

Filed October 6, 2022

STATE BAR COURT OF CALIFORNIA
REVIEW DEPARTMENT

In the Matter of)	Case No. SBC-21-O-30189
)	
PETER LEO KUTRUBES,)	OPINION
)	
State Bar No. 176024.)	
_____)	

This is Peter Leo Kutrubes’s third discipline case since his admission to practice law in California in 1995. A hearing judge found him culpable of 22 counts of misconduct related to two client matters. The judge found Kutrubes failed to obey multiple court orders, failed to maintain due respect to the court, failed to inform a client of significant events, maintained an unjust action, and failed to report sanctions to the State Bar. The judge’s recommended discipline included an 18-month actual suspension. Kutrubes appeals. Although he only contests culpability under six counts, he challenges some of the aggravation and mitigation and argues that an 18-month actual suspension is too severe. The Office of Chief Trial Counsel of the State Bar (OCTC) does not appeal.

Upon independent review of the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge’s culpability findings and find Kutrubes culpable of 22 counts of misconduct. We also affirm most of the judge’s aggravation and mitigation findings. Unlike the hearing judge, we find that a one-year actual suspension is appropriate progressive discipline to protect the public, the courts, and the legal profession.

I. PROCEDURAL BACKGROUND

OCTC filed a Notice of Disciplinary Charges (NDC) in this matter on March 26, 2021. Kutrubes filed an answer on April 29, 2021. On July 6, 2021, the parties filed a pre-trial Stipulation as to Facts and Admission of Documents (Stipulation). A two-day trial was held on July 13 and 14, 2021. The matter was submitted for decision on August 4, 2021.

II. FACTUAL BACKGROUND¹ AND CULPABILITY²

Kutrubes was admitted to practice law in California on March 28, 1995. In addition, he has been licensed in Massachusetts for 25 years. During the timeframe involved in these proceedings, Kutrubes lived in New Hampshire and maintained two law offices, one in California and one in Massachusetts.

A. C & H Matter (Counts One through Thirteen)

1. Factual Background

On January 10, 2018, Kutrubes filed *C & H Produce Inc. v. ABC Bakery Café Inc., et al.* (C & H Matter) in San Francisco County Superior Court. Kutrubes represented the plaintiff. Kutrubes knew he had to serve the defendants within 60 days of filing the complaint. He served the defendants past the deadline, on April 1, 2018. Kutrubes used a fax and file service to serve the defendants, but the service failed to file the proof of service with the court. Kutrubes did not check the docket to ensure that the proof of service was filed. The parties settled most of their

¹ The facts are based on trial testimony, documentary evidence, and the hearing judge's factual and credibility findings, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).)

² All culpability findings in this opinion are established by clear and convincing evidence. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552 [clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command unhesitating assent of every reasonable mind].)

dispute shortly after service of the complaint, and had reached an oral agreement on the one remaining issue regarding attorney's fees.

On July 6, 2018, the superior court judge assigned to the matter issued an Order to Show Cause (OSC), setting a hearing for September 11, 2018. The order cancelled a scheduled management conference and ordered Kutrubes to show cause why the case should not be dismissed or why sanctions should not be imposed for failure to file the proof of service and obtain the defendant's answer or enter default. The OSC ordered Kutrubes to appear and file a response. The court served the OSC on Kutrubes and he received it. Kutrubes did not inform his client about the OSC—he testified he did not inform his client because this involved his own failure to the court. On August 22, 2018, Kutrubes submitted a request for entry of default against the defendants in the C & H Matter, which the court rejected for failure to file an original proof of service. On August 24, 2018, Kutrubes filed another request for entry of default.

On September 7, 2018, the court issued another OSC, cancelled the upcoming hearing, and ordered Kutrubes to appear on January 8, 2019, to show cause why the case should not be dismissed or why sanctions should not be imposed for failure to enter a default judgment. The OSC required Kutrubes to file a response. The OSC was served on Kutrubes and he received it. Kutrubes failed to file any response to the OSC, and he did not appear for the hearing on January 8. Kutrubes testified that he “dropped the ball” and failed to properly schedule the event.

At some point in 2018, Kutrubes's sister was diagnosed with cancer. She lived in Boston and Kutrubes would travel back and forth from New Hampshire to visit and care for her. From January to September 2019, his sister had multiple surgeries. One surgery was on January 8, 2019, the day the OSC was scheduled in the C & H Matter in San Francisco. His sister's medical condition caused him to lose focus and fail to comply with the court orders or appear at

the OSC hearings. He also moved his offices in California during this time. Kutrubes testified that these omissions were his fault. During this period Kutrubes was also dealing with his son's drug and alcohol addiction issues, which began in 2015. His son also experienced medical issues requiring him to need hospitalization and psychiatric care in mid-2019.

On January 10, 2019, the court imposed \$400 in sanctions against Kutrubes for failing to appear at the OSC. The sanctions were to be paid no later than January 25, 2019. Also on January 10, the court issued another OSC requiring Kutrubes to appear on March 12, 2019, to show cause why the matter should not be dismissed or why sanctions should not be imposed for failure to enter default judgment. The OSC required Kutrubes to file a response. The OSC was served on Kutrubes and he received it. Kutrubes did not seek relief from the order and did not pay sanctions by the deadline. He also failed to file a response or appear at the March 12 OSC hearing.

On March 12, 2019, the court imposed an additional \$400 in sanctions against Kutrubes for failing to appear at the OSC hearing. The same day, the court issued another OSC requiring Kutrubes to appear at a May 14 hearing to show cause why the case should not be dismissed or why sanctions should not be imposed for failure to seek default judgment and pay outstanding sanctions. The OSC required Kutrubes to file a response. Kutrubes was served with the OSC and received it. However, he did not pay sanctions by the deadline, file a response, or appear at the OSC hearing. Kutrubes testified that he planned to inform the court that the C & H Matter had settled and should be dismissed, but he had many things going on, including his sister's medical issues, and his son's medical issues and addiction problems. These personal difficulties caused him to miss his professional obligations.

