PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

Filed October 19, 2016

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of MARY FRANCES PREVOST, A Member of the State Bar, No. 157782.	)	Case Nos. 14-O-04539; 14-O-05757 (Cons.) OPINION

A hearing judge found Mary Frances Prevost culpable for engaging in the unauthorized practice of law (UPL) involving moral turpitude, and for failing to cooperate in the related investigation. The judge also found Prevost failed to perform competently and to communicate in one client matter. Finding four factors in aggravation (one prior record of discipline, multiple acts of misconduct, significant harm to her client, and indifference) and limited mitigation for good character, the judge recommended discipline that included a six-month suspension.

Prevost appeals, arguing that the hearing judge made errors of law and fact. She seeks a re-hearing, a dismissal, or "only minimal discipline" if she is found culpable. The Office of the Chief Trial Counsel of the State Bar (OCTC) does not appeal and supports the hearing judge's findings and discipline recommendation.

Based on our independent review (Cal. Rules of Court, rule 9.12), we affirm the hearing judge's findings, except we do not find significant harm as aggravation. Even so, we agree that a six-month suspension is appropriate progressive discipline in light of Prevost's prior discipline in 2015 and her present misconduct, which both reflect her ongoing difficulty communicating with clients and with the State Bar.

I. PROCEDURAL HISTORY

On May 12, 2015, OCTC filed a First Amended Notice of Disciplinary Charges in case no. 14-O-04539, charging Prevost with: (1) UPL in the United States District Court for the Southern District of California (Southern District), in violation of rule 1-300(B) of the Rules of Professional Conduct;[1] (2) an act of moral turpitude, in violation of Business and Professions Code section 6106[2] for knowingly, or through gross negligence, engaging in UPL; and (3) failing to cooperate with the State Bar investigation of the alleged UPL, in violation of section 6068, subdivision (i).

On June 2, 2015, OCTC filed a Notice of Disciplinary Charges (NDC) in case no. 14-O-05757, charging Prevost in one client matter with failing: (1) to perform with competence, in violation of rule 3-110(A); and (2) to inform her client of significant developments, in violation of section 6068, subdivision (m).

Trial was set to begin in case no. 14-O-04539 on June 9, 2015. On June 4, 2015, at a pretrial hearing, Prevost requested a 60-day trial continuance for health reasons. Upon agreement of the parties, the hearing judge consolidated the matters and set trial in the consolidated case for July 27, 2015. To the extent Prevost asserts in her opening brief that the judge unfairly failed to grant the full 60-day continuance, we find her assertion unfounded. She agreed on the record to the July 27, 2015 trial date and did not seek a further continuance.

A four-day trial took place July 27, 28, 29, and 30, 2015. Throughout her opening brief, Prevost explicitly and implicitly contends the hearing judge acted "antagonistically" towards her. She suggests the judge unfairly made evidentiary rulings to her detriment and in OCTC's favor. We note that a hearing judge has discretion to manage the trial pending before the court and that

[1] All further references to rules are to the Rules of Professional Conduct unless otherwise noted.

[2] All further references to sections are to the Business and Professions Code.

a disciplinary trial "need not be conducted according to technical rules relating to evidence and witnesses." (Rules Proc. of State Bar, rule 5.104(C).) Further, State Bar Rule of Procedure 5.104(F) expressly permits the admission of all reasonable and reliable evidence, including hearsay, subject to the hearing judge's discretion to exclude evidence if "its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time." Reviewing the transcript with these rules in mind, we reject Prevost's contention that she did not receive a fair trial and/or was subject to unfair evidentiary rulings. No good cause for a rehearing being shown, we deny her request for one.

On November 10, 2015, the hearing judge issued her decision.

II. MORAL TURPITUDE UPL AND FAILURE TO COOPERATE

A. FACTS (CASE NO. 14-O-04539)

Prevost was admitted to practice law in California on March 23, 1992. As a member of Minimum Continuing Legal Education (MCLE) Compliance Group 3, she was required to report her MCLE compliance by February 3, 2014. Prevost testified that she knew she was required to report her MCLE compliance every three years, but when asked if she kept track of her compliance deadline, she replied, "[a]ctually, not particularly," as it was not on her "radar."

