

Filed August 27, 2020

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of)	17-O-01202 (17-O-05799)
)	
PEYMAN ROSHAN,)	OPINION
)	
State Bar No. 303460.)	
_____)	

In his first disciplinary matter relating to activity that occurred shortly after he was admitted to practice law, Peyman Roshan was charged with 21 counts of misconduct arising from a partnership he entered into with his client and his actions regarding litigation he filed on her behalf. The hearing judge found Roshan culpable of 12 counts of misconduct and recommended discipline including a two-year actual suspension and until he proves rehabilitation.

Roshan appeals. He argues that he is not culpable of any charges, and raises broad constitutional challenges to the State Bar disciplinary process. The Office of Chief Trial Counsel of the State Bar (OCTC) does not appeal the hearing judge’s findings and requests that we uphold the judge’s discipline recommendation.

Upon our independent review of the record (Cal. Rules of Court, rule 9.12), we find that Roshan is culpable of seven counts of misconduct, the most serious of which includes breach of fiduciary duty, failing to avoid interests adverse to a client, and moral turpitude by misrepresentation. We dismiss five counts for lack of evidence. Although we find less culpability than the hearing judge, given the multiple acts of serious misconduct, and weighing the significant factors in aggravation against moderate mitigation, we uphold her disciplinary recommendation.

I. RELEVANT PROCEDURAL BACKGROUND

On December 21, 2018, OCTC filed a Notice of Disciplinary Charges (NDC) alleging 19 counts of misconduct. On March 21, 2019, OCTC filed a motion to amend the NDC by adding two counts, which Roshan opposed on April 5. The hearing judge granted the motion, and, on April 9, OCTC filed an amended NDC (ANDC). On April 5, the judge denied Roshan's request for abatement. On April 12, Roshan filed a motion to continue the trial and reopen discovery, which the judge denied on April 17. On March 27, the parties filed a Stipulation as to Facts (Stipulation), and a five-day trial commenced on April 18. On April 19, Roshan filed a petition for interlocutory review of the order denying his motion to continue, which we denied on April 25. The judge issued her decision on August 7, 2019.

II. RELEVANT FACTUAL BACKGROUND¹

A. Solheim's Attempt to Create Servisensor Application Software

In 2006, Brenda Solheim created Servisensor, a device designed for restaurants that would allow customers to signal when they need wait staff. In November 2013, Solheim paid Jay Leopardi, owner of Who's Big, LLC (Who's Big), \$35,000 to develop application software (App) for smart phones using her Servisensor ideas. Leopardi paid Christian Romero, a subcontractor, to work on developing the App. In 2014, the Servisensor App was developed but exhibited technical difficulties. In March 2015, Solheim contacted Leopardi and Romero to request a refund of the \$35,000, which they refused to provide.

¹ The facts included in this opinion are based on the Stipulation, trial testimony, documentary evidence, and the hearing judge's factual findings, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).) Although Roshan's amended opening brief adopted the hearing judge's factual findings by reference in the interests of space, his reply brief challenges some of those findings.

B. Solheim and Roshan's Initial Encounters

In early May 2015, Solheim and Roshan discussed Leopardi and Romero's refusal to refund her money. Roshan expressed interest in working with Solheim to resolve the dispute. On May 21, Solheim and Roshan exchanged emails to set up a meeting on May 28. In preparation for the meeting, Solheim sent Roshan documents pertaining to the dispute, including the contract with Leopardi and the source code for the Servisensor App. After Solheim and Roshan met on May 28, they agreed to work together in two separate endeavors. First, Roshan would serve as Solheim's attorney in the contract dispute with Leopardi and Romero. Second, Roshan and Solheim would enter into a partnership to develop the Servisensor App. In an email Roshan sent the day after their meeting, he differentiated between tasks he would perform on the "legal side of things" and those on the "business development side."

C. Attorney-Client Fee Agreement and Subsequent Consent and Waiver Form

Roshan was sworn in and admitted to practice law in California on June 2, 2015. On July 9, Roshan and Solheim entered into an Attorney-Client Fee Agreement (2015 Fee Agreement) for Roshan to handle the claims against Leopardi and Romero. Roshan was entitled to 40 percent of any recovery by Solheim, after deductions for costs and hourly attorney fees.² The 2015 Fee Agreement did not mention their business partnership.

On July 28, 2015, Roshan sent an email to Solheim discussing his legal responsibilities pursuant to former rule 3-300 of the Rules of Professional Conduct.³ He explained that his concurrently being her attorney in the Leopardi matter and her business partner could involve future actual or potential conflicts of interest. The email did not disclose the terms of the partnership between Roshan and Solheim, but included a one-paragraph section entitled

² By November 2016, Solheim had paid Roshan over \$57,000 under the 2015 Fee Agreement, billed at the contracted rate of \$300 per hour.

³ All further references to rules are to the Rules of Professional Conduct that were in effect until November 1, 2018, unless otherwise noted.

“CONSENT AND WAIVER OF RIGHTS” (Consent and Waiver), which Roshan requested that Solheim sign. The Consent and Waiver included broad prospective waivers of the right to sue Roshan or the partnership, or to assert any conflict, breach of fiduciary duty, other attorney-client duty, or violation of former rule 3-300. On August 3, Solheim signed the Consent and Waiver. Though the document stated that she could seek the assistance of independent counsel, Solheim did not and signed the document without careful review.

D. Roshan’s Email Regarding Potential Partnership Terms

On August 11, 2015, Roshan sent Solheim an email outlining their partnership regarding the Servisensor App. Solheim would use her “years of being steeped in this idea” and of acquiring contacts to market and sell the App. Roshan would create the App and prepare a provisional patent. His email also specified that they would jointly share out-of-pocket expenses, that any funds recovered from the Leopardi and Romero dispute would be placed in the partnership’s common funds, but that Roshan did not want to get “bogged down . . . in details that may shift a few thousand dollars between [them].” The email did not include a disclaimer that Solheim could seek review from independent counsel. That same day, Solheim responded that Roshan’s email “absolutely matched” her understanding of their partnership. This email exchange constituted the extent of the partnership terms until November 2016.

