only four culpability findings: failing to perform with competence in three client matters and not refunding fees to one client. He asks that we reverse the challenged culpability, assign less aggravation, and recommend "substantially" reduced discipline with no more than 60 days' actual suspension. The Office of Chief Trial Counsel of the State Bar (OCTC) does not appeal and supports the hearing judge's decision.

After independently reviewing the record (Cal. Rules of Court, rule 9.12), we adopt the factual and culpability findings, most mitigation and aggravation findings, and the discipline recommendation. Though Na's misconduct, prior record, and other aggravation are serious, disbarment is too severe because he has never been suspended or placed on probation in his prior cases. We find that the hearing judge's discipline recommendation is appropriate.

I. PROCEDURAL BACKGROUND

Na became a licensed attorney in California in 1982, and he has primarily practiced immigration law since 1999. OCTC filed Notices of Disciplinary Charges (NDC) against Na on November 1, 2016 (No. 15-O-15994), December 15, 2016 (No. 16-O-12345), and August 1, 2017 (Nos. 16-O-13582 (16-O-16844)). On September 18, 2017, the three NDCs were consolidated to form the present case. On November 17, 2017, the parties filed an extensive "Stipulation as to Facts and Admission of Documents" (Stipulation). The hearing judge held trial on November 17 and 20, and filed her decision on March 5, 2018.

II. CREDIBILITY

The hearing judge found that the complaining trial witnesses were credible. The record supports this finding as their testimony was generally consistent, particularly when compared to Na's testimony, which was often equivocal, inconsistent, or unclear. We adopt the hearing judge's credibility findings and assign the complaining witnesses' testimony great weight. (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [hearing judge in best position to resolve credibility questions after observing and evaluating demeanor of witnesses].)

III. THE CORTES MATTER (NO. 16-O-12345) [1]

Jose and Maria Cortez hired Na in July 2015 for immigration work and paid him $3,500. Na partially performed the work before his services were terminated in 2016. Once OCTC began an investigation, Na refunded unearned fees of $1,425. On review, Na does not challenge the hearing judge's culpability findings for failing to (1) render accounts of client funds (violation of rule 4-100(B)(3) of the Rules of Professional Conduct—count one),[2] and (2) promptly refund all

[1] The facts for all client matters are based on the Stipulation, trial testimony, documentary evidence, and factual findings by the hearing judge (Rules Proc. of State Bar, rule 5.155(A).) Na argues certain factual challenges that are not outcome-determinative. We have considered all arguments and those not addressed have been evaluated and are rejected as without merit.

[2] Further references to rules are to this source unless otherwise noted.

unearned fees (violation of rule 3-700(D)(2)—count two). The record supports these findings, and we adopt them.

IV. THE CRUZ MATTER (NO. 15-O-15994)

A. FACTS

Byron Cruz hired Na on July 21, 2013, to process an I-601A waiver in an immigration matter, and paid him $1,500. However, Cruz was not eligible for the waiver because he was over the 21-year-old age limit. Na knew this but failed to tell Cruz that he might have to wait years for a change in the law to receive an immigration adjustment. Also, Na incorrectly told Cruz that he would not have to leave the United States when, to process the waiver, Cruz would have to return to Guatemala, his country of origin. Na did not file the I-601A waiver and failed to so inform Cruz. Na testified that from his hiring in 2013 until 2016, he monitored President Obama's expected changes to the I-601A waiver.

In 2015, Cruz contacted Na several times seeking the return of his money, but did not receive a response. Frustrated, he went to Na's office on October 15, 2015, to demand a refund, and a confrontation ensued. Cruz refused to leave when asked, and Na called security. Cruz reported the incident to the police. Both parties testified that Na pushed Cruz out of the office. On November 23, Cruz sent Na a letter requesting refund of his $1,500. After a State Bar investigation began, Na refunded $1,500 in installment payments from March to June 2016.

B. CULPABILITY[3]

Count One: Failing to Perform Competently (Rule 3-110(A))

The NDC charged that Cruz hired Na to pursue a change in his immigration status on or about July 21, 2013, and Na failed to perform any work, in violation of rule 3-110(A). This rule

[3] Na concedes he violated rule 3-700(D)(2) under count two for failing to promptly refund unearned fees. The record supports his culpability, and we adopt it.

provides that an attorney "shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence." The hearing judge found Na culpable.

