

Filed November 10, 2021

**STATE BAR COURT OF CALIFORNIA**

**REVIEW DEPARTMENT**

In the Matter of	)	SBC-20-O-30528
	)	
EDWARD SHKOLNIKOV	)	OPINION
	)	[As Modified on January 21, 2022]
State Bar No. 237116.	)	
_____	)	

Edward Shkolnikov is charged with five counts of misconduct in two client matters: moral turpitude (misrepresentation), failure to perform with competence, failure to inform client of significant developments (two counts), and improper withdrawal from employment. A hearing judge found Shkolnikov culpable on three of the five counts; he did not find Shkolnikov culpable of the two counts for failure to inform of significant developments. The judge recommended that Shkolnikov be actually suspended for 45 days. The Office of Chief Trial Counsel of the State Bar (OCTC) appeals, arguing that the record supports culpability on all five counts and that an actual suspension of six months is required. Shkolnikov accepts the hearing judge’s findings and recommendation.

Upon independent review of the record (Cal. Rules of Court, rule 9.12), we find Shkolnikov culpable of four counts of misconduct. His misconduct spanned several years, involved intentional misrepresentation to a client, and caused significant harm in two client matters. Under these circumstances, a 45-day actual suspension is not appropriate. Protection of the public, the courts, and the legal profession is necessary and, in order to achieve that, we recommend a six-month actual suspension as warranted under our disciplinary standards.

## I. PROCEDURAL BACKGROUND

OCTC filed a Notice of Disciplinary Charges (NDC) on August 25, 2020. Shkolnikov filed a response on September 23. On November 30, the parties filed a Stipulation to Undisputed Facts (Stipulation). Trial was held on December 8, and closing briefs were filed on December 18. The hearing judge issued his decision on February 16, 2021. OCTC filed a request for review on March 5. After briefing was completed, we heard oral argument on October 13.

## II. FACTUAL BACKGROUND<sup>1</sup>

Shkolnikov was admitted to practice in California on June 1, 2005.

### A. Herrera Matter

On March 3, 2012, Hortencia Herrera was injured while working at a recycling center in San Luis Obispo. A truck crashed into a container while she was inside, causing bundles of plastic bottles and cans to fall on her. On March 12, Herrera retained Shkolnikov to represent her in a personal injury matter. On March 3, 2014,<sup>2</sup> exactly two years after the accident, Shkolnikov filed a complaint on Herrera's behalf. (*Herrera v. Flowers Foods, Inc.* (Super. Ct. L.A. County, No. BC545459).) Shkolnikov and Herrera executed liens with Herrera's medical providers.

Trial was set for September 3, 2015. On August 17, Shkolnikov did not appear for the final status conference (FSC) or communicate with the court as to the non-appearance. The defendant, Flowers Foods, Inc., had not been served with the summons and complaint and did

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<sup>1</sup> The facts are based on the Stipulation, trial testimony, documentary evidence, and the hearing judge's factual and credibility findings, which are entitled to great weight, unless we have found differently based on the record. (Rules Proc. of State Bar, rule 5.155(A); *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737, 748 [Review Department may decline to adopt hearing judge's findings if insufficient evidence exists in record to support them].)

<sup>2</sup> The Stipulation stated that the complaint was filed on May 3, 2014. However, the record indicates that the complaint was filed on March 3.

not appear. The court took the status conference off calendar but kept the trial date on calendar. On September 3, Shkolnikov appeared and advised the court that he would serve the summons and complaint by publication. The court reset the FSC for March 3, 2016, and continued the trial to March 15, 2016. The rescheduled FSC and trial did not take place. Instead, the court issued an order to show cause (OSC) regarding dismissal for failure to prosecute and serve the summons and complaint. On March 3, 2017, Shkolnikov appeared at a hearing on the OSC.<sup>3</sup> He requested a continuance to serve the defendant. The court denied the request and dismissed the case with prejudice.