E. *Solheim v. Badboy* and Motion to Quash

On January 25, 2016, Roshan filed *Solheim v. Badboy Branding, et al.*, in Sonoma County Superior Court (*Solheim v. Badboy*) against Leopardi, Romero, and Who’s Big. The lawsuit also named several Florida attorneys, who were representing some of the *Solheim v. Badboy* defendants in a related federal lawsuit in Florida they had previously filed against Solheim.⁴

⁴ The federal lawsuit, *Who’s Big, LLC v. Solheim*, was filed in the Southern District of Florida on or about December 15, 2015, and involved allegations that Solheim failed to convey an ownership interest in the Servisensor App to Who’s Big.

In March 2016, Marshall Bluestone, counsel for the Florida attorneys who were sued in *Solheim v. Badboy*, attempted to meet and confer with Roshan to procure the dismissal of the Florida attorneys because they resided in Florida and could not be sued in California. Bluestone sent Roshan a draft copy of a motion to quash service of the summons, but Roshan refused to dismiss them from the lawsuit. Bluestone warned he would seek sanctions and, thereafter, filed the motion to quash service of the summons, which was granted on March 30, 2016.

F. Roshan’s Recording of Romero and Romero’s Motion to Disqualify against Roshan

In May 2016, Roshan and Romero, who was not represented by counsel, met and conferred pursuant to a court order. Roshan stated during the conversation that he was recording it, although he was not actually doing so. In a later discussion, Roshan threatened to use the purported recording of their meet-and-confer conversation in a possible defamation lawsuit against Romero. Romero asked for the recording but Roshan refused to provide it.

On July 25, 2016, Romero emailed Roshan that he never consented to a recording of their May 2016 conversation. Two days later, Roshan emailed back that Romero had no reason to expect privacy when discussing matters with an opposing party’s counsel and such communication “may properly be recorded.” When questioned at trial, Roshan revealed that he actually recorded a November 14, 2016 conversation with Romero, but not any other conversation between them.

On March 20, 2017, Romero filed a motion to disqualify Roshan as counsel for Solheim, asserting that Roshan, as Solheim’s business partner, could be called as a potential witness in *Solheim v. Badboy*. Roshan did not inform Solheim that the motion to disqualify had been filed.

G. Roshan’s Communications with Leopardi

On August 1, 2016, Roshan emailed Leopardi, the owner and managing agent of Who’s Big, to ask who was representing Who’s Big in *Solheim v. Badboy*. Leopardi was represented by

Martin Hirsch, but Hirsch had told Roshan that he did not represent Who's Big. Roshan had not obtained Hirsch's consent before he contacted Leopardi, and Roshan's email went beyond an attempt to determine who was representing Who's Big, and it included several threats about what Roshan would do if Who's Big did not respond.

On August 5, 2016, Hirsh emailed Roshan, admonishing him for contacting a represented party, and warning him not to contact Leopardi again. Hirsch testified that he did not represent Who's Big, but that Leopardi faced personal liability if Roshan took the default of Who's Big in the *Solheim v. Badboy* litigation.⁵ Hirsch believed that Roshan's communication involved the same lawsuit and a represented party.

H. Sanctions in *Solheim v. Badboy*

After the motion to quash was granted in *Solheim v. Badboy*, Bluestone attempted to persuade Roshan to dismiss the Florida attorney defendants from the lawsuit. When Roshan refused, Bluestone filed a motion seeking sanctions on June 22, 2016. On October 27, the court issued an order granting monetary sanctions of \$2,715 against Roshan for taking actions that were "ill advised" and that any reasonable attorney would find completely without merit.⁶ On November 4, Roshan informed Solheim about the sanctions order and asked her to appeal it, telling her that a law professor had agreed with his strategy to serve the Florida attorneys. Solheim refused and, instead, told Roshan that she wanted to dismiss the lawsuit. During the conversation, Roshan asserted that he should be compensated for his ideas pertaining to the development of the App. Solheim disagreed because she was not requesting compensation for her ideas and thought they were equal partners under the agreement.

⁵ Hirsch also testified that Who's Big's corporate status was suspended and could not be represented by an attorney.

⁶ On September 13, 2018, the Court of Appeal affirmed the order granting sanctions against Roshan, finding his conduct involved subjective bad faith that justified the sanctions order. On November 15, Roshan paid the sanctions.

I. Roshan and Solheim's November 21 Meeting

On November 6, 2016, Solheim sent Roshan a letter (November 6 letter) in which she made clear that she did not want to pursue *Solheim v. Badboy* further. The letter also summarized a previous conversation about dismissing the lawsuit and where Roshan told her he considered the lawsuit to be part of the partnership and would have had second thoughts about the partnership if she did not continue with the lawsuit.

Shortly before an in-person meeting on November 21, 2016, to discuss a written partnership agreement, Solheim texted Roshan, requesting a draft of the agreement so that her husband could review it. Roshan replied by text that the written agreement was merely a restatement of their oral agreement and the meeting would only be “words on a screen” to ensure they were not overlooking anything they had previously discussed. Solheim texted again that she wanted her husband to review any documents prior to her signing them. Roshan agreed, but he did not send her anything. Also prior to the meeting, Roshan told Solheim he was upset by her November 6 letter because it put him in a “bad light,” and he wanted her to revise it “line by line.” Solheim refused. Roshan then requested that Solheim give him a 51 percent interest in the partnership to compensate him for the statements she made in her letter. Solheim orally agreed, but then reconsidered, and instead asked to discuss it during their upcoming meeting.

Despite Roshan's prior assurances, he arrived at the November 21, 2016 meeting with five agreements for Solheim to sign, some of which were backdated to have an earlier effective date. He told her that she had to sign the agreements to “fix” her statements in her November 6 letter. He assured her the agreements were just so they could move forward with their partnership. Roshan did not tell Solheim that she could consult independent counsel prior to signing. He also did not give her husband an opportunity to read the agreements before signing,

as she had requested and he had agreed. He pressured Solheim to sign the five agreements, which she ultimately did at the meeting without reading them.⁷

J. Solheim Terminates Partnership; Roshan Files Provisional Patent Applications

On January 6, 2017, Solheim emailed Roshan a letter ending their partnership. In it, Solheim said she wanted it to be clear that visual signaling and the patent for it were hers. She also stated that Roshan could have “full custody” of the “perks, beacons, and data” that he had developed.⁸ On January 9, Roshan wrote that her retaining control of the visual signaling and patent did not conform to their partnership agreement. He told her that he had given her the idea to develop the App (even though Leopardi and Romero had worked on developing the App in 2013 and 2014 before Solheim began working with Roshan) and that the patent should include his ideas. Two days later, on January 11, Roshan filed a provisional patent application for the App with the United States Patent and Trademark Office (USPTO), listing himself and Solheim as inventors.⁹

K. Release of Solheim’s File

On April 18, 2017, Solheim signed an authorization directing Roshan to release her files to her new counsel. On April 20, Solheim terminated Roshan as her counsel in *Solheim v. Badboy* pursuant to the 2015 Fee Agreement.