Na argues that he is not culpable because he "performed all possible services" for Cruz during his employment. He asserts that the waiver was not filed because Cruz was unwilling to return to Guatemala to obtain the adjustment.

We reject Na's arguments. He knew in 2013, when Cruz hired him, that Cruz was not eligible for the I-601A waiver because of his age and that Cruz did not wish to return to Guatemala. Na acted incompetently because he failed to promptly inform Cruz of these issues, and let three years pass from 2013 to 2016 without taking any action. (*In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480, 490 [attorney "could not simply let excessive time pass, lead his client to believe he would advance her claim and neither do so nor take appropriate action to withdraw"].) Na did not act competently by simply monitoring the status of immigration laws for several years in hopes that the laws would change to benefit his client. Accordingly, he willfully violated rule 3-110(A).[4]

V. THE CHACON MATTER (NO. 16-O-13582)[5]

A. FACTS

On October 19, 2015, Edwin Chacon hired Na to file an I-881 application for suspension of deportation, pursuant to the Nicaraguan Adjustment and Central American Relief Act (NACARA). Na represented to Chacon that he could obtain residency within six months and

[4] We also reject Na's argument that the hearing judge improperly held him accountable for failure to perform services after he was terminated. The judge found Na culpable for failing to perform work for Cruz before the termination and for failing to withdraw when he knew that he could not perform the services for which he was hired.

[5] This matter and the following Velasquez matter were charged under correlated case numbers in the third NDC. No. 16-O-13582 charges counts one through three in the Chacon matter and No. 16-O-16844 charges counts four and five in the Velasquez matter.

charged him a $3,000 flat fee. Chacon provided Na with a copy of his immigration file obtained via a Freedom of Information Act request.

On January 12, 2016, Na submitted Chacon's application to United States Citizenship and Immigration Services (USCIS). On January 19, it was rejected for insufficient copies. Between this date and January 25, Na resubmitted the application, but USCIS rejected it without providing a reason. Na resubmitted the same application to USCIS without ascertaining why it had been rejected. He later learned that USCIS did not have jurisdiction over Chacon's case.

In February 2016, Chacon went to Na's office but Na told him that he could not help him with his application. When Chacon requested his file and a refund, Na asked him to leave. A week later, Na returned Chacon's file but did not refund any fees.

Chacon then hired a new attorney to work on his NACARA application and apply for a work permit. The new attorney testified that she had Chacon's case reopened and filed the application in the appropriate forum, the immigration court, which has exclusive jurisdiction over Chacon's case according to the Code of Federal Regulations. The attorney testified that she believed Chacon met all the requirements of NACARA.

On April 12, 2016, with his new counsel's assistance, Chacon sent a letter to Na expressing his dissatisfaction with Na's services and requesting return of his $3,000. Na did not respond. On May 5, Chacon went to Na's office to personally request a refund. Na told him to leave and did not return the $3,000. Since Chacon lacked the funds to pay his new attorney, she referred him to the Central American Resource Center to help file his application.

Na testified that he made a mistake investigating Chacon's case, did not take steps to properly file the I-881 application, and failed to file it in the proper jurisdiction. Na also asserts that because Chacon fired him and took the file, Na was not given a chance to remedy his error.

B. CULPABILITY[6]

Count One: Failing to Act Competently (Rule 3-110(A))

Na is charged with violating rule 3-110(A) by failing to (1) investigate Chacon's immigration case, (2) take steps to properly file Chacon's I-881 application, and (3) file the application in the correct jurisdiction. The judge found Na grossly negligent, reasoning that a competent investigation would have revealed that Chacon's application was not pending with USCIS. The judge also found Na grossly negligent for failing to learn the reason that the application had been rejected before he refiled it.

Na argues that filing the I-881 application in the wrong venue was "simple negligence at the most." He contends that he was only retained by Chacon to prepare and file the application, not to pursue it to completion.