On May 14, 2019, the court imposed \$400 in sanctions against Kutrubes for failing to appear at the OSC hearing. Kutrubes did not pay these sanctions by the deadline. On May 15,

the court issued another OSC requiring Kutrubes to appear for a July 16 hearing to show cause why the case should not be dismissed or why sanctions should not be imposed for failure to seek a default judgment and pay outstanding sanctions. The OSC emphasized that the case was subject to dismissal if Kutrubes failed to appear or file a response. Kutrubes again failed to file a response or appear at the hearing. On July 17, 2019, the court dismissed the C & H Matter, finding no good cause or justification for Kutrubes's failure to comply with the court's previous orders. The court found that a less severe sanction would be ineffective due to Kutrubes's history of noncompliance. Kutrubes paid all three sanction orders totaling \$1,200 on February 22, 2020. Throughout the series of OSCs and imposition of sanctions, Kutrubes never informed his client of the court orders, or his failure to comply.

OCTC sent Kutrubes two investigative letters regarding his failure to comply with the court's orders and his failure to timely pay sanctions. Kutrubes responded: "I admit that as this case was being resolved, I should have been more proactive on keeping the court apprised of the status, making sure the default was properly lodged with the court, and ultimately dismissing the case when C & H agreed it was over. This is why I took no further action when the case was ultimately dismissed by the court." Kutrubes also admitted that he should have paid the sanctions in full and was working on resolving the default issue with the court.

2. Culpability Findings

Counts One, Four, Seven and Ten: Failure to Obey Court Order (Bus. & Prof. Code, § 6103)³

In counts one, four, seven, and ten, OCTC charged Kutrubes with willfully violating section 6103 by failing to comply with the superior court's orders dated September 7, 2018, and January 10, March 12, and May 15, 2019. The orders at issue required Kutrubes to file a

³ All further references to sections are to the Business and Professions Code unless otherwise indicated.

response to the OSC and appear at the related OSC hearings. Section 6103 provides, in pertinent part, that willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the attorney's profession, which the attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment. The hearing judge found Kutrubes culpable as charged. We agree.

An attorney willfully violates section 6103 when, despite being aware of a final, binding court order, he or she knowingly takes no action in response to the order or chooses to violate it. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 787.) The record establishes that Kutrubes was aware of the orders, and that he stipulated he failed to respond or appear at the hearings as ordered by the court. On review, Kutrubes does not dispute culpability for failing to obey the orders.⁴ He testified that he had multiple responsibilities at the time, including caring for his ill sister and losing his administrative staff. But ultimately Kutrubes acknowledged that he "dropped the ball" and is culpable for disobeying the court orders. We affirm the hearing judge's culpability determinations under counts one, four, seven, and ten.

Counts Two, Five, Eight, and Eleven: Failure to Maintain Respect to Court (§ 6068, subd. (b))

Counts two, five, eight, and eleven alleged that Kutrubes failed to maintain respect to the court when he did not comply with the OSC orders dated September 7, 2018, and January 10, March 12, and May 15, 2019, requiring him to file responses to the OSC and appear at the OSC hearings specified in the orders. The hearing judge found Kutrubes culpable as charged but

⁴ While not contesting culpability, Kutrubes asserts that count four should be considered as a single count with count three, discussed below. We decline to consider counts three and four as one single count. Although both counts allege violations of section 6103, count three alleges a violation of the court's order to pay sanctions by January 25, 2019, and count four involves Kutrubes's violation of the court's OSC requirements to file a response and attend the March 12, 2019 hearing.

declined to assign additional weight in culpability based on counts two, five, eight, and eleven being duplicative of counts one, four, seven, and ten.

Under section 6068, subdivision (b), an attorney has a duty to maintain the respect due to the courts and judicial officers. Kutrubes disputes culpability, arguing that counts two, five, eight, and eleven are cumulative of the allegations discussed above regarding his failure to obey the superior court's orders in counts one, four, seven, and ten. He asserts that since he eventually paid the court ordered sanctions, OCTC failed to establish culpability and the charges should be dismissed. We reject this argument. First, we found Kutrubes culpable for failing to obey the court orders pursuant to section 6103; and the same facts can result in culpability under both section 6103 and section 6068, subdivision (b). (*In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389, 403-404 [finding culpability under both §§ 6068, subd. (b) & 6103 based on attorney's willful failure to comply with court orders].) This court has held that an attorney should be found culpable for all charged misconduct which is proven, in order to maintain both the highest professional standards and the public's confidence in the legal profession. (See *In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511, 520 [no dismissal of charge where same misconduct proves culpability for another charge].) Accordingly, we affirm culpability under counts two, five, eight, and eleven but assign no additional weight in discipline.

Counts Three, Six, and Nine: Failure to Obey Court Order (§ 6103)

In counts three, six, and nine, OCTC charged Kutrubes with willfully violating section 6103 by failing to comply with the superior court's orders dated January 10, March 12, and May 14, 2019, each requiring him to pay sanctions by specified deadlines. Based on Kutrubes's admissions in the Stipulation, the hearing judge determined that he was culpable as charged. He stipulated that he should have handled the case more proactively and admitted that

he failed to pay the court-imposed sanctions by the deadlines. Neither party challenges the judge's culpability findings on review. Thus, we affirm culpability under counts three, six, and nine.

***Count Twelve: Failure to Inform Client of Significant Developments
(§ 6068, subd. (m))***

Count twelve alleged that Kutrubes violated section 6068, subdivision (m), which requires an attorney to “keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.” OCTC alleged that Kutrubes failed to inform his client in the C & H Matter of the following events: OSC hearings dated January 8, March 12, May 14, and July 16, 2019, and the dismissal of the case on July 17, 2019. The hearing judge found that Kutrubes should have informed his client of these events and found him culpable as charged. Neither party challenges this finding on review. Kutrubes stipulated that he never informed his client of the OSCs or notified the client regarding his failure to prosecute the case. On review, Kutrubes acknowledges culpability. We affirm culpability under count twelve.

Count Thirteen: Failure to Perform with Competence (Rules Prof. Conduct, former rule 3-110(A))⁵

Count thirteen alleged Kutrubes failed to perform with competence in his representation of the C & H Matter by failing to file a proof of service of the civil complaint and a request for entry of default. Former rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. The hearing judge found that Kutrubes was merely negligent in missing the deadline and that he ultimately filed the proofs of service and request for entry of default approximately three months late. Therefore, the

⁵ All further references to former rule(s) are to the former California Rules of Professional Conduct that were in effect until November 1, 2018, unless otherwise noted.

judge dismissed count thirteen with prejudice. Neither party challenges this dismissal on review, and we affirm it with prejudice. (*In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 843 [dismissal of charges for want of proof after trial on merits is with prejudice].)