⁷ At the same meeting, Solheim gave Roshan an undated letter in which she stated her understanding of their partnership. She asserted the App’s “visual signaling” function was her idea. She also stated that they had agreed to be equal partners, not pay each other as employees, and that they would not change the format of the partnership. The statements in this letter contradicted the ones in the agreements Roshan pressured Solheim to sign.

⁸ Roshan had proposed to include in the App’s software and hardware developments integration of the ability to track and show an establishment’s sales increases due to additional perks and deals for users.

⁹ On October 24, 2017, Roshan filed a second provisional patent application with the USPTO that was substantially the same as the first, but included his additional ideas for user perks. In this application, Roshan listed only himself as the inventor.

On April 19, 2017, Solheim's new counsel contacted Roshan to request Solheim's original file. Roshan produced an electronic version but repeatedly refused to produce the file in its original form until counsel provided "acknowledgement that each original page delivered matches each electronic page already delivered to ensure that we have record of each original document delivered." Roshan made this demand for page-by-page verification even though there were over 3,500 pages in the file.

III. ROSHAN IS CULPABLE FOR EXERTING INFLUENCE OVER SOLHEIM AND OVERREACHING WITH THEIR BUSINESS PARTNERSHIP

A. Overview

Roshan simultaneously agreed to represent Solheim in *Badboy v. Solheim* and to become her business partner. As to the business partnership, Roshan failed to ensure that the partnership's terms were fair and reasonable or obtain Solheim's informed written consent, and he did not reduce their oral agreement to writing. Over a year after he and Solheim began working together, he surprised Solheim with agreements, some backdated by months, which contained terms that were contrary to her understanding of their partnership and which clearly favored Roshan over her. Further, he did not explain the terms and forced her to sign the agreements without letting her review the documents in advance. As to his attorney-client relationship with her, his use of the Consent and Waiver was improper because it failed to disclose all the terms necessary for Solheim's informed written consent to the relationship. It was also an improper attempt for him to limit his professional malpractice liability to her.

B. Count Four: Former Rule 3-300¹⁰ (Business Transaction With Client)

Based on the allegations in count four of the ANDC, the hearing judge found Roshan culpable for violating former rule 3-300 because, while he did make some effort to comply with the rule's requirements through the Consent and Waiver, he did not memorialize in writing the terms of the partnership for Solheim until over a year after their initial meeting. While OCTC agrees with the judge's culpability findings, Roshan argues that he is not culpable because he copied the Consent and Waiver verbatim from the Rutter Guide on Professional Responsibility (Rutter Guide), which he describes as "extremely authoritative."¹¹

The Consent and Waiver, which Roshan asked Solheim to sign, states, in relevant part:

[Solheim], [Roshan's] client, on behalf of herself and on behalf her [*sic*] various entities, acknowledges the foregoing letter and its written disclosure pursuant to [former rule 3-300] . . . and hereby consents and agrees to the terms and conditions spelled out therein, including waiver of the right to disqualify [Roshan] from participating in any forthcoming partnership between [Roshan] and [Solheim], [Solheim] agrees to give up the right to bring suit against [Roshan] or any forthcoming partnership between [them], and [Solheim] waives the right to assert (i) any conflict of interest, (ii) any violation of [former rule 3-300,] or (iii) any breach of fiduciary or any other attorney-client duty. [. . .] [Solheim] hereby certifies, by signing this form of consent, that [Solheim] has been advised to consult with independent counsel, and has had an opportunity to do so, before signing this form of consent.

To the extent that Roshan argues that the Consent and Waiver satisfied the requirements of former rule 3-300, he is mistaken. The Consent and Waiver he prepared did not disclose the terms of the partnership, nor did he obtain Solheim's informed written consent. Therefore, we

¹⁰ Former rule 3-300 provides that an attorney shall not enter into a business transaction with a client unless the transaction and its terms are fair and reasonable and fully disclosed in writing to the client in a manner that would be understood; the client is advised in writing that they may seek the advice of an independent lawyer and given a reasonable opportunity to do so; and the client consents in writing.

¹¹ Further references to this source are to the California Practice Guide on Professional Responsibility (Vapnek et al., Cal. Practice Guide: Professional Responsibility (The Rutter Group 2018)).

agree with the hearing judge's finding that Roshan's conduct clearly and convincingly¹² violated former rule 3-300.¹³

C. Count Five: Former Rule 3-400¹⁴ (Limiting Liability to Client)

Count five of the ANDC alleged that the Consent and Waiver violated former rule 3-400 by prospectively limiting Roshan's liability to Solheim for professional malpractice. The hearing judge found Roshan culpable because he contracted with Solheim to prevent her from suing him, and OCTC asks that we affirm. As he did in the Hearing Department, Roshan argues that he should not be found culpable because he used language from the Rutter Guide. Again, he is mistaken. He did not include the Rutter Guide language verbatim, but modified it by deleting language, thus giving it a broader application. As a result, the Consent and Waiver did not describe a particular business transaction with Solheim and is drafted to broadly limit all prospective liability.

Roshan also argues that the Consent and Waiver could not be a waiver of prospective liability because it did not include waiver language from Civil Code section 1542.¹⁵ His argument misses the point of former rule 3-400, which is the ethical duty Roshan owed Solheim,

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.)

¹³ In his reply, Roshan misstates the holding of *Hawk v. State Bar* (1988) 45 Cal.3d 589 and argues that it limits the application of former rule 3-300 to transactions that create the ability for the lawyer to summarily extinguish the client's interest in property. *Hawk* does not limit application of former rule 3-300 but rather explains how broadly it is applied to transactions between lawyers and clients that are favorable to the lawyer. (*Id.* at pp. 599–601.)