We reject Na's arguments. An attorney must use best efforts to accomplish what he or she was hired to do; it is grounds for discipline to fail to communicate with or attend to the needs of a client, even if the failure is not willful or deliberate. (*Butler v. State Bar* (1986) 42 Cal.3d 323, 328; *Kapelus v. State Bar* (1987) 44 Cal.3d 179, 188.) As an experienced immigration attorney since 1999, Na's shortcomings as described by the hearing judge were not simply negligent—they demonstrated reckless disregard for Chacon. Na repeatedly filed the I-881 application in the wrong forum and thus failed to provide any services of value to Chacon. Na willfully violated rule 3-110(A). (*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].)

[6] Na admits he violated rule 4-100(B)(3) under count two for failing to render accounts of client funds. The record supports his culpability, and we adopt it.

Count Three: Failing to Promptly Refund Unearned Fees (Rule 3-700(D)(2))

Na is charged with failing to refund unearned fees, in violation of rule 3-700(D)(2), by not promptly refunding $3,000 after he was terminated in April 2016. When employment has been terminated, rule 3-700(D)(2) requires the attorney to "[p]romptly refund any part of a fee paid in advance that has not been earned." The hearing judge found Na culpable because Chacon was entitled to a refund of the entire $3,000 since Na did not perform any work of value for him.

Na argues he earned the $3,000 fee by spending 10 hours on Chacon's matter and "properly and promptly" preparing his I-881 NACARA application. He also contends that even though he submitted the application to the wrong venue, his work still held value because it could have later been filed in the appropriate forum. Finally, he blames Chacon's impatience in hiring new counsel before Na could fix the problem. We reject these arguments. Na had ample time to file the application properly. By repeatedly misfiling it, he did not provide any service of value to Chacon, failed to refund $3,000, and thus willfully violated rule 3-700(D)(2).

VI. THE VELASQUEZ MATTER (NO. 16-O-16844)

A. FACTS

In August 2012, Felipa Velasquez hired Na to review her immigration history and file a motion to reopen her case. She paid him $1,500 under a retainer agreement (First Agreement). Vasquez told Na at their first meeting that three other immigration attorneys had informed her that a motion to reopen would not be successful, and that she had signed a "voluntary departure" agreement to leave the United States. On October 12, 2012, Velasquez agreed to pay another $6,000 to Na pursuant to a second retainer agreement (Second Agreement), and actually paid $4,100. The hearing judge found that the Second Agreement was for work on Velasquez's daughter's Deferred Action for Childhood Arrivals (DACA) action, as stated in the retainer agreement. We adopt this finding as both parties on review agree to this fact.

Na did not file a motion to reopen Velasquez's case. On August 22, 2016, Velasquez terminated his employment, expressed her dissatisfaction with his services, and requested a refund. In January 2017, Na provided an accounting to Velasquez, and sent her a refund check of $800 related to the Second Agreement, which she did not cash. Na testified he earned the entire $1,500 under the First Agreement.

B. CULPABILITY

Count Four: Failing to Act Competently (Rule 3-110(A))

The NDC alleges that Velasquez hired Na to research and file a motion to reopen her immigration case and he failed to perform, in violation of rule 3-110(A), by not filing the motion. The hearing judge found him culpable because Na neither advised Velasquez that he could not file a meritorious motion nor did he then withdraw from representation.

Na asserts that the judge erred when she deemed not credible his claim that he continued to research Velasquez's case, as proved by a motion to reopen the deportation proceedings that he submitted into evidence. Na testified that he began to prepare this document using another case sample, but stopped when he realized it would not work for Velasquez. He argues he is not culpable because he provided services by reviewing her case, working on the document, and then advising her that a motion to reopen would be unsuccessful due to her immigration record.

Na's arguments fail. At the time Velasquez hired Na, he knew or should have known that he could not reopen her case based on the information she provided, including that three attorneys had already rejected her case and that she had agreed to a "voluntary departure." That he began working on a document to reopen Velasquez's case does not excuse his failure to timely inform her that a motion to reopen would be unsuccessful. We agree with the hearing judge that Na failed to perform with competence, in willful violation of rule 3-110(A).

Count Five: Failing to Refund Unearned Fees (Rule 3-700(D)(2))

The hearing judge found that Na willfully violated rule 3-700(D)(2) as to the First and Second Agreements. Na does not challenge his culpability, though he contends he earned the $1,500 under the First Agreement. We agree with the judge's unchallenged culpability finding; it is supported by the record.