1. Membership Sent Notice to Prevost about the MCLE Compliance Deadline

On October 10, 2013, the Member Records and Compliance Department of the State Bar (Membership) sent all members of Group 3, including Prevost, a courtesy email reminding them that they were required to report their MCLE compliance by February 3, 2014.[3] Prevost testified she did not recall receiving the email, but "might have" received it. On December 2, 2013, Membership mailed the State Bar annual dues statement to Prevost's membership records address (member address), which also noted her upcoming MCLE compliance deadline. Prevost

[3] This evidence is based on the testimony of a Membership Senior Administrative Supervisor and was corroborated by documentary evidence.

did not timely pay her dues or report her MCLE compliance. On March 7, 2014, Membership mailed to her member address a "final notice" regarding dues and MCLE compliance. Prevost testified that she did not recall receiving the final notice, stating: "[s]omehow I got a notice to pay Bar dues, and I don't recall how that came, but I don't recall getting notices subsequent to that."[4]

2. Prevost Filed a Pleading in Federal Court While Her Status Was "Not Eligible"

When Prevost did not timely report her MCLE compliance, Membership attempted to notify her about it three more times. First, on April 30, 2014, Membership mailed to her member address an "MCLE Noncompliance 60-Day Notice," which informed her that if she failed to fulfill her MCLE compliance by June 30, 2014, the State Bar would enroll her as an inactive member, not eligible to practice law, effective July 1, 2014. Second, on May 21, 2014, a Membership employee called Prevost at her member phone number and left a message concerning her noncompliance. Third, on June 6, 2014, Membership sent to Prevost's member address via certified mail an "MCLE Noncompliance Final Notice." The notice warned her to comply by June 30, 2014 or she would be enrolled as inactive on July 1, 2014. On June 9, 2014, Noreta Van Buskirk, who was in charge of Prevost's mail, signed the certified mail receipt.

While Prevost stipulated the two letters were not returned as undeliverable, her recall at trial was inconsistent. On the one hand, she testified that she did not remember whether she received the April 2014 notice and that she did not receive the June 2014 final notice of noncompliance sent by certified mail. On this latter point, Prevost testified that she had difficulties with Van Buskirk for a number of years; the relationship had deteriorated significantly by 2014. Prevost presented other witness testimony that corroborated her continuing problems with Van Buskirk. Prevost also testified that she "definitely did not

[4] The record is silent as to precisely when Prevost paid her membership dues.

receive" the phone message from a Membership employee, and blamed a new employee at her office (not Van Buskirk), whom she promptly fired because "she was awful." The hearing judge found Prevost's testimony on "her alleged non-receipt of State Bar communications" to be "evasive, self-contradictory and at times, sarcastic," and concluded it was not credible. We adopt the hearing judge's determination. (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [hearing judge best suited to resolve credibility questions]; Rules Proc. of State Bar, rule 5.155(A) [hearing judge's factual findings are entitled to great weight].)

Prevost did not timely bring herself into MCLE compliance. As a result, she was enrolled as inactive on July 1, 2014, and her State Bar status was changed to "not eligible."

Prevost stipulated that she filed a memorandum of points and authorities on July 3, 2014 in support of two separate motions to strike affirmative defenses raised by defendants in *Baker v. Ensign*, pending in the Southern District. Therein, she indicated she was the attorney for plaintiff Baker and cited her California State Bar number. Prevost further stipulated that rules 83.3.c.1.a and 83.3.c.2 of the Local Civil Rules of Practice for the Southern District preclude an attorney from practicing law in that district unless the attorney is an active member in good standing of the California Bar.[5]

On July 11, 2014, Membership notified Prevost by letter to her member address that she was not eligible to practice law, effective July 1, 2014. Prevost testified she received this correspondence. On July 16, 2014, Prevost reported her MCLE compliance and was returned to active status the next day.

Thereafter, in August 2014, Prevost moved her office but did not update her address with the State Bar until December 4, 2014. Section 6002.1 requires that an attorney maintain a current member address and notify the State Bar of a new address within 30 days of any change.

[5] The record does not indicate whether Prevost knew she had to be a member in good standing in California in order to appear in the Southern District.

3. Prevost Did Not Respond to the UPL Investigation

Opposing counsel in *Baker v. Ensign* complained to the State Bar, alleging that Prevost committed UPL. State Bar Investigator James Nelson investigated the complaint.