¹⁴ Former rule 3-400 provides that an attorney shall not “[c]ontract with a client prospectively limiting the [attorney’s] liability to the client for the [attorney’s] professional malpractice.”

¹⁵ Civil Code section 1542 provides, “A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

and not whether the Consent and Waiver was in fact enforceable. We find Roshan culpable for violating former rule 3-400.

D. Count Nine: Former Rule 3-300 (Business Transaction with Client)

As alleged in count nine of the ANDC, the hearing judge found that Roshan violated former rule 3-300, when he presented partnership agreements¹⁶ for Solheim to sign on November 21, 2016. Specifically, the judge found that numerous terms in the agreements were not fair and reasonable, the agreements were not presented to Solheim in a manner that could have been reasonably understood by her, and he did not advise Solheim in writing that she could seek the advice of an independent lawyer or give her time to seek that advice. Upon our independent review of the record, we agree with the judge's findings.

The first agreement was a Partnership Agreement, backdated to August 11, 2015. It stated, among other provisions, (1) a description of their respective partnership responsibilities, (2) each would have equal voice in the management of the partnership and in binding the partnership to contracts and obligations, (3) profits and losses would be shared equally, (4) any benefit gained from the Leopardi-Romero litigation would be deposited into the partnership, and (5) Solheim could at any time, in her sole discretion, cease to bring claims against Leopardi and Romero.

The second agreement was a Partnership Agreement Modification, backdated to March 10, 2016. It stated, among other provisions, (1) the partners voluntarily modified their partnership to add functionality to the App to demonstrably track and show a business's sales increases, (2) Solheim's opinion that the modification to the partnership, which was occurring

¹⁶ While Roshan presented five agreements for Solheim to sign, the ANDC alleges only four under count nine that violated former rule 3-300.

due to Roshan's contributions, increased the partnership's value by at least \$3 million,¹⁷ (3) in exchange for Roshan's contributions, Solheim agreed to pay him \$100,000, and (4) Roshan would have sole management and authority in achieving the developments expressed in the modified agreement.¹⁸

The third agreement was a Second Partnership Agreement Modification, with an effective date of November 20, 2016. It provided that Solheim would pay Roshan an hourly fee of \$25.00 for his software design and programming services, as well as marketing services.

The fourth agreement was a Release of Debt as Refunded Agreement (Release), also with an effective date of November 20, 2016. It stated that, because Solheim had concerns that Roshan had caused her to unnecessarily incur costs and attorney fees, Roshan would release the amount she had paid in fees to date, \$57,152.16, by crediting that amount against the \$100,000 she had agreed to pay by signing the Partnership Modification Agreement. The Release indicated it would make her "to-date litigation expenses zero." It also asserted that a law school professor, Martin Seeger, had validated Roshan's approach to serving the Florida defendants.¹⁹ Finally, the Release stated that it was "meant to resolve, and accepted as resolving, [Solheim's] concerns regarding any negative impact on her by virtue of any of [Roshan's] actions in [*Who's Big, LLC v. Solheim* and *Solheim v. Bad Boy*]."

While Roshan did not challenge the hearing judge's culpability findings in his opening brief, he is again unpersuasive in his reply brief that culpability under former rule 3-300 is

¹⁷ The hearing judge found that Solheim credibly testified that she never came up with that figure; such a credibility finding is entitled to great deference (*Maltaman v. State Bar* (1987) 43 Cal.3d 924, 932.) Solheim testified at trial that she did not have a firm valuation for the App, but would not have valued it higher than \$1.6 million.

¹⁸ Solheim also made clear in the letter she presented to Roshan, at the same time she signed the agreements, that they had agreed to be equal partners, not pay each other as employees, and she would not change the partnership's format. She also stated that the visual signaling concept was her idea.

¹⁹ Professor Seeger testified at trial that he did not tell Roshan he validated his approach.

limited, under *Hawk v. State Bar, supra*, 45 Cal.3d 589, to agreements that allow an attorney to summarily extinguish a client's property interests. Like the judge, we find that the four agreements signed on November 21, 2016, clearly violate former rule 3-300.

Many of the agreements' terms were not fair and reasonable because they were contrary to Solheim's interests, with her receiving nothing or very little in return. The first agreement provided that any recovery in the litigation belonged to the partnership, notwithstanding the 2015 Fee Agreement entitling Solheim to 60 percent of the net recovery from the litigation. The second agreement provided that Roshan's contribution to new ideas for the App's development was worth millions, such that Solheim would pay him \$100,000, and that he would have sole management and authority in achieving the App's development. The third agreement provided that Solheim would pay Roshan per hour for his software design and services, notwithstanding that such work was clearly within the original understanding of their partnership's division of labor. The fourth agreement provided that the Release essentially reaffirmed Solheim's debt to Roshan of \$100,000, less credit for the approximately \$57,000 she had paid him in attorney fees and that the Release resolved any concerns she may have had regarding his actions in either the California or Florida litigation.

Additionally, Roshan violated former rule 3-300 by failing to disclose the agreements in a manner that would be understood by springing them on Solheim without warning, despite her requests for her husband and her to review them beforehand. Finally, he failed to advise her in the agreements that she could seek an independent lawyer, and she was not given a reasonable opportunity to do so when he pressured her to sign them at their meeting on November 21, 2016.

E. Count Eleven: § 6068(a) (Overreaching, Breach of Fiduciary Duty)²⁰

Count eleven alleged that Roshan violated section 6068, subdivision (a), when he breached his fiduciary duties to Solheim by acting without her best interests in mind, thereby taking advantage of her in the lawsuit against Leopardi and Romero through the partnership after she placed her trust and confidence in him. The hearing judge found Roshan culpable but assigned no additional weight because the misconduct overlapped with the former rule 3-300 violations.

We find that Roshan is culpable for overreaching and breaching his fiduciary duties to Solheim. “When an attorney-client transaction is involved, the attorney bears the burden of showing that the dealings between the parties were fair and reasonable and were fully known and understood by the client.” (*Hunnecutt v. State Bar* (1988) 44 Cal.3d 362, 372–73; see also *Rodgers v. State Bar* (1989) 48 Cal.3d 300, 317 [repeated evasions and deceit surrounding attorney’s business transaction with client are inconsistent with high degree of fidelity owed by attorney to profession and to public].) Roshan did not meet this burden; rather, he negotiated terms that benefitted him to the detriment of his client. We find it particularly egregious that Roshan incorporated misleading and self-serving terms in the agreements detailed in count nine involving his business transaction with her. Instead of ensuring that she understood the terms and that they were fair to her, he made misrepresentations to favor his own position. (See *Rodgers v. State Bar, supra*, 48 Cal.3d at p. 317.) Since we also find that this misconduct is not entirely duplicative of the former rule 3-300 charges, we give it independent weight.