As to the fees earned, the hearing judge found Na did not earn any fees under the First Agreement, and thus failed to refund the entire $1,500 fee. As to the Second Agreement, the judge found that Na provided a fair accounting indicating that he earned $3,300 of the $4,100 paid for work done on Velasquez's daughter's DACA application. But Na did not refund the difference of $800 until January 2017, nearly five months after his employment was terminated in August 2016. Because the $800 check was not cashed, the judge found that Na owes $2,300 to Velasquez ($1,500 for the First Agreement and $800 for the Second Agreement). We agree.

VII. AGGRAVATION OUTWEIGHS MITIGATION

Standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct requires that OCTC prove aggravating factors by clear and convincing evidence.[7] (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552 [clear and convincing evidence is that which leaves no substantial doubt and is sufficiently strong to command unhesitating assent of every reasonable mind].) Standard 1.6 requires Na to meet the same burden to prove mitigation.

A. AGGRAVATION

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

***Na I* (State Bar Nos. 12-O-12734 (12-O-13042))**. In 2009, Na was hired to work on two immigration matters. In the first, he was hired to adjust his client's legal status. He provided no

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

legal services of value and failed to promptly refund $2,260 in unearned fees after he was terminated in 2012. In the second matter, Na did not timely respond to a notice of action issued by the Department of Homeland Security regarding his client's petition for an alien relative.

On May 16, 2013, Na signed a stipulation that he violated rule 3-700(D)(2) (failure to refund fees) and rule 3-110(A) (failure to perform with competence). There were no aggravating circumstances. In mitigation, Na cooperated by entering into the stipulation before an NDC was filed, and he had no prior discipline record. The parties agreed to a private reproval with conditions. The Hearing Department approved the stipulation, which was filed on May 29, 2013.

Na II (**State Bar No. 14-O-03140)**. In 2009, a client hired Na and paid him $3,500 for an adjustment of immigration status. When the client went to Na's office in 2012 for a status report, Na was dismissive and did not provide a timetable for completing the work. In 2014, the client returned to Na's office for a status report. Na had not filed any application for adjustment. The client filed a State Bar complaint. After a State Bar investigator contacted Na, he entered into an agreement with his client where he would complete legal services in exchange for the client's withdrawal of the State Bar complaint. Na signed a stipulation on December 15, 2014, that his agreement violated Business and Professions Code section 6090.5, subdivision (a)(2).[8] His prior record was an aggravating circumstance. In mitigation, he entered into the stipulation before an NDC was filed and the client suffered no harm. The parties agreed to a public reproval with conditions as progressive discipline under standard 1.8(a). The Hearing Department approved the stipulation, which was filed on January 5, 2015.

In the present case, the hearing judge assigned limited aggravating weight to *Na II* because the "misconduct in his second prior matter occurred contemporaneously with the current misconduct." The record does not support this finding. Na committed all of his misconduct in

[8] This section provides that it is cause for discipline if an attorney enters an agreement where a client agrees to withdraw a disciplinary complaint.

two current client matters and most of his misconduct in two other current matters in 2015 and 2016, after he knew of both prior discipline cases. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619 [weight of aggravation for prior discipline record depends on whether attorney had opportunity to heed import of prior proceeding before committing misconduct at issue].)

The operative dates to mark Na's notice of his past wrongdoing are when he signed the stipulations in *Na I* and *Na II* (May 2013 and December 2014, respectively). Na committed the following misconduct in the present case after May 2013 (*Na I*) and/or December 2014 (*Na II*): (1) all misconduct in the Cortes matter as Na was hired in mid-2015; (2) all misconduct in the Chacon matter as Na was hired in October 2015; (3) most misconduct in the Cruz matter as Na was hired in 2013, did not perform through 2015, and did not refund fees when asked in October and November 2015; and (4) most misconduct in the Velasquez matter as Na was hired in 2012, failed to perform through 2015, was terminated in 2016, and did not timely account or refund fees.

Na argues that less aggravating weight should be assigned to his prior record because he stipulated to his past misconduct and received only "minor" discipline (reprovals). We reject his argument. First, he committed most of his present misconduct during his reproval conditions period in *Na II*, and notably, committed it after he had already been disciplined in 2013 in *Na I* for the same wrongdoing—failing to competently perform and refund fees in immigration cases. Na was on notice that it was unethical to collect fees from clients, perform no work, and fail to refund unearned fees. The similarity of his misconduct to the present case makes his past discipline record more serious. (See *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443–444 [similarities between prior and current misconduct render previous discipline more serious, as they indicate prior discipline did not rehabilitate].) Accordingly, we assign substantial weight in aggravation to Na's prior discipline record.