Herrera testified that Shkolnikov never informed her that her case was dismissed. Instead, she stated that she believed Shkolnikov was still working on her case based on her communications with him and that he had negotiated a \$40,000 settlement. In fact, the record reveals Shkolnikov failed to inform Herrera that there was no settlement and the case had been dismissed two years earlier. Herrera thought that Shkolnikov was working to track down the money from the defendant in her case, which is corroborated by the text messages between Shkolnikov and Herrera in the record. Shkolnikov texted Herrera on August 30 and 31, 2018, respectively, that he was “on the phone tracking” her settlement money, but there was “no money . . . in the account.”<sup>4</sup> Shkolnikov texted Herrera on August 31, 2018, “I settled for 40 we need to pay doctors too. [Whatever] I will save on them will be passed on to you as well.” When Herrera asked Shkolnikov to give her the settlement money, Shkolnikov responded, “I wish I could. As soon as [I] get it I will. Believe me I know how much you need it.” She also asked about court dates and what other work he was doing on the case. She later texted, “[W]hy

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<sup>3</sup> The record does not indicate why the OSC hearing was not held until 2017.

<sup>4</sup> The texts are quoted from the record as styled in the original messages unless indicated in brackets.

won't you send me all my documents of my case...judgment...order you send the bank...all from beginning to end[?]" About a month later, Herrera texted again asking about her money.

Shkolnikov confirmed in a text message that he had promised her \$40,000.<sup>5</sup> Herrera texted Shkolnikov that he needed to call "them" to get the money.

In April 2019, Herrera texted Shkolnikov, "There is a judgment from a judge and these people are . . . not paying off. [P]lease Edward then go back to that judge and let's get this ball rolling." Shkolnikov responded that he was working on finishing her case. Herrera responded that she was going to look into contacting the Better Business Bureau because Shkolnikov had not closed her case. He texted her, "I mean to be fully committed to you. No other cases." In May 2019, Herrera texted asking for an update on her case. Shkolnikov responded, "I am working on it constantly. I hope to give you definite news." Later she asked, "Do you need to go back to court and let the judge know they don't care what he ordered[?]" Herrera testified that she believed Shkolnikov was still working on her case in 2019.<sup>6</sup> The multiple text messages corroborate Herrera's understanding that the case was ongoing and that Shkolnikov was still doing work for her, not that it had been dismissed. The text messages are documentary evidence that Herrera was not aware her case was dismissed, which corresponds to her testimony. The record supports Herrera's version of events—that she was unaware that her case was dismissed,

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<sup>5</sup> Shkolnikov testified that the message he sent to Herrera informing her that her case had settled for \$40,000 was not meant for her but for someone else. The hearing judge found that this portion of Shkolnikov's testimony was not credible. We adopt this finding.

<sup>6</sup> Herrera testified that she told Shkolnikov that she would report him to the State Bar and afterwards he sent her the case file and told her that he could no longer talk to her because she could sue him. Shkolnikov told her that Robert Berke was representing him if she wanted to talk to him. Herrera could not recall if Shkolnikov offered his insurance information to her. She stated she discussed her case with another attorney, but the attorney said there was nothing to be done on her injury case due to the passage of time.

and she believed Shkolnikov was still working on it. Therefore, we find that Herrera did not know her case was dismissed.<sup>7</sup>

**B. Macias Matter**

On March 1, 2013, Peter and Leslie Macias were rear-ended in their vehicle by a Los Angeles County Metropolitan Transportation (Metro) bus. The Maciases were injured and hired Shkolnikov shortly after the accident to represent them in a personal injury matter. In March 2013, Shkolnikov sent Metro a claim for damages on behalf of his clients, which was rejected; the rejection was served on Shkolnikov.

On February 26, 2015, Shkolnikov filed a complaint against Metro. (*Macias, et al. v. L.A. County Metropolitan Transportation Authority, et al.* (Super Ct. L.A. County, No. BC573614).) On November 2, 2016, Metro demurred to the complaint on the ground that the complaint was untimely under Government Code section 945.6 and, therefore, did not state facts sufficient to constitute a cause of action.<sup>8</sup> Shkolnikov did not file an opposition to the demurrer or an amended complaint. On December 16, 2016, Shkolnikov appeared in court for a hearing on the demurrer. The Maciases were also present in court and were aware that the court had made the tentative ruling to dismiss their case. After oral argument, the court adopted its tentative ruling and sustained the demurrer without leave to amend.

After the case was dismissed in December 2016, Shkolnikov did not take any other action on the Maciases' case and did not tell them that he had stopped working on it. The Maciases believed their case was still viable and that Shkolnikov was working on setting aside the

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<sup>7</sup> Based on the record, we decline to adopt the hearing judge's finding that Herrera heard from Shkolnikov and the court at the OSC hearing that her case was dismissed.