Roshan argues that the ANDC and the culpability findings are vague and he did not receive sufficient notice of the allegations against him. We reject these arguments as analyzed below with regard to Roshan’s global constitutional challenges.

²⁰ Business and Professions Code section 6068, subdivision (a), provides that it is the duty of an attorney to support the Constitution and laws of the United States and of California. Further references to sections are to this source unless otherwise indicated.

IV. CULPABILITY RELATED TO MISCONDUCT IN *BADBOY v. SOLHEIM*

A. **Count Eight: Former Rule 2-100(A)**²¹ (Communication with Represented Party)

Count eight of the ANDC alleges that Roshan violated former rule 2-100(A) by communicating with Leopardi regarding who represented Who's Big. The hearing judge found that Roshan was culpable because his email went beyond asking who represented Who's Big, and included statements about Who's Big's conduct and apparent legal threats to Leopardi if he did not respond. We agree.

Roshan argues that the judge erred because the rule requires that the communication must be with a party that the attorney knows was represented, and argues that, because it was established that Who's Big was not represented, he was free to communicate with Leopardi as its owner and managing agent. OCTC submits that former rule 2-100(A)'s definition of a party includes an officer, director, or managing agent of a corporation, association, or partnership.

We find that, although Hirsch testified that he told Roshan that Who's Big was unrepresented, Roshan violated the rule because he knew that Hirsch represented Leopardi in his personal capacity in *Solheim v. Badboy*. Further, his questions went beyond an inquiry as to whether Who's Big was represented, but went instead to the subject of the lawsuit. Further, Leopardi had personal liability in the same lawsuit if the default of Who's Big was entered; therefore, Roshan's communication concerned the subject of the representation.

²¹ Former rule 2-100(A) provides, "While representing a client, a member shall not communicate directly or indirectly about the subject of the representation with a party the member knows to be represented by another lawyer in the matter, unless the member has the consent of the other lawyer."

B. Count Sixteen: Former Rule 3-700(D)(1) (Failure to Release File)²²

Count sixteen of the ANDC alleged that Roshan failed to promptly release Solheim's papers and property after she terminated him. The hearing judge found that Roshan violated former rule 3-700(D)(1) by refusing to return Solheim's original file without receiving an acknowledgment that each page conformed identically to the electronic version he had already provided. Roshan's opening brief did not challenge the judge's culpability findings, but his reply brief cites to an ethics opinion by the State Bar's Standing Committee on Professional Responsibility and Conduct (COPRAC), and argues that he is not culpable because he provided the electronic copy and was therefore allowed to place conditions on the release of the original file. We adopt the hearing judge's findings as supported by the law and the record.²³

C. Count Nineteen: § 6106 (Moral Turpitude—Misrepresentation)

Count nineteen of the ANDC alleged that Roshan made a misrepresentation constituting moral turpitude when he told Romero that he had recorded one or more of their prior telephone conversations when he had not. The hearing judge found Roshan culpable. Citing *United States v. Parker* (W.D.N.Y. 2001) 165 F.Supp.2d 431, Roshan argues that he is not culpable because attorneys may, in the course of seeking to prove criminal acts, intend to deceive and assist others

²² Former rule 3-700(D)(1) provides that an attorney whose employment has been terminated shall promptly release to the client, at his or her request, all client papers and property. Client papers and property are defined as including correspondence, pleadings, deposition transcripts, exhibits, physical evidence, expert's reports and other items reasonably necessary to the client's representation.

²³ The ethics opinion cited by Roshan does not support his position. Formal Opinion No. 2007-174 finds that former rule 3-700(D)(1) broadly applies regardless of the form of the client's property, stating that the rule expressly extends its coverage to "all the client papers and property," without distinction based on the form of any item, whether electronic or non-electronic. (State Bar Formal Opn. 2007-174, p. 4.) The opinion goes on to state that the attorney's obligation is to release the materials, not to create them or change the application in which the attorney possesses them. (*Ibid.*) Contrary to Roshan's argument, we do not read this to mean that once he has provided an electronic version, he is not required to provide the original file. He must provide all of the property without regard to its form. (See also COPRAC Formal Opn. 1992-127 [construing "client papers and property" within the meaning of former rule 3-700(D)(1) to include the "entire contents of the file"].)

in deception. OCTC submits that Roshan erroneously relies on the *Parker* case. We agree. *Parker* analyzed whether a prosecuting attorney who supervised police officers conducting a sting operation acted unethically and found that the attorney did not. Here, Roshan is not a prosecuting attorney. We agree with the judge that Roshan is culpable because he intentionally misled Romero to believe that he had recorded their conversation and then threatened to use the recording in a defamation suit against Romero. (*In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211, 220 [concealment of material facts is just as misleading as explicit false statements].) Further, we reject Roshan’s explanation in his reply brief that he never told Romero he was recording a conversation because Romero credibly testified that this was exactly what Roshan said.

V. DISMISSED COUNTS

The hearing judge dismissed with prejudice counts one, two, six, seven, ten, thirteen, seventeen, eighteen, and twenty-one of the ANDC. Neither party challenges these rulings. We adopt the dismissals as supported by the record. Having reviewed and considered the parties’ arguments, we find the additional counts listed below are not established by clear and convincing evidence and are dismissed with prejudice. (See *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].)

A. **Count Three: Former Rule 3-110(A) (Failure to Perform with Competence)**²⁴

Count three of the ANDC alleges that, in *Solheim v. Badboy*, Roshan intentionally, recklessly, or repeatedly failed to perform with competence, in violation of former rule 3-110(A), and further alleges six specific violations of the rule. The hearing judge found Roshan culpable for two of those specific allegations: first, by Roshan failing to properly serve, or follow

²⁴ Former rule 3-110(A) provides that “[a] member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence.”

procedure for properly serving, the defendants, and second, by his failing to avoid sanctions for serving the defendants who previously quashed service. Roshan states that OCTC failed to establish clear and convincing evidence regarding either allegation. OCTC agrees with the judge's findings, maintaining that they are well supported by the record.