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

The hearing judge found that Na's nine ethical violations in four client matters aggravating. We agree and assign significant 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 found that Na caused significant harm to Cruz, Chacon, and Velasquez by failing to properly handle their cases and not promptly refunding fees. We agree and assign substantial weight in aggravation.

Na argues he caused no significant harm to Cruz because the visa application was not terminated until after Na was fired, his later work restored the application, and he refunded the $1,500 fee. He asserts he did not harm Chacon by improperly submitting the NACARA application because Chacon could later use it in the proper forum, and that he earned the $3,000.

Na's arguments lack merit. He mishandled and delayed his clients' cases, his clients were charged fees unnecessarily, and full refunds have not been made. Na continues to harm Velasquez and Chacon by depriving them of their money, particularly Chacon, who hired another attorney but could not afford to maintain her as his counsel and terminated her employment. (See *In the Matter of Casey* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117, 126 [significant harm where client hired new attorney, incurred fees, and suffered for three years due to attorney's misconduct].)

4. Indifference (Std. 1.5(k))

The hearing judge found that Na was indifferent toward rectification of or atonement for the consequences of his misconduct. The judge reasoned that Na repeatedly failed to perform with competence and did not refund unearned fees even though "he should be keenly aware of his professional obligations" from his past misconduct. The judge noted that Na did not recognize his

wrongdoing when he "testified that he did not know why he was disciplined in the past and that he performed services for his clients, even though they were of no value to the clients." Citing *Blair v. State Bar* (1989) 49 Cal.3d 762, 781–782, the judge found Na's misconduct and indifference troubling because it suggests misconduct may recur. Though Na argues he was not indifferent because he admitted misconduct "where appropriate," we agree with the hearing judge's analysis. Na's admission to certain charges does not override his lack of understanding about his current and past misconduct. We assign considerable weight in aggravation to Na's indifference.

5. Failure to Make Restitution (Std. 1.5(m))

The hearing judge found that Na's failure to pay restitution to Chacon and Velasquez was aggravating. We agree and reject Na's argument that he was not required to make restitution because he repaid Velasquez $800 and he had a "good faith and reasonable belief" that he earned all $3,000 in fees Chacon paid. He failed to perform in both client matters and owes a total of $5,300 in unearned advance fees to Chacon ($3,000) and Velasquez ($2,300). We assign substantial weight to this factor. (See *In the Matter of DeClue* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 437, 445 [failure to pay $10,000 in restitution is significantly aggravating].)

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

The hearing judge concluded that the victims had a high level of vulnerability due to their uncertain immigration status. We agree and, like the hearing judge, assign significant aggravation. Na's clients were unsophisticated immigrants with limited English-language skills, facing possible deportation. They depended on Na's assistance 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].)[9]

[9] The limited evidence about Na's confrontations with Cruz and Chacon at Na's office does not constitute aggravation. We note, however, that Na's overall attitude as an attorney toward his clients' requests for refunds is troubling.

B. MITIGATION

The hearing judge assigned minimal weight in mitigation to Na for entering into the Stipulation. (Std. 1.6(e) [spontaneous candor and cooperation with State Bar is mitigating].) It was extensive as to facts and preserved court time and resources, but did not admit culpability and was not filed until the first day of trial. On review, Na does not dispute culpability on five charges, though he challenges all counts of failing to perform. Nonetheless, he is entitled to considerable weight in mitigation for his Stipulation and his admissions to several charges. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive weight in mitigation accorded to those who admit culpability and facts].)

VIII. DISCIPLINE[10]

Our disciplinary analysis begins with the standards which, although not binding, are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 91–92.) The Supreme Court has instructed us to follow them whenever possible. (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) We first determine which standard specifies the most severe sanction for the misconduct. (Std. 1.7(a).) Considering Na's past record, we look to standard 1.8(b), which provides that "disbarment is appropriate" where an attorney has two or more prior records of discipline *if*: (1) an actual suspension was ordered in any prior matter; (2) the prior and current matters demonstrate a pattern of misconduct; or (3) the prior and current matters demonstrate the attorney's unwillingness or inability to conform to ethical responsibilities. OCTC did not prove these criteria. Therefore, standard 1.8(b) does not apply.