B. Bankruptcy Matter (Counts Fourteen through Twenty-Five)

1. Factual Background

On June 4, 2012, Kutrubes filed a chapter 13 bankruptcy petition in the United States Bankruptcy Court for the Northern District of California (Northern District) on behalf of Paul Christensen. Christensen had lost all of his savings and much of his investment real estate properties between 2008 and 2012. After Kutrubes failed to comply with a court order to file requisite documents by June 19, 2012, the court dismissed the case. On July 26, Kutrubes filed another chapter 13 bankruptcy petition in the Northern District on behalf of Christensen. The trustee moved to dismiss the petition, arguing that it was filed in bad faith because Christensen had filed four other bankruptcy petitions since December of 2010, which all were dismissed. Kutrubes opposed this motion.

The court dismissed the bankruptcy petition in a January 4, 2013 order (2013 ND Order). The 2013 ND Order provided that Christensen was “barred and prohibited from filing a bankruptcy case under any chapter of the Bankruptcy Code in any United States Bankruptcy Court unless: (a) Debtor files with the petition all documents required by 11 U.S.C. § 512; **and** (b) Debtor pays the entire filing fee in full.” Kutrubes was served with this order and received it. Kutrubes did not seek relief from the order.

Kutrubes became aware that a third party had helped Christensen file for bankruptcy in New York. On June 3, 2013, the United States Bankruptcy Court for the Southern District of New York issued an order permanently barring Christensen from engaging in a number of activities, including filing new bankruptcy cases or adversary proceedings in any federal

bankruptcy court (2013 NY Order). Kutrubes and Christensen were not served with this order, and Kutrubes was not aware of it until 2016 when he made additional filings on behalf of Christensen.

On March 1, 2016, Kutrubes filed a chapter 11 bankruptcy petition in the Northern District on behalf of Christensen. Kutrubes thought that the petition was permissible under the 2013 ND Order because he interpreted it as only barring the filing of a chapter 13 petition. Kutrubes testified that he did not review the order carefully. The filing was missing numerous required documents, and Kutrubes admits he made a mistake by filing a “skeletal” petition. He did not obtain a filing fee from his client in advance, because he thought that his client would submit the fee after he filed the petition.

On March 2, 2016, the Northern District court issued an order indicating that the chapter 11 petition was missing many required forms and schedules. The order stated that if the documents were not filed within 14 days of the filing of the petition, the court might dismiss the case. Kutrubes was served with the order and received it. He began to work with Christensen on preparing the missing documents. On March 4, 2016, the chapter 11 petition was dismissed for failing to comply with the 2013 ND Order. Kutrubes received this order and understood it.

On April 7, 2016, Kutrubes filed another chapter 11 bankruptcy petition on behalf of Christensen in the Northern District. Kutrubes filed a complete petition this time, but the filing fee was not paid. On April 8, this petition was dismissed by the court. The dismissal order cited to violations of the 2013 ND Order and the 2013 NY Order. The order also noted that the previous chapter 11 petition was dismissed because it violated the 2013 ND Order. The court ordered Kutrubes and Christensen to appear for a hearing on April 15, 2016, to show cause why they should not be sanctioned for violation of the orders.

On April 8, 2016, Kutrubes paid the filing fee after the matter was dismissed. Kutrubes filed a written response in advance of the hearing, which admitted that the omissions in his first petition were an oversight on his part. Kutrubes also said that the failure to pay the filing fee with the second chapter 11 petition was his fault, not Christensen's. He attributed the error to the fact that he had two offices, one in California and one in Massachusetts, but that he spent most of his time in New England where he resides. He explained that, during the week of the filing, he was extremely short staffed in his California office, and he was busy with other cases. He repeated these explanations at the OSC hearing and at his disciplinary trial.

On April 15, 2016, the Northern District issued a Memorandum on Order to Show Cause. The memorandum stated that Christensen had filed eight bankruptcies since 2010, that the bankruptcy dismissed on April 8 was the second one to violate the 2013 NY Order, and that each filing was dismissed for failure to follow the rules or court orders. Given the history of filings and Kutrubes's involvement, the court found "less than convincing Kutrubes'[s] [*sic*] argument that failure to pay the filing fee was a mere oversight" and as a sanction, it declined to refund the filing fee paid after dismissal. The court noted that the 2013 NY Order was still in effect, prohibiting Christensen from filing further bankruptcy cases, and enjoined Christensen and Kutrubes from filing further bankruptcy cases in the Northern District while the order remained in effect.

In December 2017, Kutrubes successfully moved the Northern District to lift its bar on Christensen filing further petitions. On April 25, 2018, Christensen filed a pro se chapter 7 petition that was dismissed for failure to file required documents.

On December 12, 2018, Kutrubes filed a third chapter 11 petition on behalf of Christensen. On December 13, the court notified Kutrubes that a required document was missing and gave him 14 days to file it or the case would be dismissed. Kutrubes was served with the

order and received it, but did not file the required document. Kutrubes testified in his disciplinary trial that he could not upload the required document when he filed the petition, so he tried to upload it separately.

On January 23, 2019, the court dismissed the third chapter 11 petition for failure to comply with the December 13, 2018 order. Kutrubes was served with the order and received it. On February 19, 2019, the court issued an OSC and set a hearing for March 20. In the order, the court highlighted numerous bankruptcy filings by Christensen which had all been dismissed for failure to comply with court orders. The court noted that the 2013 NY Order found that Christensen acted in concert with abusive bankruptcy filers and permanently enjoined him from filing a bankruptcy petition in any bankruptcy court. The order went on to state “Christensen’s history of case filings suggests that this case may have been filed in bad faith or with a combination of recklessness and aggravating factors (such as frivolousness, harassment, or an improper purpose) that may require the imposition of sanctions.” The court ordered Christensen and Kutrubes to show cause why they should not be sanctioned and ordered them to file a written response by March 5, 2019.