<sup>8</sup> Government Code section 945, subdivision (a)(1) generally provides that a suit brought against a public entity must be commenced not more than six months after written notice of the action is given.

dismissal. The Maciases messaged Shkolnikov asking about their case. In January 2018, Shkolnikov texted Leslie Macias that he was working on setting the dismissal aside and that he was “working on fixing it.” Subsequently, the Maciases met Shkolnikov at his office where he admitted that they could no longer sue Metro. He told them that he had made mistakes in their case and they could pursue legal action against him and his insurance.

### III. CULPABILITY

#### A. **Count One: Moral Turpitude – Misrepresentation (Bus. & Prof. Code, § 6106)**<sup>9</sup>

In count one, the NDC alleges that on August 31, 2018, Shkolnikov stated in writing to Herrera that he had settled Herrera’s case, when he knew his statement was false, in violation of section 6106. Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. The hearing judge found that Shkolnikov texted Herrera on August 31, 2018, stating that her case had settled for \$40,000, which was a misrepresentation. The judge found that this misrepresentation was material, as Herrera had been waiting for the resolution of her case for years. He also found Shkolnikov acted intentionally. Therefore, he was found culpable of a moral turpitude violation under count one. OCTC does not seek review of this count and Shkolnikov accepts the judge’s finding. We find clear and convincing evidence<sup>10</sup> that Shkolnikov is culpable under count one and affirm the hearing judge’s culpability determination. (See *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 910 [moral turpitude includes affirmative misrepresentations].)

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<sup>9</sup> All further references to sections are to this source, unless otherwise noted.

<sup>10</sup> 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.)

**B. Count Two: Failure to Perform with Competence (Rules Prof. Conduct, rule 3-110(A))<sup>11</sup>**

In count two, the NDC alleges that Shkolnikov failed to perform with competence in *Herrera v. Flowers Foods, Inc.* by failing to serve the summons and complaint on the defendant from approximately May 2014 to March 2017, in violation of rule 3-110(A). Rule 3-110(A) provides that an attorney “shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence.” The hearing judge found Shkolnikov culpable as charged. His failure to serve the defendant for nearly three years resulted in the dismissal of Herrera’s case for failure to prosecute. Neither OCTC nor Shkolnikov challenge this determination. We find clear and convincing evidence that Shkolnikov is culpable under count two and affirm the hearing judge’s culpability determination. (See *In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308, 316 [rule 3-110(A) violation where attorney failed to timely serve summons and complaint, resulting in dismissal of client’s case].)

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

The NDC alleges in count three that Shkolnikov failed to inform Herrera that her case, *Herrera v. Flowers Foods, Inc.* had been dismissed in violation of section 6068, subdivision (m). Section 6068, subdivision (m) provides that it is the duty of an attorney to “respond promptly to reasonable status inquires 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.”

The hearing judge found that Herrera attended the OSC hearing on March 3, 2017, where her case was dismissed, which was consistent with Shkolnikov’s testimony that he informed

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<sup>11</sup> All further references to rules are to the former California Rules of Professional Conduct that were in effect until November 1, 2018, unless otherwise noted.

Herrera that the court dismissed her case on the day they attended the OSC hearing. The judge found that Herrera heard from Shkolnikov and the court that her case was dismissed, therefore, OCTC did not prove culpability by clear and convincing evidence. The judge dismissed count three with prejudice.

On review, OCTC seeks culpability under count three. OCTC challenges the finding that Herrera heard from Shkolnikov and the court that her case was dismissed and takes issue with the hearing judge crediting Shkolnikov's version of events over Herrera's. The hearing judge reasoned Herrera knew of the dismissal because she attended the OSC hearing where the case was dismissed. While Herrera could not recall the date of the hearing she attended, she was adamant that the judge did not say that her case was dismissed.<sup>12</sup> She testified that she did not understand what the judge said at the hearing, but she trusted Shkolnikov as her lawyer. Regardless of which hearing she attended, Herrera clearly did not know her case was dismissed. Shkolnikov testified Herrera was in court with him at the OSC hearing, he discussed the dismissal with Herrera, and he explained to her what had happened. We find this testimony is unsupported by the record, especially because Shkolnikov thereafter repeatedly misled Herrera in text messages regarding the settlement and his ongoing work on her case.