[10] The purpose of attorney discipline is not to punish the attorney but to protect the public, the courts, and the legal profession; to maintain high professional standards; and to preserve public confidence in the legal profession. (Std. 1.1)

We next look to standard 2.7, which calls for disbarment or actual suspension for performance violations. Given the broad range of discipline, we consult case law and consider the principle of progressive discipline. (Std. 1.8(a).)

The hearing judge properly relied on comparable case law including: *In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944; *Nizinski v. State Bar* (1975) 14 Cal.3d 587; and *Bledsoe v. State Bar* (1991) 52 Cal.3d 1074. In *In the Matter of Brockway*, the attorney was suspended for two years continuing until he proved rehabilitation for competency violations, failures to account and refund fees, and other violations in four immigration matters. No mitigation was proved but aggravation included a prior record, multiple acts, harm, failure to atone, and uncharged moral turpitude. In *Nizinski v. State Bar*, the attorney was suspended for two years and until restitution was paid for failing to perform in four client matters; the attorney received a 30-day suspension in a prior case. And in *Bledsoe v. State Bar*, an attorney who had 17 years with no prior discipline was suspended for two years for misconduct in four matters, including abandonment, failure to refund fees, and not cooperating with the State Bar.

Na argues for no more than a 60-day actual suspension, citing cases he contends are more relevant than those the hearing judge analyzed, including *In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196, 206 (30-day suspension for abandonment of one client plus other violations; impressive mitigation with no priors), *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354 (45-day suspension for misconduct in three client matters; extensive mitigation and one past private reproval), and *Van Sloten v. State Bar* (1989) 48 Cal.3d 921 (stayed suspension for one count of failure to perform). These cases are not comparable to Na's as they involve less misconduct and aggravation and more mitigation.

We conclude that a two-year actual suspension is appropriate progressive discipline given Na's present misconduct, his two previous discipline records, and aggravation that outweighs

mitigation. To protect the public, the courts, and the profession, we recommend that this two-year actual suspension continue until Na pays restitution and demonstrates his rehabilitation, fitness to practice, and learning and ability in the law before the State Bar Court.

IX. RECOMMENDATION

For the foregoing reasons, we recommend that Sheen Myong Na be suspended from the practice of law for three years, that execution of that suspension be stayed, and that he be placed on probation for three years with the following conditions:

1. Na must be suspended from the practice of law for the first two years of his probation, and will remain suspended until both of the following requirements are satisfied:

    a. Na makes restitution to the following payees (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) and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles:

        i. Edwin Chacon in the amount of $3,000 plus 10 percent interest per year from October 19, 2015; and

        ii. Felipa Velasquez in the amounts of $1,500 plus 10 percent interest per year from August 7, 2012, and $800 plus 10 percent interest per year from August 22, 2016.

    b. Na provides proof to the State Bar Court of his rehabilitation, fitness to practice, and present learning and ability in the general law. (Std. 1.2(c)(1).)

2. Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Na 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 his first quarterly report.

3. Na must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of his probation.

4. Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Na 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. Na 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. Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Na 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, he may meet with the probation case specialist in person or by telephone. During the probation period, Na 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. During Na's probation period, the State Bar Court retains jurisdiction over him to address issues concerning compliance with probation conditions. During this period, he must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to his official membership address, as provided above. Subject to the assertion of applicable privileges, Na 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. Na 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, Na 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. Na 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. Na is directed to maintain proof of his compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of his actual suspension has ended, whichever is longer. He is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

8. Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Na 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 Na 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, he will nonetheless receive credit for such evidence toward his duty to comply with this condition.

9. Na 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). Such proof must include: the names and addresses of all individuals and entities to whom he 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 Na 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.

10. 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 Na has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

X. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Na be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners during the period of his actual suspension in this matter and to provide satisfactory proof of such passage to the Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).) If Na provides satisfactory evidence of the taking and passage of the MPRE 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 condition.

XI. RULE 9.20

We further recommend that Na be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

XII. 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. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

PURCELL, P. J.

WE CONCUR:

HONN, J.

STOVITZ, J.*

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