Kutrubes was served with the OSC and received it, but he did not file a response. Kutrubes testified that he does not recall whether he knew he had to file a response and that this was during the time his sister had ongoing medical treatments. Kutrubes appeared telephonically at the OSC, and the court inquired as to why he had not filed a response. Kutrubes responded that he had made several mistakes and that he thought he would be filing the case with an experienced chapter 11 attorney, but was unable to find one. He told the court he did not disagree that he should be sanctioned because he negligently handled the case. Kutrubes noted that he did make sure that his client knew he “had to be all in” before he filed the bankruptcy.

On April 2, 2019, the court issued an order imposing \$2,500 in sanctions against Kutrubes, to be paid by April 16, and ordered him to disgorge his fee. The court also barred Christensen from filing any bankruptcy case for three years. The order emphasized that an attorney must exercise some discretion and decline to represent a debtor who refuses to prosecute a bankruptcy case to conclusion. The court found that Kutrubes's filing the petition without ensuring that Christensen signed all the documents, and without disclosing the monthly secured debt payments, was not only reckless, but reflected a knowledge that this case was yet another bad faith bankruptcy filing. The order stated that Kutrubes's comments did nothing to allay the court's concern that this was a bad faith filing, and that it should never have been filed.

Kutrubes was served with the order and received it but did not appeal or seek a stay. He did not pay the sanctions by the deadline. He attempted to pay the sanctions, but the check was returned. As of April 2, 2019, Kutrubes was aware of the sanctions but did not report them to the State Bar until July 10, when he included reference to the sanctions in his State Bar probation report. Kutrubes believed that reporting through his probation report was sufficient notification.

On April 24, 2019, the Northern District issued an OSC to determine why Kutrubes should not be held in contempt for failing to comply with the April 2 sanctions order. Kutrubes was ordered to file a written response by May 10, and to appear on May 22. He was served with the order and received it, but did not file a response or appear at the OSC hearing.

On May 22, 2019, Kutrubes paid the sanctions and the court waited to issue its order in order to verify that the check would clear. The check did not clear because it was written on a closed account. On June 4, Kutrubes was held in contempt of court and ordered to pay the sanctions. The court further ordered him to pay \$25 for each day after June 4, for which he failed to make payment. Kutrubes paid the sanctions on June 5, and the contempt order was lifted.

Kutrubes testified that Christensen never told him that he was not serious about pursuing his bankruptcy petitions. For the first two bankruptcies filed by Kutrubes, he believed that Christensen was sincere in wanting to proceed with them. After the last filing in 2018, Kutrubes discovered that Christensen did not want to proceed with the bankruptcy, but prior to filing the petition Kutrubes made Christensen promise that he was committed to following through. During the disciplinary trial, Christensen testified that the purpose of the bankruptcy filings was to seek a loan modification and to stop a foreclosure sale on his properties. He said the strategy had worked each time a sale came up. However, Christensen also maintained that he genuinely wanted to go through bankruptcy.

2. Culpability Findings

Counts Fourteen and Fifteen: Failure to Obey Court Order (§ 6103)

Under counts fourteen and fifteen OCTC alleged that Kutrubes failed to obey the 2013 ND Order in willful violation of section 6103. The order barred Kutrubes from filing any bankruptcy petition unless he (a) submitted all documents required pursuant to the relevant bankruptcy statute and (b) paid the filing fee by the specified deadline. OCTC alleged that Kutrubes violated the order by filing a bankruptcy petition on March 1, 2016, on behalf of Christensen without filing all the required documents and paying the filing fee. The hearing judge found him culpable since Kutrubes was aware of the court's order when he filed the bankruptcy petition without paying the filing fee and submitting the necessary documents. On review Kutrubes acknowledges he failed to adhere to the court's order and does not dispute culpability under these counts. Since Kutrubes knew about the obligations under the order but disobeyed it, we affirm the hearing judge's culpability determinations under counts fourteen and fifteen.

Count Sixteen: Failure to Obey Court Order (§ 6103)

Under count sixteen, OCTC alleged that Kutrubes failed to obey the Northern District's March 2, 2016 order in willful violation of section 6103. The court's order required Kutrubes to file the required missing documents to support Christensen's bankruptcy petition within 14 days. The hearing judge dismissed count sixteen with prejudice because the bankruptcy court placed the order "on hold" shortly after issuing it and then dismissed the case two days later. Because these court events occurred prior to the 14 days allowing for Kutrubes to comply with the order, we do not find that he willfully violated section 6103. Accordingly, we affirm the hearing judge and dismiss count sixteen with prejudice.⁶ (*In the Matter of Kroff, supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

Count Seventeen: Failure to Obey Court Order (§ 6103)

Under count seventeen, OCTC alleged that Kutrubes failed to obey the 2013 ND Order in willful violation of section 6103, by filing a bankruptcy petition on April 7, 2016, but failing to pay the filing fee. The hearing judge found him culpable as charged and neither party challenges the judge's finding. The record establishes that the bankruptcy petition was filed without paying the filing fee in violation of the court's January 4, 2013 order. Kutrubes acknowledges his culpability under this count for willfully violating section 6103. Accordingly, we affirm the judge and find Kutrubes culpable under count seventeen.

Count Eighteen: Failure to Obey Court Order (§ 6103)

Under count eighteen, OCTC alleged that Kutrubes failed to obey the Northern District's December 13, 2018 order by not filing the required missing documents to support Christensen's

⁶ OCTC does not challenge the dismissal on review.

bankruptcy petition within 14 days. The hearing judge dismissed count eighteen with prejudice upon finding the language of the order to be ambiguous and not clearly commanding Kutrubes to take action. The order states: “IT IS HEREBY ORDERED that unless, within 14 days of the petition date, the debtor(s) file each document listed above, the court may dismiss this case without further notice or hearing.” Neither party challenges the judge’s dismissal under this count. Based on the specific language of the order, we do not find clear and convincing evidence to support a willful violation of section 6103. The order did not mandate a specific action but rather put Kutrubes on notice of its intention to dismiss the case if the required documentation was not received by the court. Accordingly, we dismiss count eighteen with prejudice. (*In the Matter of Kroff, supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

Count Nineteen: Failure to Obey Court Order (§ 6103)

Count nineteen alleged that Kutrubes willfully violated section 6103 by failing to adhere to the Northern District’s February 19, 2019 order. The bankruptcy court’s order required Kutrubes to file a written response to the OSC. Based on the Stipulation, the hearing judge found Kutrubes culpable as charged and neither party challenges this count on review. We agree. Kutrubes admitted that he received notice of the order and failed to file a response. Thus, we affirm the judge’s culpability finding under count nineteen.