We agree with OCTC that Herrera's testimony is entitled to more weight than the hearing judge assigned. The text messages support her testimony that she did not know her case was dismissed.<sup>13</sup> Other than his testimony that he explained to her on the day of the OSC hearing

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<sup>12</sup> Herrera testified that she appeared at only one court hearing. However, she could not recall the date of the hearing, only that it was "late in the case" and "[m]aybe two years after" the case started. Herrera testified that the judge at the hearing where she was present told Shkolnikov to "do a writing, a report." She then asked Shkolnikov whether he would do the writing and he stated that he would. She stated that the judge did not say the case was dismissed.

<sup>13</sup> We disagree with Shkolnikov that only Herrera's testimony supports culpability under count three. Rather, the text messages are strong evidence that he did not tell her of the dismissal.

that the case was dismissed, Shkolnikov presented no other evidence that would prove he explained to Herrera that her case was dismissed.<sup>14</sup> There are no messages in evidence correcting her when she referred to court orders or the case being ongoing. Instead, the messages show that he stated he was working on her case and working to get her paid in the \$40,000 settlement. Herrera's testimony and the text messages are sufficient for us to reverse the judge's culpability finding as they show that she was not aware of the dismissal.<sup>15</sup> (*In the Matter of DeMassa, supra*, 1 Cal. State Bar Ct. Rptr. at p. 742 [reversal of hearing judge's findings when unsupported by the record]; *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 315 [under independent review, Review Department may make different findings than hearing judge based on the record].) Based on Herrera's testimony and the text messages, we find that Shkolnikov did not inform Herrera of the dismissal.

Accordingly, we find clear and convincing documentary and testimonial evidence that Shkolnikov failed to keep Herrera informed of significant developments in her case, including the dismissal, and find culpability under count three.<sup>16</sup> However, we do not assign additional disciplinary weight because Shkolnikov's misconduct underlying count three is factually the same as that underlying count one: he was dishonest about the settlement and lied to Herrera

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<sup>14</sup> Shkolnikov's testimony was uncorroborated, and he failed to produce other text messages or other documentary evidence to support his testimony. (See *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113, 122 [appropriate to consider respondent's failure to produce corroborating evidence as indication that his testimony was not credible].)

<sup>15</sup> We reject Shkolnikov's argument that we must review the record under Rules of Procedure of the State Bar, rule 5.150(K), as that rule applies to petitions for interlocutory review, not review of a Hearing Department decision.

<sup>16</sup> OCTC and Shkolnikov make arguments regarding which hearing Herrera attended. We find it unnecessary to make such a finding. Even if she was at the hearing where the case was dismissed, it is clear from the record that she did not understand the court's ruling and that she justifiably believed Shkolnikov was still working on her case.

about the status of her case.<sup>17</sup> (*In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511, 520 [no additional weight in determining discipline where same misconduct underlies two violations].) Therefore, we treat the two violations as a single offense involving moral turpitude. (*Ibid.*)

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

In count four, the NDC alleges that Shkolnikov failed to inform the Maciases that the court sustained the defendant's November 2, 2016 demurrer in *Macias v. L.A. County Metropolitan Transportation Authority*, in violation of section 6068, subdivision (m). The Maciases testified that they were present at the hearing on the demurrer and heard Shkolnikov's argument and the court's ruling on the matter. They also stated they spoke with Shkolnikov about the court's dismissal. Therefore, the hearing judge found that OCTC failed to establish by clear and convincing evidence that Shkolnikov violated section 6068, subdivision (m) as alleged in count four and dismissed the count with prejudice.

On review, OCTC asserts that Shkolnikov committed a section 6068, subdivision (m) violation in the Macias matter by failing to keep his clients informed about their case, including the granting of the defendant's demurrer and the significant events leading to that point. OCTC acknowledges that the NDC does not allege this specific misconduct but contends that the NDC is broad enough to put Shkolnikov on notice that all his communications, or lack thereof, related to the demurrer would be at issue in the disciplinary trial.

"The degree of specificity required [in the NDC] does not necessitate lengthy detailed pleading." (*In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163, 173.)

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<sup>17</sup> We disagree with OCTC that the acts under counts one and three are discrete. Shkolnikov misrepresented that the case had settled when it had actually been dismissed. His failure to inform Herrera about that development—the dismissal—is factually joined with the misrepresentation that he was working on her case and getting her the settlement money.