Nelson sought Prevost's cooperation. First, on November 18, 2014, he sent her a letter at her member address concerning the complaint. He directed Prevost to respond in writing by December 2, 2014, and reminded her of her duty to cooperate pursuant to section 6068, subdivision (i).[6] Second, having received no response, Nelson wrote to Prevost at her new member address on December 9, 2014.[7] He attached his first letter and described his second letter as a "last good faith effort to contact [her] to cooperate in this investigation." He warned Prevost that if she did not respond by December 23, 2014, OCTC could consider her failure to respond as a violation of section 6068, subdivision (i).

Prevost stipulated that Nelson sent both the November 18 and December 9, 2014 letters and that neither was returned as undeliverable. She received Nelson's November 18, 2014 letter shortly before the December 2, 2014 deadline to respond, and admitted she did not timely respond. She testified she did not seek an extension and was not concerned about replying on time because her prior dealings with OCTC led her to believe timeliness was not important. She did not explain why she never provided the requested information.

At trial, Nelson testified that Prevost did not respond to his letters. Near the end of 2014, he completed his investigation and prepared a report recommending that Prevost be prosecuted for UPL, as well as for her failure to cooperate in a disciplinary proceeding. He testified that he would *not* have included the non-cooperation charge if he had received any response from Prevost.

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[6] Section 6068, subdivision (i), requires attorneys "[t]o cooperate and participate in any disciplinary investigation . . . against himself or herself."

[7] He also emailed his correspondence to Prevost.

The matter proceeded to the charging stage. On January 9, 2015, Senior Trial Counsel for OCTC sent Prevost a "Notice Of Intent To File Notice Of Disciplinary Charges" that explained OCTC's intention to charge Prevost with UPL, related acts of moral turpitude, and failure to cooperate with the investigation. On January 16, 2015, Prevost replied, stating that she had responded to Nelson's November 18, 2014 letter on December 18, 2014, and attached a copy of the letter response she purportedly sent.[8] Notably, Prevost did not provide the information Nelson had requested and instead sought documentation from OCTC because she had "no recollection of having had any notice whatsoever that an administrative suspension had been imposed."

The hearing judge did not credit Prevost's account that she sent a letter response on December 18, 2014—nor do we, in light of Nelson's testimony that he did not receive her response and the documentary evidence corroborating his testimony. (*McKnight v. State Bar*, *supra*, 53 Cal.3d at p. 1032; *Galardi v. State Bar* (1987) 43 Cal.3d 683, 690 [hearing judge's credibility findings entitled to great weight particularly where "the documentary evidence does not support [the attorney's] version of the facts"].)

[8] In the letter, Prevost blames her tardy response on her failure to promptly change her membership address and the resulting delay in receiving Nelson's first letter.

B. CULPABILITY (CASE NO. 14-O-04539)

1. Prevost Committed UPL (Count One)

Like the hearing judge, we find that Prevost practiced law in another jurisdiction in violation of rule 1-300(B).[9] Prevost stipulated she performed the acts which establish her UPL in the Southern District—she filed the at-issue memorandum of points and authorities in, and appeared in, the Southern District when she was ineligible to practice law in California and was required to be a member in good standing in California to practice in the Southern District.[10] (*In the Matter of Lenard* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250, 257 [analyzing regulations in non-California jurisdiction to determine whether California attorney's conduct constituted UPL].)

We assign no disciplinary weight for this violation, however, as it is based on the same facts that underlie our moral turpitude finding for engaging in UPL by gross negligence, discussed below, which supports the same or greater discipline. (*In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127.)

2. Prevost's UPL Amounts to Moral Turpitude by Gross Negligence (Count Two)

We affirm the hearing judge's finding that Prevost committed an act of moral turpitude in violation of section 6106[11] by engaging in UPL attributable to her gross negligence.

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[9] Rule 1-300(B) provides that "[a] member shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction."

[10] Rule 83.3.c.1.a of the Local Civil Rules of Practice for the Southern District of California states that: "[a]dmission to and continuing membership in the bar of this court is limited to attorneys of good moral character who are active members in good standing of the State Bar of California. And rule 83.3.c.2 provides that "only members of the bar of this court will practice in this court."

[11] Section 6106 provides, in pertinent part: "The commission of any act involving moral turpitude, dishonesty or corruption . . . constitutes a cause for disbarment or suspension."