Count Twenty: Failure to Maintain Respect to Court (§ 6068, subd. (b))

Under count twenty, OCTC alleged that Kutrubes failed to maintain due respect to the bankruptcy court when he did not comply with the court’s February 19, 2019 order, requiring him to file a written response to the OSC. The hearing judge found him culpable as charged but declined to assign additional weight in discipline based on count nineteen being duplicative of this charge.

On review, Kutrubes challenges the hearing judge's culpability finding and requests dismissal of count twenty. He asserts that OCTC failed to establish culpability because it did not introduce evidence of "an attack on the honesty, motivation, integrity, or competence of a judge" to support a section 6068, subdivision (b), violation. OCTC contends that a violation of section 6068, subdivision (b), does not require such a finding. As discussed above pertaining to similar counts in the C & H Matter, an attorney's willful failure to comply with court orders can be used to establish culpability under both section 6068, subdivision (b), and section 6103. (See *In the Matter of Boyne, supra*, 2 Cal. State Bar Ct. Rptr. at pp. 403-404.) Because the record indicates, and Kutrubes admits, that he disobeyed the court's order requiring him to file a written response to the OSC, he is culpable of willfully violating section 6068, subdivision (b). Therefore, we agree with the hearing judge and find Kutrubes culpable as charged under count twenty. We assign no additional weight in discipline as culpability is based on the same facts underlying count nineteen. (See *In the Matter of Moriarty, supra*, 5 Cal. State Bar Ct. Rptr. at p. 520.)

Count Twenty-One: Failure to Report Judicial Sanctions (§ 6068, subd. (o)(3))

Count twenty-one charges that Kutrubes willfully violated section 6068, subdivision (o)(3), by failing to timely report to the State Bar the Northern District's April 2, 2019 order imposing \$2,500 in sanctions against him. Section 6068, subdivision (o)(3), requires attorneys to report to the State Bar, in writing, within 30 days of knowledge of "[t]he imposition of judicial sanctions against the attorney, except for sanctions for failure to make discovery or monetary sanctions of less than one thousand dollars (\$1,000)." The hearing judge found him culpable. Kutrubes stipulated that he received the order but did not report the sanctions within 30 days of knowledge as required. On review, Kutrubes does not contest culpability. Kutrubes's

actions constituted a willful violation of section 6068, subdivision (o)(3), and we affirm the hearing judge's culpability determination.

Count Twenty-Two: Failure to Obey Court Order (§ 6103)

In count twenty-two, OCTC alleged that Kutrubes violated section 6103 by failing to comply with the Northern District's sanction order. The sanction order required Kutrubes to pay \$2,500 by April 16, 2019. The hearing judge found him culpable as charged. Neither party disputes the judge's culpability finding on review. Kutrubes stipulated that he failed to timely pay sanctions by the court's deadline. Thus, we affirm culpability under count twenty-two.

Count Twenty-Three: Failure to Maintain Respect to Court (§ 6068, subd. (b))

Under count twenty-three, OCTC alleged that Kutrubes failed to maintain respect to the Northern District, in willful violation of section 6068, subdivision (b), when he did not comply with the bankruptcy court's April 24, 2019 order, requiring him to file a written response to the OSC and appear on May 22, 2019. The hearing judge found him culpable as charged but declined to assign additional weight in discipline based on count twenty-four being duplicative. Kutrubes challenges the judge's culpability finding and requests dismissal based on the same arguments he made under count twenty. The record and case law supports Kutrubes's culpability under count twenty-three, and we affirm the judge's culpability determination. (See *In the Matter of Boyne, supra*, 2 Cal. State Bar Ct. Rptr. at 403-404.) However, we assign no additional weight in discipline because the same misconduct underlies count twenty-four discussed *post*. (See *In the Matter of Moriarty, supra*, 5 Cal. State Bar Ct. Rptr. at p. 520 [no additional weight in determining discipline where same misconduct underlies two violations].)

Count Twenty-Four: Failure to Obey Court Order (§ 6103)

In count twenty-four, OCTC charged Kutrubes with willfully violating section 6103 by failing to comply with the Northern District's April 24, 2019 order, failing to file a response to the May 10, 2019 order, and failing to appear on May 22, 2019. The hearing judge found him culpable as charged and neither party challenges the judge's finding. The record establishes that Kutrubes did not file a written response or attend the ordered hearing. And Kutrubes acknowledges his culpability under this count for willfully violating section 6103. Accordingly, we affirm the hearing judge's culpability finding under count twenty-four.

Count Twenty-Five: Maintaining an Unjust Action (§ 6068, subd. (c))

Lastly, in count twenty-five, OCTC charged Kutrubes with maintaining an unjust action, in willful violation of section 6068, subdivision (c), by failing to prosecute four bankruptcies.

OCTC alleged that:

- (a) On July 26, 2012, Kutrubes filed a bankruptcy petition on behalf of Christensen without filing all required documents or paying the filing fee, resulting in the case's dismissal on January 4, 2013, and an order barring Christensen from filing future petitions until certain conditions were met;
- (b) On March 1, 2016, Kutrubes filed a bankruptcy petition on behalf of Christensen without filing all required documents or paying the filing fee, which violated the 2013 ND Order and the 2013 NY Order, resulting in the case's dismissal on March 4, 2016;
- (c) On April 7, 2016, Kutrubes filed a bankruptcy petition on behalf of Christensen without paying the filing fee, which violated the 2013 ND Order and the 2013 NY Order, resulting in the case's dismissal on April 8, 2016; and
- (d) On December 12, 2018, Kutrubes filed a bankruptcy petition on behalf of Christensen without filing a required document and then subsequently violated the court's December 23, 2018 order to file the missing document, resulting in the case's dismissal on January 23, 2019.

The hearing judge concluded that Kutrubes was only culpable for maintaining an unjust action under subpart (d) and she dismissed subparts (a) through (c) of count twenty-five with prejudice.

Neither party challenges the judge's findings on review.