Roshan asserts that the hearing judge improperly determined that he failed to properly serve, or follow procedure, because the superior court's order quashing service found that the defendants had no minimum contacts in California and that he should not be culpable on this point for simply losing the motion. Given the allegations as made in this count, we agree. OCTC has not presented clear and convincing evidence that Roshan's improper service of the defendants constitutes a failure to perform. Roshan also argues that the hearing judge's conclusion of law, that he failed to avoid sanctions by re-serving the defendants after the motion to quash was granted, is not supported by the judge's findings or the record. We agree with Roshan's arguments because the ANDC did not allege culpability for filing a frivolous action, but instead for re-serving the defendants. Also, the order granting sanctions is not based on Roshan's re-serving the defendants, but on his "egregious" lawsuit.

B. Count Twelve: § 6106 (Misrepresentation)²⁵

Count twelve of the ANDC alleged that Roshan made misrepresentations constituting moral turpitude by including four statements in the November 21, 2016 agreements. The hearing judge found Roshan culpable as to all four misrepresentations.

Roshan argues that the statements are not misrepresentations because they were contract terms, and therefore he did not actually mislead Solheim, and that two of the alleged

²⁵ Section 6106 provides that the commission of any act involving moral turpitude, dishonesty or corruption, whether committed in the course of relations as an attorney or otherwise, constitutes a cause for disbarment or suspension.

misrepresentations are in fact true. OCTC asserts that the hearing judge properly found culpability for these misrepresentations.

We agree that OCTC has not proven by clear and convincing evidence that these contractual terms were misrepresentations and thus dismiss count twelve with prejudice. While many of the terms are misleading and unfair to Solheim, this misconduct has been appropriately addressed as overreaching and breach of fiduciary duty.

C. Count Fourteen: § 6068, subd. (m) (Failure to Inform of Significant Developments)²⁶

Count fourteen of the ANDC alleged that Roshan failed to keep Solheim reasonably informed of significant developments by failing to inform her that he was a potential fact witness in *Solheim v. Badboy* and that a motion to disqualify him as Solheim’s counsel had been filed. The hearing judge found Roshan was culpable for failing to disclose this information to Solheim. Roshan argues he should not be held culpable because no evidence exists that he knew about the motion to disqualify. In its brief, OCTC asserts Roshan did know about the motion because he stipulated that Romero had filed it, and did not testify at trial that he did not know about it. However, OCTC conceded at oral argument that the evidence was “circumstantial” and “weak.” We agree that OCTC has not met its burden to prove that Roshan knew about the motion—OCTC did not question him or Romero about whether he was served with the motion after it was filed.

D. Count Fifteen: Former Rule 4-200(A) (Unconscionable Fee)²⁷

Count fifteen of the ANDC alleged that Roshan violated former rule 4-200(A) by charging Solheim unconscionable fees. The hearing judge found Roshan culpable based on (1) his lack of experience and reputation, (2) the total amount charged (about \$57,000) compared

²⁶ Section 6068, subdivision (m), provides that it is the duty of an attorney to keep clients reasonably informed of significant developments in matters in which the attorney has agreed to provide legal services.

²⁷ Former rule 4-200(A) provides that an attorney shall not enter into an agreement for, charge, or collect an illegal or unconscionable fee.

to the amount Solheim was seeking to recover (\$35,000), and (3) the lack of novelty or difficulty in the questions involved and in the skill necessary to perform the legal services properly.

Roshan argues that the judge's finding of the amount that Solheim was seeking to recover was incorrect because the complaint sought over \$116,000 in damages, plus attorney fees. In its brief, OCTC argued that the judge's culpability finding and her reliance on *Bushman v. State Bar* (1974) 11 Cal.3d 558 were correct.

We disagree that the record and case law demonstrate that Roshan charged an unconscionable fee. The record fails to prove that his compensation was unconscionable for the services performed. While Solheim paid over \$57,000 in fees, Roshan's billing invoices indicate that he did substantial work on *Solheim v. Badboy*. We note that the judge also found—in her analysis dismissing count seventeen for failure to refund unearned fees—that Roshan performed considerable work for Solheim. At oral argument, OCTC agreed, given the case law that applies here, it is a “weak charge.”²⁸

E. Count Twenty: § 6106 (Moral Turpitude—Misrepresentation)

Count twenty of the ANDC alleged, and the hearing judge found, that Roshan made a misrepresentation constituting moral turpitude when he submitted a provisional patent application indicating that he was the inventor of the App. Citing *United States v. Camick* (10th Cir. 2015) 796 F.3d 1206, 1219 (*Camick*), Roshan argues that he is not culpable because this case holds that statements in a provisional patent application are immaterial until an applicant takes additional steps necessary to convert the provisional application into a nonprovisional application. *Camick* involved a federal criminal defendant charged with mail fraud and material

²⁸ A fee is unconscionable when it is “so exorbitant and wholly disproportionate to the services performed as to shock the conscience.” (*In re Goldstone* (1931) 214 Cal. 490, 499.) However, “[i]n the few cases where discipline has been enforced against an attorney for charging excessive fees, there has usually been present some element of fraud or overreaching” that practically constitutes an appropriation of client funds under the guise of fees. (*Herrscher v. State Bar* (1935) 4 Cal.2d 399, 403.)

misrepresentation. The federal court dismissed these criminal charges because it found that statements in a provisional patent application were immaterial and therefore did not provide evidence of criminal conduct. (*Ibid.*) OCTC did not specifically address *Camick's* reasoning, but argues that the statement made in the patent application was a misrepresentation. Although Roshan's statement that he was the sole owner of Solheim's invention was not true, we are persuaded that he is not culpable of this misconduct because his statement was immaterial under federal law.

VI. ROSHAN'S CONSTITUTIONAL CHALLENGES FAIL²⁹

Roshan first argues that the hearing judge's denial of his request for a continuance violated his constitutional right to counsel. He previously made this same argument in the Hearing Department and in petitions for interlocutory review before this court. Roshan has failed to offer any new arguments or evidence to support these previously reviewed and denied challenges, and we therefore decline to consider them again. (*In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348, 355 [Review Department found no basis to reconsider judge's refusal to set aside default where previously considered and rejected twice].)