Resolving all reasonable doubts in Prevost's favor (*Galardi v. State Bar, supra,* 43 Cal.3d 683, 689), we make the following findings. First, OCTC did not prove Prevost *knew* she was ineligible to practice in the Southern District when she committed UPL. Second, Prevost committed UPL on only one occasion, July 3, 2014, and quickly took steps to restore her active status upon learning that she was inactive.

Despite these findings, the record establishes by clear and convincing evidence[12] that Prevost was not, as she contends, simply negligent. We conclude she was grossly negligent, even reckless. To begin, she concedes she knew she had to report her MCLE compliance, yet admits she failed to keep even rough track of her compliance deadline. That Prevost generally believed she had enough units because she had taught several MCLE courses is not a defense. Submission by attorneys of "accurate MCLE compliance affirmations is essential to maintaining public confidence in the legal profession" (*In the Matter of Yee* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330, 334); tracking and reporting MCLE compliance is of equal importance in performing ethical obligations as is obtaining the credits. Further, tracking the reporting deadlines requires minimal effort; the information is clearly identified and publicly available on the State Bar website.

Not only did Prevost fail to act proactively, she did not ensure that she would receive State Bar communications. On six occasions spanning a period of eight months, Membership attempted to notify her about MCLE matters by various means: email, telephone, regular mail, and certified mail. Prevost maintains, however, that at least some messages failed to reach her due to the fault of her staff. But reliance on staff she knew to be incompetent or untrustworthy further shows her gross negligence. In particular, we are concerned that Prevost continued to

[12] Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

rely on Van Buskirk to handle her mail despite longstanding difficulties in their relationship. In addition, Prevost admitted she may have received some notifications that she failed to read carefully and that she neglected to calendar her MCLE compliance deadline. Finally, she allowed a four-month period to pass before updating her member address after she relocated her office, which highlights her casual and grossly negligent attitude toward State Bar communications.

Prevost is mistaken that OCTC must establish that she acted dishonestly or with the intent to mislead to prove moral turpitude. A showing of gross negligence can be sufficient to support such a finding. On the facts before us, we find Prevost's UPL caused by her gross negligence amounts to moral turpitude, in violation of section 6106. (*In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 91 [grossly negligent UPL may constitute moral turpitude]; see *In the Matter of Yee*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 334 [gross negligence amounting to moral turpitude where attorney submitted inaccurate MCLE compliance affirmation].)

3. Prevost Failed to Cooperate with the State Bar Investigation (Count Three)

We affirm the hearing judge's finding that Prevost is culpable of violating section 6068, subdivision (i). Prevost did not respond to Nelson's letters, which she admits she received. She finally took action only when she received a notice of intent to file disciplinary charges. (*Bach v. State* Bar (1991) 52 Cal.3d 1201, 1208 [duty to cooperate breached where neither of two investigation letters returned]; *In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206, 213 [two-month delay in responding does not constitute timely cooperation]; *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657, 684-685 [six-week delay does not constitute timely cooperation].) More fundamentally, Prevost's belated response did not constitute cooperation because she failed to provide the requested information.

III. FAILURES TO PERFORM AND TO COMMUNICATE (CASE NO. 14-O-05757)

A. FACTS

In 2008, the Chula Vista police arrested Dr. Eric Harris, a spinal surgeon and United States Naval officer, in front of his wife, May Harris, and their minor children. In October 2009, after the criminal charges against Dr. Harris were dismissed, Prevost and attorney Thomas Beck filed a civil lawsuit in the Southern District, on behalf of the Harris family, against the City of Chula Vista and individual city employees. The lawsuit claimed, inter alia, civil rights violations, false arrest, and negligence.

The court issued a pretrial order scheduling motions in limine to be heard on January 14, 2013.[13] On January 7, 2013, the defendants filed five motions in limine to exclude evidence relating to: (1) a 1993 physical altercation involving defendant Chula Vista Police Officer Kraft; (2) a prior lawsuit against Officer Kraft; (3) Dr. Harris's loss of income; (4) Dr. Harris's past and future claimed medical expenses; and (5) Dr. Harris's medical treatment. On its own motion, the court rescheduled the hearing to February 11, 2013, and provided plaintiffs with the opportunity to file opposition by January 14, 2013.