Section 6068, subdivision (c) provides that it is an attorney's duty "[t]o counsel or maintain those actions, proceedings, or defenses only as appear to him or her legal or just" The hearing judge found culpability under subpart (d) based on the Northern District's sanction order. We generally give a strong presumption of validity to an underlying court's findings if supported by substantial evidence. (*Maltaman v. State Bar* (1987) 43 Cal.3d 924, 947.) The bankruptcy court sanctioned Kutrubes upon determining that the petition was filed in bad faith, specifically noting that Kutrubes had previously filed four bankruptcy cases for Christensen in the Northern District and they were all dismissed. The court also indicated that Kutrubes failed to ensure the December 12, 2018 petition included the required documents, signatures, and disclosures which the court reasoned as "not only reckless, but also reflected a knowledge that this case was yet another bad faith bankruptcy filing."

Upon our independent review, we find the record supports Kutrubes's culpability under subpart (d). Kutrubes admitted that, after receiving the bankruptcy court's notice regarding the missing filings, he failed to file the required documents, which caused the case to be dismissed. And during the OSC hearing regarding whether the bankruptcy court should impose sanctions, Kutrubes stated he was not in disagreement with being sanctioned and that he realized he made several mistakes. This was his fifth inadequately filed petition on behalf of Christensen which the court determined was filed in bad faith. The facts support a finding that Kutrubes violated section 6068, subdivision (c), when filing the December 12, 2018 bankruptcy petition, and, thus, we affirm the hearing judge's culpability finding under count twenty-five subpart (d). We agree with the hearing judge's findings that the record does not support culpability under subparts (a) through (c) because the evidence is not conclusive as to whether Kutrubes was aware of the 2013 NY Order or Christensen's ulterior motives with pursuing a bankruptcy. (*In the Matter of Kroff, supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.) All reasonable doubts are resolved in the attorney's

favor and thus we dismiss subparts (a) through (c) with prejudice. (*Galardi v. State Bar* (1987) 43 Cal.3d 683, 689).

III. AGGRAVATION AND MITIGATION

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

A. Aggravation

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

Kutrubes has two prior records of discipline. In 2014, the State Bar Court issued a public reproof of Kutrubes. He stipulated that he failed to perform with competence and failed to keep his client reasonably informed of important developments. He received mitigation for his lack of a prior record of discipline and cooperation by entering into a stipulation with OCTC. In aggravation, he committed multiple acts of misconduct.

On April 27, 2018, Kutrubes received a two-year stayed suspension for various probation violations relating to his public reproof. One probation condition required Kutrubes to develop a law office management plan detailing the specific office procedures for managing his practice. He received aggravation for his prior record of discipline and committing multiple acts of misconduct. He established mitigation for cooperation, good character, and for suffering family problems at the time of his misconduct.

The hearing judge assigned substantial aggravation for Kutrubes's two prior records of discipline, which was partially based on his current misconduct occurring while he was still on

probation for his prior discipline. We agree. Kutrubes's first disciplinary matter involved misconduct similar to that in the present matter, including a failure to keep his client reasonably informed and disobedience of a court order. Kutrubes was ordered to develop a law office management and organization plan as a part of his probation conditions in his first discipline. The similarity of that misconduct to the present case indicates that his prior discipline in 2014 did not rehabilitate him, causing concern about future misconduct. (*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443-444.) Accordingly, we affirm the judge's aggravation finding and assign substantial weight to Kutrubes's prior records of discipline.

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

The hearing judge assigned aggravation for Kutrubes's multiple acts of misconduct, including 13 counts⁷ of failing to obey court orders, one count of failing to report judicial sanctions, one count of failing to keep a client reasonably informed, and one count of maintaining an unjust action. We agree and assign substantial aggravation. (*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 to Client, Public, or Administration of Justice (Std. 1.5(j))

The hearing judge found significant harm under standard 1.5(j), concluding that Kutrubes's misconduct harmed the administration of justice by burdening two courts through the issuances of multiple orders to show cause, holding related hearings, and issuing sanctions orders and an order of contempt. Kutrubes argues that aggravation is not warranted because it was duplicative of the misconduct establishing culpability. We reject his assertion. Kutrubes's

⁷ The hearing judge's decision mistakenly stated that it found Kutrubes culpable of 12 counts of failing to obey a court order when in fact the decision found culpability under 13 counts.

misconduct for disobeying court orders not only resulted in sanctions but wasted judicial time and resources and created additional unnecessary work for the courts. We affirm the judge's finding and assign substantial weight to this circumstance because Kutrubes's repeated failures to perform diligently and as directed by the courts significantly harmed the administration of justice. (See *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 75, 79-80 [harm to administration of justice where attorney "wasted considerable time" due to attorney's failure to conduct affairs properly and as directed].)

B. Mitigation

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

The hearing judge assigned moderate mitigation for Kutrubes entering into the Stipulation with OCTC because it involved easily provable facts. Kutrubes argues that he should receive more mitigation credit for his cooperation because the judge's decision relied on the Stipulation to prove culpability. He is mistaken. He did not stipulate to culpability and his stipulation to facts alone does not warrant increased mitigation under this circumstance. (See *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive mitigation weight for admission of culpability and facts].) We agree with the judge and assign moderate weight.

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

Kutrubes may obtain mitigation for "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).) The hearing judge assigned substantial weight in mitigation. OCTC argues on review that the hearing judge improperly afforded full mitigating weight despite all of witnesses not being aware of Kutrubes's prior discipline. Kutrubes requests that we affirm the judge's mitigation finding of substantial weight.

We agree that Kutrubes did not establish good character warranting the assignment of substantial mitigating weight. Kutrubes presented character evidence from seven witnesses, including two attorneys, two pastors, church members, and friends. One of the attorney declarants, who previously worked with Kutrubes, characterized him as a knowledgeable and highly skilled attorney. Testimony from attorneys is entitled to serious consideration. (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [serious consideration given to attorneys' testimony due to their "strong interest in maintaining the honest administration of justice"].) Five witnesses testified on Kutrubes's behalf and described him as generous, competent, and hardworking. However, only two of the witnesses were aware of the full extent of the misconduct, including his prior records of discipline. Full awareness is required under standard 1.6(f), and it was Kutrubes's burden to prove, which he failed to do. In reviewing the record and weighing the evidence, we find that Kutrubes is entitled to moderate weight in mitigation under the standard for good character.