Roshan's second argument is the ANDC did not provide him sufficient notice and, generally, the Rules of Procedure of the State Bar are constitutionally deficient. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." (*Matthews v. Eldridge* (1976) 424 U.S. 319, 333.) Due process generally includes an individual's right to be adequately notified of charges or proceedings, the opportunity to be heard at these proceedings, and that the person or panel making the final decision in the proceedings be impartial. (*Goldberg v. Kelly* (1970) 397 U.S. 254, 267.) State Bar proceedings are *sui generis*, and neither criminal nor civil in nature. (*Yokozeki v. State Bar*

²⁹ Having independently reviewed all arguments Roshan raised, those not specifically addressed herein have been considered and are rejected as lacking merit.

(1974) 11 Cal.3d 436, 447.) Further, disciplinary proceedings are administrative in nature, and not governed by the rules of civil or criminal procedure. (*Walker v. State Bar* (1989) 49 Cal.3d 1107, 1115; *Emslie v. State Bar* (1974) 11 Cal.3d 210, 225–226.)

The State Bar cannot impose discipline for any violation not alleged in the operative notice. (*Gendron v. State Bar* (1983) 35 Cal.3d 409, 420.) Yet adequate notice requires only that the attorney be fairly apprised of the precise nature of the *charges* before the proceedings commence. (*In re Ruffalo* (1968) 390 U.S. 544, 551; *Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 928–929.) Rule 5.41(B) of the Rules of Procedure of the State Bar requires that a NDC must “cite the statutes, rules, or Court orders that the attorney allegedly violated or that warrant the proposed action” and “contain facts, in concise and ordinary language, comprising the violations in sufficient detail to permit the preparation of a defense; no technical averments or any allegations of matters not essential to be proved are required.” We have no reason to recommend to the Supreme Court that this rule fails to meet minimum constitutional standards.³⁰

We find that OCTC correctly followed rule 5.41(B) of the Rules of Procedure of the State Bar. The ANDC specified each charge by stating the statutes or rules violated, as well as the facts, thus giving sufficient notice to allow Roshan to prepare a defense. He filed responses to the NDC and to the ANDC. In addition, Roshan received copies of all exhibits four weeks before trial and submitted both a joint pretrial statement, in which he responded to all of OCTC’s

³⁰ In his reply brief, Roshan states that, since the State Bar Court does not have authority to declare a statute to be unconstitutional, he will raise his constitutional claims in a federal court lawsuit; at oral argument, he confirmed that he has. While we do not have authority to declare a statute unconstitutional, our analysis above applies existing law to Roshan’s constitutional claims. Moreover, our recommendation to the Supreme Court can include a recommendation that a statute or rule is unconstitutional. (*In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424, 433, fn. 11.) Contrary to Roshan’s assertions that the availability of California Supreme Court review is irrelevant, the California Supreme Court’s plenary jurisdiction over attorney discipline includes jurisdiction to review an attorney’s constitutional challenges to the discipline process. (*In re Attorney Discipline System* (1998) 19 Cal.4th 582, 592; *In re Rose* (2000) 22 Cal.4th 430, 447–448 [summary review of [attorney’s] petition for review is full and adequate state court review of federal claims].)

allegations, as well as the Stipulation. Finally, he participated in a pretrial conference, and the five-day trial in which he presented witnesses and evidence and cross-examined OCTC's witnesses. We find that Roshan received ample due process and further, even if he had shown lack of notice, he has not demonstrated the specific prejudice he allegedly suffered. (See *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 495, 501 [defective NDC entitles attorney to relief only if he can show that specific prejudice resulted from defect].)

VII. AGGRAVATION AND MITIGATION

OCTC must establish aggravating circumstances by clear and convincing evidence under standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.³¹ Roshan has the same burden to prove mitigation under standard 1.6. Roshan's petition for review challenges only the hearing judge's finding of uncharged misconduct in aggravation. We analyze that factor below and affirm the hearing judge's other findings in aggravation and mitigation.³²

The hearing judge found moderate aggravation for uncharged misconduct based on Roshan's testimony that he recorded his November 14, 2016 conversation with Romero, and we agree. By recording Romero without his consent, Roshan violated Penal Code section 632, which constitutes a violation of section 6068, subdivision (a). (Std. 1.5(h) [aggravation for uncharged violations of Bus. & Prof. Code]; *Edwards v. State Bar* (1990) 52 Cal.3d 28, 35–36.) Roshan argues that the judge's finding is unconstitutional because he did not have advance notice of the charge. *Edwards* holds that allegations not included in a NDC may not be used as an independent ground of discipline, but can be used to establish aggravation. Under *Edwards*,

³¹ All further references to standards are to this source.

³² We agree that Roshan's multiple acts of misconduct and significant harm to Solheim should be given substantial weight in aggravation. We also affirm the hearing judge's finding of moderate mitigation for good character and cooperation. Finally, we agree that Roshan should not receive any mitigation for no prior record of discipline since his misconduct began immediately after he was admitted to practice law.

use of unnoticed allegations for aggravation requires that the evidence proving the allegations come in through an attorney's own testimony, elicited for the relevant purpose of inquiring into the cause of the charged misconduct. (*Id.* at p. 36.)

Here, Roshan revealed at trial for the first time that he recorded the November 14 conversation with Romero in response to questioning about count eighteen, which alleged that he told Romero he had recorded earlier calls without his consent. The hearing judge dismissed count eighteen. Roshan's testimony revealing that he violated Penal Code section 632 precisely meets the *Edwards* requirements. The analysis in *Edwards* makes clear that, when these circumstances are met, no unconstitutional lack of notice exists. (*Ibid.*)

VIII. 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.) After establishing the applicable standards, we look to comparable case law for guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310–1311.)

We first determine which standard specifies the most severe sanction for the at-issue misconduct. (Std. 1.7(a) [most severe sanction must be imposed where multiple sanctions apply].) Here, the most severe sanctions are standard 2.11, which provides that disbarment or actual suspension is the presumed sanction for acts of moral turpitude, and standard 2.12(a), which provides the same presumed sanction for violations of oath or duties of an attorney.