Plaintiffs did not file an opposition to the motions in limine, and neither Beck nor Prevost appeared at the hearing. The court rescheduled the motions in limine hearing to February 25, 2013, and ordered counsel of record to appear. Prevost appeared. Upon hearing from her, the court rescheduled the hearing to June 17, 2013, and reset Plaintiffs' deadline to oppose the motions to June 7, 2013.

[13] Prevost does not dispute that she had notice of each of the relevant court orders in the Harris matter.

Plaintiffs again failed to file an opposition. Thus, on June 10, 2013, on its own motion, the court issued an order deeming the motions unopposed and suitable for disposition without oral argument.

On June 14, 2013, Prevost filed an ex parte motion for an extension of time to file opposition to the motions in limine. She identified ongoing settlement talks, the press of business in other matters, and unnamed medical issues in support of the motion. The defendants opposed the extension for lack of good cause shown.

On June 25, 2013, the court denied the ex parte request: "Plaintiffs have had over five months to file oppositions to defendants' motions . . . . This Court finds plaintiffs' assertions concerning the press of other matters and medical issues are inadequate to justify a finding of good cause to extend time, considering that there are two counsel and two law firms representing plaintiffs. . . . [A]ttorneys are often required to manage their case filings even while settlement negotiations are pending." On July 23, 2013, the court issued an order granting defendants' five unopposed motions in limine.

Neither Prevost nor Beck notified the Harrises about the failure to file oppositions to the motions in limine or about the court order granting the unopposed motions. On November 11, 2013, still unaware of the order granting the motions in limine, the Harrises terminated Prevost due to disagreements about costs, fees, and alleged breaches of confidentiality.

In December 2013, the Harrises accepted a $125,000 settlement. Around the time of the settlement, they learned for the first time in a conversation with Beck that the motions in limine were unopposed and granted. To obtain more information May Harris—herself an attorney—reviewed the public court docket for online information about her case. She subsequently complained to the State Bar.

B. CULPABILITY (CASE NO. 14-O-05757)

We affirm the hearing judge's findings that Prevost: (1) failed to perform with competence, in violation of rule 3-110(A),[14] by failing to oppose five motions in limine despite the opportunity to do so; and (2) failed to inform her client of significant developments, in violation of section 6068, subdivision (m),[15] by failing to disclose to her clients that she did not timely oppose the motions in limine and the court granted them.

The Southern District provided Prevost with ample time and opportunity to oppose the defendants' motions in limine. Yet Prevost chose inaction for months *without* seeking advice or input from her clients. Thus, she did not allow them their right to make litigation decisions. Even after the court rendered a significant adverse ruling, Prevost failed to communicate with her clients. Instead, the Harrises learned of the court's ruling only after they terminated Prevost and while they were finalizing settlement. Regardless of whether four of the five motions should not have been opposed, as Prevost asserts, we find that her actions establish culpability.

Prevost's contention that she chose not to oppose the motions on legal or strategic grounds is unsupported by the record. In fact, her belated ex parte request to the court shows she believed opposition was warranted. And, in that same motion, she revealed that she did not attribute her delay to her legal conclusion that opposition was unnecessary, but rather to her inability to manage the demands of her practice and because of her health. That the court flatly rejected her grounds for further extension shows her inaction was indefensible. Accordingly, we find Prevost culpable as charged. (*Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 931 ["An attorney must use his best efforts to accomplish with reasonable speed the purpose for which he

[14] Rule 3-110(A) provides that a "member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence."

[15] Section 6068, subdivision (m), requires attorneys "[t]o respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services."

was employed. Failure to communicate with and inattention to the needs of a client are grounds for discipline."]; *In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547, 554 [attorney had "obligation to take timely, substantive action on the client's behalf" and failure to do so violated rule].)[16]

IV. AGGRAVATION AND MITIGATION

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

A. AGGRAVATION

1. Prior Record of Discipline

The hearing judge correctly found that Prevost's prior record of misconduct is an aggravating factor. (Std. 1.5(a).)

On September 27, 2012, OCTC filed an NDC in case no. 12-O-14626 and charged Prevost for misconduct committed from late 2011 through early 2012. We subsequently found Prevost culpable as charged for her failures to: (1) respond to her client's numerous emails and calls, in violation of section 6068, subdivision (m); (2) return client fees, in violation of rule 3-700(D)(2); and (3) cooperate and participate in a pending disciplinary investigation, in violation of section 6068, subdivision (i). In aggravation, we found multiple acts of misconduct and overreaching. In mitigation, we assigned significant weight for her lack of prior record, her good character, and her pro bono work. We also assigned some mitigation credit to her physical difficulties and her cooperation.