Rather, the NDC must (1) cite the statutes or rules an attorney allegedly violated, (2) contain facts comprising the violation in sufficient detail to permit the preparation of a defense, and (3) relate the stated facts to the authorities the attorney allegedly violated. (Rules Proc. of State Bar, rule 5.41(B).) Here, the facts charged in count four were very specific—that Shkolnikov failed to inform the Maciases that the court sustained the demurrer. OCTC now asks us to interpret that charge broadly and argues that other facts constitute misconduct that would violate section 6068, subdivision (m) in the Macias matter. We decline to include other alleged misconduct under the charge of count four. To do so would infringe on Shkolnikov’s right to a fair proceeding as he is entitled to adequate notice of the rule or statute he violated and the manner in which he is alleged to have violated it. (*Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 928-929.)

We reject OCTC’s argument that Shkolnikov received notice that his overall communication with the Maciases was being charged. OCTC’s after-the-fact allegations are much broader than what was charged in the NDC and even what was stated in OCTC’s pre-trial statement. (See *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179, 186 [respondent must not be “left to guess” as to why he is being charged with violating a specified statute].) Further, OCTC did not amend the NDC to conform to proof at trial. If the NDC does not match the subsequent proof at the hearing, the NDC may be amended to conform to proof and the respondent must have a chance to respond. (Rules Proc. of State Bar, rule 5.44(C); *Van Sloten v. State Bar*, *supra*, 48 Cal.3d at pp. 928-929; *Marquette v. State Bar* (1988) 44 Cal.3d 253, 264-265.) Because the NDC was narrowly drafted and was not amended to conform to proof, we will not consider OCTC’s allegations on review that Shkolnikov failed to communicate in other instances in the Macias matter.

The Maciases were in court with Shkolnikov when their case was dismissed. They heard and understood the judge’s ruling. Therefore, no violation of section 6068, subdivision (m)

occurred as alleged in count four. We affirm the hearing judge's dismissal of count four with prejudice. (*In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 843 [dismissal of charges for want of proof after trial on merits is with prejudice].)

**E. Count Five: Improper Withdrawal from Employment (Rule 3-700(A)(2))**

Count Five alleges that Shkolnikov failed to take any action on the Maciases' behalf after the December 16, 2016 hearing, and therefore, constructively terminated his employment. The NDC charges that Shkolnikov failed to inform the Maciases that he was withdrawing from employment and did not take reasonable steps to avoid foreseeable prejudice to them, in violation of rule 3-700(A)(2). Rule 3-700(A)(2) provides that an attorney shall not withdraw from employment until the attorney "has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules."

The hearing judge found that after the December 16, 2016 hearing where the court dismissed the case, Shkolnikov did not take any action on the Maciases' case and did not tell them that he had stopped working on the matter. Instead, more than a year after the court hearing, Shkolnikov informed Leslie Macias that he was working on setting aside the dismissal. The judge found that Shkolnikov's failure to take any action resulted in a constructive termination of the employment. Because Shkolnikov failed to give notice to the Maciases that he was no longer working on the case, the judge determined that Shkolnikov was culpable of violating rule 3-700(A)(2). We agree. Neither OCTC nor Shkolnikov challenge this determination. Shkolnikov had a duty to truthfully inform his clients about the status of their case. Instead, he stopped working for them and later lead them to believe that the case was not over and he was working on setting aside the dismissal. Therefore, we find clear and convincing evidence that Shkolnikov is

culpable under count five and affirm the judge's culpability determination. (See *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657, 680 [withdrawal from employment is serious misconduct].)

#### IV. AGGRAVATION AND MITIGATION

Standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct<sup>18</sup> requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Shkolnikov to meet the same burden to prove mitigation.

##### A. Aggravation

###### 1. Multiple Acts of Wrongdoing (Std. 1.5(b))

The hearing judge found culpability for three counts in the NDC and assigned limited weight in aggravation. (See *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646–647 [three instances of misconduct considered multiple acts].) Citing *In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, *In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308, and *In the Matter of Martin* (Review Dept. 2020) 5 Cal State Bar Ct. Rptr. 753, OCTC argues that Shkolnikov should receive significant aggravation for his multiple acts of misconduct because it spanned multiple years and caused significant harm. The facts of those cases are not comparable to the instant matter as they involved more acts of misconduct: 65 improper client trust account (CTA) withdrawals in *Song*, 24 counts of misconduct in *Guzman*, and 168 improper CTA uses in *Martin*. We do not find it appropriate to consider significant harm in assigning the level of aggravation for multiple acts of misconduct. Doing so would double count harm in evaluating standards 1.5(b) and 1.5(j). We