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

Standard 1.6(d) provides that mitigation may be assigned for extreme emotional difficulties where (1) the attorney suffered from them at the time of the misconduct, (2) they are established by expert testimony as being directly responsible for the misconduct, and (3) they no longer pose a risk that the attorney will commit future misconduct. However, some mitigation may be available for extremely stressful family circumstances even when there is no expert testimony. (See *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1364 [lay testimony of marital difficulties considered in mitigation]; *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332, 338 [lay testimony regarding family concerns mitigating].) The hearing judge found that some of Kutrubes's misconduct was mitigated by the emotional difficulties he suffered as a result of family stress at the time. He testified that from 2015 to 2019, he was

dealing with his son's addiction and serious psychiatric challenges. He also testified that, between the end of 2018 and into 2019, he was traveling frequently to Boston to care for his sister who was diagnosed with cancer. The judge noted that Kutrubes demonstrated how he will handle family issues moving forward, which includes attending counseling.

On review, OCTC argued that we should not consider his emotional difficulties as deserving full mitigation because some of his bad acts began in 2011, which preceded the family difficulties. However, like the hearing judge, we find that the majority of Kutrubes's grave family troubles were directly related and endured during the time of the misconduct between 2016 through 2019, which is worthy of mitigation. (See *In re Brown* (1995) 12 Cal.4th 205, 222 [some mitigation establishing illness directly responsible for misconduct]; *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47, 60 [some mitigation assigned to personal stress factors].)

As we previously noted above, Kutrubes was not aware of the 2013 NY Order restricting Christensen from filing frivolous bankruptcy petitions until 2016. This supports our finding that Kutrubes's emotional troubles based on his stress related to family issues coincides with his misconduct and is worthy of moderate mitigation.

4. Pro Bono Work and Community Service

An attorney's pro bono work and community service can be a mitigating circumstance. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) Kutrubes's character witnesses discussed the extensive volunteer work that he performs with his church. Since 2012, Kutrubes has been serving as a member of the church's financial advisory team. He assisted with the transfer of church property and helped the church obtain its nonprofit designation. Kutrubes also serves on the hospitality ministry and provides pro bono legal services to church members. Like the hearing judge, we find Kutrubes's prolonged dedication to community service and pro bono

work is entitled to substantial mitigation. (See *Rose v. State Bar* (1989) 49 Cal.3d 646, 667 [mitigation for legal abilities, dedication, and zeal in pro bono work].)

IV. ONE-YEAR 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 Silvertown* (2005) 36 Cal.4th 81, 91-92.) The Supreme Court has instructed us to follow the standards “whenever possible.” (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) We also look to comparable case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.)

In 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 most severe sanction applicable here is under standard 2.12(a) and standard 2.18, which both provide for actual suspension or disbarment.⁸ The hearing judge recommended an 18-month actual suspension. Kutrubes argues that a 30-day actual suspension satisfies both progressive discipline and is aligned with case law. OCTC asks us to affirm the hearing judge’s recommendation.⁹

For guidance, the hearing judge looked to *In the Matter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430. In *Katz*, the attorney received a two-year actual suspension after

⁸ Standard 2.7(c) is also applicable and provides for actual suspension or reproof.

⁹ We note that OCTC requested a 12-month suspension in its closing brief submitted after the disciplinary trial in the Hearing Department.

he committed acts of moral turpitude, violated two bankruptcy court orders, maintained an unjust action, and endorsed his client's false financial statement. The court considered in aggravation that (1) Katz had a prior discipline involving moral turpitude, resulting in a one-year stayed suspension, (2) engaged in multiple acts, (3) caused significant harm to the public and the administration of justice, (4) exhibited indifference, and (5) lacked candor. No mitigating circumstance were found. Here, Kutrubes established mitigation for good character, cooperation, extreme emotional difficulties, and community service—compared to Katz's establishing none. Even though Katz only had one prior record of discipline whereas Kutrubes has two, Katz committed moral turpitude violations in both his prior and current misconduct. Since Kutrubes does not have any prior or current misconduct involving moral turpitude, we look to other cases for guidance.

Kutrubes asks us to consider *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229, *In the Matter of Collins* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551, and *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509. The attorney in *Trousil* was actually suspended for 30 days for his misconduct including engaging in the unauthorized practice of law while suspended. The court afforded mitigation for good faith, cooperation, and Trousil's severe medical condition. The only factor in aggravation was that Trousil had three prior records of discipline. Trousil's first and second discipline resulted in a six-month actual suspension, and he received a stayed suspension in his third case. The acts of misconduct from Trousil's three prior disciplines were similar, involving his failure to keep clients informed, promptly deliver funds, communicate with clients, and provide diligent representation. Trousil's prior disciplinary records are distinguished from Kutrubes's priors. The *Trousil* court found Trousil's significant medical issues mitigating. All Trousil's prior misconduct began before he was diagnosed with manic/depressive disorder and had attempted

suicide twice, which provided more perspective on why he engaged in repeated misconduct. Kutrubes's emotional issues occurred during his current misconduct. Further, Kutrubes was still on probation from his prior case when his current misconduct began. Kutrubes also has more aggravating circumstances than Trousil, including multiple acts and significant harm to the administration of justice.

Collins involved a 30-day actual suspension. Collins stipulated that he failed to obey five court sanctions orders in willful violation of section 6103. Collins's mitigating circumstances included 22 years of discipline-free practice and cooperation with OCTC. In aggravation, he committed multiple acts of misconduct. Kutrubes asserts that the 30-day actual suspension imposed in *Collins* is entirely consistent with the imposition of progressive discipline in this case. We disagree because Collins had a discipline-free record, while this is Kutrubes's third disciplinary case.

Kaplan involved an attorney who was found culpable of multiple violations of minor misconduct including: failing to supervise staff, failing to communicate, failing to perform competently, failing to pay court-ordered sanctions, and other violations in 10 client matters. This was Kaplan's first disciplinary case, and no aggravating circumstances were found; the court imposed a 90-day actual suspension.