[16] We do not assign separate disciplinary weight to the failures to perform and to communicate because the same facts underlie our analysis of both charges, and the same standard applies to both. Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 2.7. All further references to standards are to this source.

On September 23, 2015 (effective October 23, 2015), the Supreme Court imposed our recommended discipline and ordered Prevost suspended for one year, execution stayed, and placed on probation for two years subject to the conditions of probation, including the payment of restitution to her former client within the first 60 days of her probation. (*In re Mary Frances Prevost* (S227482).)

We assign significant weight to Prevost's prior discipline record (*Prevost I*). In September 2012, she was charged with failing to communicate with a client in *Prevost I*, yet she repeated the misconduct in the Harris matter in 2013. After being charged and found culpable by the Hearing Department in July 2013 in *Prevost I* for failing to cooperate with a disciplinary investigation, she repeated the misconduct in the present case in December 2014. (*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].)

2. Multiple Acts of Wrongdoing

We agree with the hearing judge that Prevost's multiple acts of misconduct are an aggravating factor. (Std. 1.5(b).) We assign moderate weight to this factor because her misconduct involved clients, the courts, and the State Bar.

3. Indifference

We adopt the hearing judge's finding that Prevost acted with indifference as demonstrated by the repetition of misconduct she was disciplined for in *Prevost I*. She also attempted to blame her staff, her clients, and the State Bar for her conduct, declining to accept any measure of responsibility for her actions. (Std. 1.5(k); *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511 [law does not require false penitence but does require

respondent to accept responsibility for acts and come to grips with culpability].) We assign moderate weight to this factor.

4. No Significant Harm to Clients

The hearing judge found that Prevost's misconduct significantly harmed the Harrises because her failure to oppose the motions in limine reduced the settlement value of Dr. Harris's case by 50 percent. (Std. 1.5(j) [significant harm to client, public, or administration of justice is aggravating circumstance].) We disagree, and assign no weight to this factor in aggravation. As analyzed below, OCTC did not establish Prevost significantly harmed the Harrises.

The Harrises' case settled for $125,000 in late 2013. Even if, arguendo, we accept OCTC's position that the case had a settlement value of $250,000 at some point earlier in 2013, the record reveals no significant harm. May Harris testified she was told by co-counsel Beck that he believed the reduction in settlement "was because so much of our evidence had been excluded, as a result of the failure to [oppose the motions in limine]." But when questioned by OCTC during its direct examination, Beck stated that he did not mention this opinion to May Harris. More to the point, when Beck was asked whether the motions in limine affected the case's settlement value, he unequivocally stated: "I don't think there's a connection. . . . It had nothing to do with the in limine motions."

B. MITIGATION

1. No Mitigation for Cooperation with State Bar

We agree with the hearing judge that any value afforded to Prevost for entering into a stipulation (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179) is outweighed by her initial lack of cooperation. It appears she attempted to avoid service of the NDC in case no. 14-O-04539, and then failed to timely respond, as required by rule 5.43(A) of the Rules of Procedure of the State Bar. OCTC allowed her an additional week to file her

response or her default could have been entered. Her failure to cooperate in the earlier investigation weighs against assigning mitigation credit for cooperation.

2. Good Character

The hearing judge correctly assigned some mitigating credit for Prevost's good character evidence. (Std. 1.6(f) [mitigation credit for extraordinary good character attested to by wide range of references in legal and general communities who are aware of full extent of misconduct].) She presented character testimony from eight witnesses, including four attorneys and a judge. (*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"].) She also submitted 13 declarations from people who had known her for many years. While each witness described Prevost as an honest, zealous, and tenacious litigator who supports her community with her pro bono work, few were aware of the full extent of her misconduct. (*In re Aquino* (1989) 49 Cal.3d 1122, 1131 [testimony of witnesses unfamiliar with details of misconduct are not given significant weight in mitigation].)

3. No Mitigation for Health Problems[17]

In her opening brief, Prevost seeks mitigation credit for her health problems. However, she failed to submit evidence demonstrating that her health problems caused her misconduct or, even assuming they did, that they are no longer a problem, as required by standard 1.6(d) (mitigation permitted for extreme physical disabilities that are directly responsible for misconduct and that no longer pose risk that member will commit future misconduct). We therefore decline to assign mitigation for this factor.