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<sup>18</sup> All further references to standards are to this source.

reject OCTC's argument and find that Shkolnikov's three ethical violations are entitled to limited weight in aggravation.<sup>19</sup>

## **2. Significant Harm to the Client (Std. 1.5(j))**

The hearing judge assigned significant weight in aggravation for the harm Shkolnikov caused Herrera and the Macias. Neither OCTC nor Shkolnikov challenge this finding. Shkolnikov's failure to serve the defendant for over three years caused the court to dismiss Herrera's case. In the Macias matter, Shkolnikov failed to oppose the demurrer, causing the case to be dismissed. In both matters, his clients did not receive their day in court. After the dismissals, he led them to believe he was working on their cases, which was false. The clients were distressed to learn years after the fact that their cases could no longer be pursued. We agree with the hearing judge that Shkolnikov caused significant client harm and assign substantial weight in aggravation. (*In the Matter of Bach, supra*, 1 Cal. State Bar Ct. Rptr. at p. 646 [significant aggravation where attorney failed to pursue client's case resulting in its dismissal].)

## **B. Mitigation**

### **1. No Prior Record of Discipline (Std. 1.6(a))**

Mitigation includes "absence of any prior record of discipline over many years coupled with present misconduct, which is not likely to recur." (Std. 1.6(a).) Because Shkolnikov "admitted that he lacked focus due to personal matters and advised both clients that they may pursue a claim against him," the hearing judge found his misconduct was aberrational and unlikely to recur. (See *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [when misconduct is serious, long record without discipline is most relevant when misconduct is aberrational].) However, the judge

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<sup>19</sup> As explained above, we found Shkolnikov culpable of one additional count more than the hearing judge. However, we do not count it as an additional act under this standard as two of the counts involved the same misconduct.

assigned limited weight in mitigation because Shkolnikov had only practiced approximately seven years without misconduct.

OCTC asserts that Shkolnikov is not entitled to any mitigation under standard 1.6(a). We disagree as Shkolnikov's seven years of discipline-free practice satisfies the first prong of the standard: no prior record of discipline over many years of practice. However, this seven-year period is entitled to only minimal mitigation. (See *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652, 664 [practicing less than seven years is not significant mitigation].) Under the second prong of the standard, OCTC argues that Shkolnikov's mitigation should be further reduced because Shkolnikov did not demonstrate that his misconduct was aberrational. We disagree. We decline to totally eliminate Shkolnikov's mitigation under standard 1.6(a) as he showed some understanding of his misconduct, admitted to the Maciases he made mistakes, and told them to pursue a claim with his malpractice insurance. Further, he does not contest the hearing judge's culpability determinations. And Shkolnikov attributed his misconduct to personal issues affecting his focus and showed some insight into his misconduct. Therefore, the record supports the finding that Shkolnikov's misconduct was aberrational. However, we assign less weight than the judge because Shkolnikov had only practiced for seven years, the minimum amount of time without misconduct to obtain credit for this mitigating factor. We assign minimal mitigation for this seven-year period.

## **2. Cooperation (Std. 1.6(e))**

The hearing judge assigned limited mitigation for Shkolnikov's Stipulation because it involved easily provable facts. Neither OCTC nor Shkolnikov challenge this finding. We agree with the judge. (See *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive mitigation weight for admission of culpability and facts].)

### **3. Extraordinary Good Character (Std. 1.6(f))**

Shkolnikov may obtain mitigation for “extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct.” (Std. 1.6(f).) Four witnesses testified at trial and two more submitted character letters. They included three attorneys, a former client, a friend, and a doctor who had worked with him in Shkolnikov’s capacity as a registered nurse.<sup>20</sup> His character references had known him for a significant amount of time, between 12 and 29 years, and they spoke positively regarding his character and his abilities as an attorney. However, none of the witnesses stated they read the NDC or discussed the details of the charges with Shkolnikov. Because Shkolnikov’s character witnesses were not aware of the full extent of the misconduct, the hearing judge assigned limited weight in mitigation. Neither OCTC nor Shkolnikov challenge this finding. We agree with the hearing judge. (See *In re Aquino* (1989) 49 Cal.3d 1122, 1131 [testimony of witnesses unfamiliar with details of misconduct not given significant weight in mitigation].)