OCTC submits that *In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1 is instructive. *Wolff* involved an attorney who abandoned over 300 indigent dependency clients during a one-month period. She was found culpable of failing to obey a court order, withdrawing from a representation without the court's permission, withdrawing from a representation without taking reasonable steps to protect her clients' interests, and failing to inform clients of significant developments. Wolff's serious misconduct resulted in an 18-month actual suspension continuing until she demonstrated rehabilitation. Kutrubes maintains that the

broad scope of Wolff's misconduct, which involved significantly more client matters, warrants greater discipline than in his case. We agree. *Wolff* involved more serious misconduct than occurred here because it consisted of numerous acts causing substantial harm to the administration of justice disrupting juvenile court proceedings for indigent dependency clients. We find Wolff's misconduct went much further than Kutrubes's actions and is unsuitable for comparison.

We find some guidance from *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615. Although Koehler's misconduct did not involve violations of the same rules and statutes as Kutrubes, both attorneys engaged in multiple acts of misconduct and had a prior record of discipline not resulting in actual suspension. Koehler's misconduct involved repeatedly misusing his client trust account as a personal account, failing to refund unearned advanced costs promptly on request, and failing to perform legal services competently. Koehler received aggravation for a single prior record of discipline (privately reprimanded with no actual suspension), multiple acts of misconduct, and had committed an uncharged act of moral turpitude by concealing funds. He received mitigating credit for pro bono work and community service, good faith, good character evidence, and his cooperation with the State Bar. Koehler received a six-month actual suspension.

Taken together, the cases mentioned above provide structure to fashioning the appropriate discipline for Kutrubes's misconduct. The *Collins* and *Kaplan* cases guide us to a sanction higher than an actual suspension of 30 or 90 days because those cases involved fewer section 6103 violations committed by attorneys without prior records of discipline. At the other end of the discipline spectrum are the *Koehler* and *Katz* matters. Katz received a two-year actual suspension for some of the same violations as Kutrubes; however, Katz was found to have engaged in moral turpitude, which we do not find here. Koehler received a six-month actual

suspension for his multiple acts of misconduct. Kutrubes has slightly less mitigation than Koehler and he committed far more serious misconduct, including culpability under 22 counts, which amounts to 16 counts after disregarding the weight of duplicative counts.

The focus of Kutrubes's case is his prior record of discipline and his 13 instances of repeatedly disobeying court orders. The text of section 6103 states disbarment or suspension is appropriate discipline for disobeying a court order, and the Supreme Court has emphasized that violations of court orders are serious misconduct. (*Barnum v. State Bar* (1990) 52 Cal.3d 104, 112 ["Other than outright deceit, it is difficult to imagine conduct in the course of legal representation more unbecoming an attorney".]) The prior reproof and stayed suspension that Kutrubes received in his prior disciplinary cases should have placed him on heightened notice that he must take seriously his ethical obligations. Yet Kutrubes has continuously shown an inability to conform to ethical standards. It appears that his prior discipline did not impress upon him that committing further ethical violations, specifically disobeying court orders, is serious misconduct and grounds for additional discipline. (*In the Matter of Boyne, supra*, 2 Cal. State Bar Ct. Rptr. at p. 403 [obedience to court orders intrinsic to respect attorneys and their clients must accord judicial system].)

We acknowledge Kutrubes's contention that his misconduct was exacerbated by the emotional stress he suffered at the time due to family issues because of his son's addiction and his sister's medical concerns. Kutrubes's emotional and family circumstances caused him to be distracted which affected his ability to properly maintain his law practices in New Hampshire and California. Yet, stress and a heavy workload are common conditions that most attorneys must learn to manage. (See *Price v. State Bar* (1982) 30 Cal.3d 537, 551.) However, we conclude that the hearing judge's discipline in this matter was too severe.

Based on the case law, aggravation and mitigation, and the need for progressive discipline, we find that a one-year actual suspension is appropriate discipline. It is in the mid-range of the actual discipline standard (std. 1.2(c)(1) [actual suspension generally for 30 days, 60 days, 90 days, six months, one year, 18 months, two years, or three years]) and reflects our increasing concern about Kutrubes's failure to comply with court orders. This discipline will emphasize to Kutrubes the importance of his ethical duties and is necessary to protect the public, the courts, and the legal profession.

V. RECOMMENDATIONS

We recommend that Peter Leo Kutrubes, State Bar Number 176024, 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. Actual Suspension.** Kutrubes must be suspended from the practice of law for the first year of his probation.
- 2. Review Rules of Professional Conduct.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Kutrubes 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 Kutrubes's first quarterly report.
- 3. Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions.** Kutrubes 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, Kutrubes 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. Kutrubes 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, Kutrubes 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, Kutrubes may meet with the probation case specialist in person or by telephone. During the probation period, Kutrubes 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 Kutrubes's probation period, the State Bar Court retains jurisdiction over him to address issues concerning compliance with probation conditions. During this period, Kutrubes 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, Kutrubes 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. Kutrubes 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, Kutrubes 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. Kutrubes 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. Kutrubes 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.

Kutrubes 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, Kutrubes 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, Kutrubes 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 Kutrubes 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.** Kutrubes 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 Kutrubes sent notification pursuant to rule 9.20; a copy of each notification letter sent to each recipient; the original receipt or postal authority tracking document for each notification sent; the originals of all returned receipts and notifications of non-delivery; and a copy of the completed compliance affidavit filed by him with the State Bar Court. He is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

VI. MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Kutrubes 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 Kutrubes 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.

VII. CALIFORNIA RULES OF COURT, RULE 9.20

We further recommend that Kutrubes 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.¹⁰ Failure to do so may result in disbarment or suspension.

VIII. MONETARY SANCTIONS

We further recommend that Peter Leo Kutrubes be ordered to pay monetary sanctions to the State Bar of California Client Security Fund in the amount of \$2,500 in accordance with Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar. The guidelines suggest monetary sanctions of up to \$2,500 for an actual suspension. After considering the facts and circumstances of the case, we determine that a \$2,500 sanction is appropriate. Monetary sanctions are enforceable as a money judgment and may be collected by the State Bar through any means permitted by law. Monetary sanctions must be paid in full as a

¹⁰ 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, Kutrubes 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).)

condition of reinstatement or return to active status, unless time for payment is extended pursuant to rule 5.137 of the Rules of Procedure of the State Bar.

IX. COSTS

We further recommend 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, unless time for payment is extended pursuant to rule 5.137 of the Rules of Procedure of the State Bar.

HONN, P. J.

WE CONCUR:

McGILL, J.

STOVITZ, J.*

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