Applying standard 2.11 and relying on relevant case law, the hearing judge recommended discipline including two years' actual suspension and until Roshan provides proof of his rehabilitation, fitness to practice, and learning and ability in the general law. Roshan does not specifically challenge the judge's discipline analysis because he claims that all of the culpability findings should be reversed. OCTC asserts that the judge's disciplinary recommendation is well supported by the record of evidence and case law.

We find that the cases cited by the hearing judge support the recommended level of discipline. The attorneys in the following cases engaged in similar misconduct as in Roshan's case, where he entered into unfair business transactions, violated his fiduciary duties to his client, and made misrepresentations to an opposing party in *Solheim v. Badboy*, along with other misconduct relating to his handling of Solheim's litigation.

In *In the Matter of Peavey* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483, the case the hearing judge found most applicable, the attorney twice solicited \$25,000 in loans or investments from two different clients in order to publish a book Peavey had written. Peavey failed to disclose known risks and facts about the book venture and we found that he willfully violated former rule 3-300 and his fiduciary duties to both clients in several respects, along with committing acts of moral turpitude for multiple misrepresentations. Moreover, he failed to report a civil judgment to the State Bar or to honor any part of the civil judgments obtained by both clients against him. His mitigating and aggravating circumstances were equal in weight, and Peavey's recommended discipline was an actual two years' suspension and until restitution was paid to both clients.

In *Rodgers v. State Bar*, *supra*, 48 Cal.3d 300, the attorney persuaded his client, a conservator, to loan money from the estate to an ex-client and former business partner who owed him legal fees, which was not disclosed to the conservator. The attorney engaged in an unfair

business transaction with, and violated the fiduciary duties he owed to, the client. He also engaged in acts of moral turpitude by deceiving opposing counsel (for the conservatee) and the probate court, along with other acts of misconduct. The Supreme Court imposed two years' actual suspension.

In *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233, the attorney was found culpable of breaching her fiduciary duty to a client and entering into an improper business transaction with a client by borrowing the bulk of settlement funds from a vulnerable relative whom she represented in a personal injury action. The unsecured loan of approximately \$20,000 was found to be unfair and unreasonable to the client. We found that the conduct involved moral turpitude and recommended that the attorney be placed on actual suspension for two years and until she provided proof of completed restitution and rehabilitation.

Finally, we also find that *Beery v. State Bar* (1987) 43 Cal.3d 802 guides us here. In *Beery*, the attorney solicited and obtained a loan from his client for a venture in which the attorney was involved. The attorney did not fully disclose his involvement with the venture, nor that it had almost no capital and that funds were unobtainable from commercial lenders. He further failed to divulge that he had no funds to make good on the guarantee to his client. The Supreme Court found that the attorney had engaged in an improper business transaction with his client and violated his fiduciary duty to the client, along with other misconduct involving moral turpitude and dishonesty. The Court also held that discipline was warranted by the attorney's "apparent lack of insight into the wrongfulness of his actions" and imposed two years' actual suspension.³³ (*Id.* at p. 816.)

³³ In *Beery*, the Supreme Court also reviewed cases where discipline was imposed for less than two years. We conclude, after review of those cases, that the attorneys' breaches of duty by engaging in a business transaction with a client, coupled with misrepresentation, were less serious than Roshan's actions involving Solheim.

Roshan committed multiple acts of misconduct, the gravamen being the unfair business dealings and breach of his fiduciary duties to his client for his self-interest, including his overreaching in attempting to obtain control of his client's intellectual property. His attempt to also have her pay him for the dubious value he brought to the partnership and his deceitful conduct toward an unrepresented defendant are particularly distasteful. While this disciplinary proceeding is his first, Roshan's actions demonstrate a complete violation of the faith and confidence that his client placed in him, which, along with our conclusion that his aggravation evidence outweighs his mitigation evidence, clearly merit a two-year actual suspension under our case law and as recommended by the hearing judge. We conclude this discipline is necessary to protect the public, the courts, and the legal profession. Additionally, as required by standard 1.2(c)(1) given our recommendation of two years' actual suspension, Roshan must provide proof of his rehabilitation, fitness to practice, and learning and ability in the general law before he returns to practice.

IX. RECOMMENDATION

We recommend that Peyman Roshan, State Bar No. 303460, be suspended from the practice of law in California 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.** Roshan must be suspended from the practice of law for the first two years of his probation, and he will remain suspended until he provides proof to the State Bar Court of his rehabilitation, fitness to practice, and present learning and ability in the general law. (Std. 1.2(c)(1).)
- 2. Review Rules of Professional Conduct.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Roshan 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 Office of Probation in Los Angeles (Office of Probation) with his first quarterly report.
- 3. Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions.** Roshan must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of his 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, Roshan 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. Roshan 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, Roshan must schedule a meeting with his assigned probation case specialist to discuss the terms and conditions of his discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, he may meet with the probation case specialist in person or by telephone. During the probation period, Roshan 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 his probation period, the State Bar Court retains jurisdiction over Roshan to address issues concerning compliance with probation conditions. During this period, he must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to his State Bar record address, as provided above. Subject to the assertion of applicable privileges, Roshan 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.** Roshan 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, Roshan 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.** Roshan 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. Roshan is directed to maintain proof of his compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of his actual suspension has ended, whichever is longer. He is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

8. State Bar Ethics School. Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Roshan 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, Roshan 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 Roshan has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

X. MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Roshan 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 he 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.

XI. CALIFORNIA RULES OF COURT, RULE 9.20

We further recommend that Roshan 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.³⁴ Failure to do so may result in disbarment or suspension.

XII. 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. 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.

XIII. MONETARY SANCTIONS

The court does not recommend the imposition of monetary sanctions as all the misconduct in this matter occurred prior to April 1, 2020, the effective date of rule 5.137 of the Rules of Procedure of the State Bar, which implements Business and Professions Code section 6086.13. (See *In the Matter of Wu* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 263,

³⁴ 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, Roshan is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files 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).)

267 [rules of statutory construction apply when interpreting Rules Proc. of State Bar]; *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1208–1209 [absent express retroactivity provision in statute or clear extrinsic sources of intended retroactive application, statute should not be retroactively applied]; *Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 841 [where retroactive application of statute is ambiguous, statute should be construed to apply prospectively]; *Fox v. Alexis* (1985) 38 Cal.3d 621, 630–631 [date of offense controls issue of retroactivity].)

McGILL, J.

WE CONCUR:

PURCELL, P. J.

HONN, J.