[17] We reject Prevost's request for mitigation, made at oral argument, for having to deal with May Harris, described by Prevost as a difficult client. The record does not establish that May Harris was an unusually demanding or unreasonable client (*Chefsky v. State Bar* (1984) 36 Cal.3d 116, 132) or that Prevost's failures as an attorney were attributable to her client.

V. DISCIPLINE

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.)

Standard 1.8(a) states that when a member has a single prior record of discipline, the "sanction must be greater than the previously imposed sanction," subject to certain exceptions that are not applicable here. And standard 2.11 provides that, "[d]isbarment or actual suspension is the presumed sanction for an act of moral turpitude . . . or grossly negligent misrepresentation . . . . The degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the member's practice of law."[18] Therefore, we conclude that a period of actual suspension is appropriate.

Beyond the standards, we look to comparable case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.) Like the hearing judge, we find guidance in *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896. In that case, an attorney who received a private reproval in her first disciplinary matter received a six-month actual suspension in her second disciplinary proceeding for committing UPL, collecting unconscionable fees, failing to refund fees, and committing an act of moral turpitude. The attorney in *In the Matter of Wyrick*, *supra*, 2 Cal. State Bar Ct. Rptr. 83 also received a six-month actual suspension for committing UPL involving moral turpitude where he had one prior record of discipline that was remote in time. In comparison, Prevost's misconduct is more serious than

[18] Other standards calling for less severe discipline apply, but standard 1.7(a) directs us to follow the standard calling for the most severe sanction. (*In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628 [applying standard most relevant to gravest aspect of attorney's misconduct].)

that of the attorney who received a 90-day actual suspension in *In the Matter of Mason* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639. Whereas Mason's misconduct was limited to UPL, Prevost's misconduct also involves the failures to perform, communicate, and cooperate.

We observe that Prevost's recent one-year stayed suspension did not impress upon her that continued failures to communicate with her clients and to respond to State Bar investigations are grounds for serious discipline. Her recalcitrance has contributed to her current, and expanded, misconduct, all of which was related to her practice of law. Under these circumstances, the six-month suspension requested by OCTC and recommended by the hearing judge is the minimum sanction necessary to address Prevost's misconduct, which includes an act of moral turpitude. It also reflects our increasing concern about her inability to comply with rules and regulations governing attorney conduct. Thus, we recommend discipline that includes a six-month actual suspension, which is consistent with both the standards and the decisional law.

VI. RECOMMENDATION

We recommend that Mary Frances Prevost be suspended from the practice of law for two years, execution stayed, and that she be placed on probation for three years on the following conditions:

1. She must be suspended from the practice of law for the first six months of the period of her probation.

2. She must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of her probation.

3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including her current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, she must report such change in writing to the Membership Records Office and the State Bar Office of Probation.

4. Within 30 days after the effective date of discipline, she must contact the Office of Probation and schedule a meeting with her assigned probation deputy to discuss the terms and

conditions of probation. Upon the direction of the Office of Probation, she must meet with the probation deputy either in person or by telephone. During the period of probation, she must promptly meet with the probation deputy as directed and upon request

5. She must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, she must state whether she has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of her probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.

6. Subject to the assertion of applicable privileges, she must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to her personally or in writing, relating to whether she is complying or has complied with the conditions contained herein.

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

VII. PROFESSIONAL RESPONSIBILITY EXAMINATION AND ETHICS SCHOOL

We do not recommend that Prevost be ordered to take and pass the Multistate Professional Responsibility Examination or to attend the State Bar's Ethics School, as she recently was required to do so. On September 23, 2015, the Supreme Court ordered Prevost to: (1) take and pass the Multistate Professional Responsibility Examination; and (2) provide the Office of Probation satisfactory proof of her attendance at a session of the State Bar Ethics School and passage of the test given at the end of that session.

VIII. RULE 9.20

We further recommend that Prevost 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.

IX. COSTS

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

PURCELL, P. J.

WE CONCUR:

STOVITZ, J.*

McGILL, 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.

**Hearing Judge of the State Bar Court, assigned by the Presiding Judge pursuant to rule 5.155(F) of the Rules of Procedure.