### **4. Extreme Emotional Difficulties (Std. 1.6(d))**

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

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<sup>20</sup> Prior to becoming an attorney, Shkolnikov was a registered nurse for 10 years.

found that some of Shkolnikov's misconduct in 2018—his misrepresentation to Herrera and his claim to the Maciases that he was working on setting aside the dismissal—was mitigated by the emotional difficulties he suffered as a result of family stress at the time. Both his wife and mother were dealing with serious medical issues. His mother then died in September 2018, which caused Shkolnikov great distress. The judge noted that Shkolnikov's failure to perform in the Herrera matter occurred between 2012 and 2017, which preceded his family's health issues. Due to "extremely stressful family circumstances" that Shkolnikov endured when he committed some of the misconduct, the judge assigned moderate weight in mitigation.

On review, OCTC argues that mitigation for emotional difficulties is not warranted because (1) all the misconduct does not coincide with Shkolnikov's family's health issues, (2) Shkolnikov's dishonesty is not explained by his emotional distress, and (3) there were no assurances that his emotional issues are resolved.<sup>21</sup> We agree that Shkolnikov's personal problems do not fully explain his misconduct. The medical issues did not begin until years after Shkolnikov took on the Herrera matter, yet even without these personal problems, Shkolnikov failed to perform competently, resulting in the dismissal of her case. The pressure of dealing with his family's medical problems does coincide with some of the misconduct and is worthy of some mitigation, but not moderate weight as assigned by the hearing judge. Further, Shkolnikov has not demonstrated that when faced with personal problems in the future, he would handle

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<sup>21</sup> OCTC also argued that we should not consider his emotional difficulties mitigating because they were not supported by expert testimony. As noted above, there is precedent for this type of mitigation even without expert witness testimony. (See *In re Brown* (1995) 12 Cal.4th 205, 222 [some mitigation for illness even though no expert testimony establishing illness directly responsible for misconduct]; *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47, 60 [some mitigation assigned to personal stress factors established by lay testimony].) While there was no expert testimony, Shkolnikov did present evidence on the matter. He testified about his emotional difficulties and a friend corroborated that Shkolnikov was very distraught after the death of his mother. Shkolnikov also submitted medical records documenting his family members' diagnoses.

them differently so as to avoid future misconduct.<sup>22</sup> (See *Kaplan v. State Bar* (1991) 52 Cal.3d 1067, 1072-1073 [concern that routine family stresses or medical emergencies will trigger future misconduct when no assurance that emotional issues are resolved].) For these reasons, we assign minimal mitigation for Shkolnikov's emotional difficulties that occurred during some of the time he committed misconduct. We emphasize that this does not mitigate his failure to perform competently in the Herrera matter.

### **5. Pro Bono Work**

Pro bono work is a mitigating circumstance. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) Two character witnesses discussed Shkolnikov's pro bono work for a client who had a serious drug problem. Shkolnikov worked for several years on the client's various criminal cases and also acted as the client's mentor. The client testified that she has been sober for two years and credited Shkolnikov in that achievement. The hearing judge noted in footnote 12 of the decision that he considered mitigation for pro bono work as there was some witness testimony concerning it. However, the judge decided that Shkolnikov did not meet the burden of proof to establish mitigation credit for his pro bono work. On our independent review of the record, we find Shkolnikov's pro bono work for this client is entitled to mitigation. However, he did not establish a prolonged dedication to pro bono work. (See *Rose v. State Bar* (1989) 49 Cal.3d 646, 667 [mitigation for legal abilities, dedication, and zeal in pro bono work].) Therefore, we assign limited mitigating weight.

## **V. 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

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<sup>22</sup> Shkolnikov testified that he was never diagnosed with depression, but when looking back at the time of his difficulties, he stated it was "like a blur." He presented no evidence regarding how he would deal with future difficulties.

maintain high professional standards for attorneys. (Std. 1.1.) Our disciplinary analysis begins with the standards. While they are guidelines for discipline and are not mandatory, we give them great weight to promote consistency. (*In re Silvertown* (2005) 36 Cal.4th 81, 91-92.) The Supreme Court has instructed us to follow the standards “whenever possible.” (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) We also look to comparable case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.)

In analyzing the applicable standards, we first determine which standard specifies the most severe sanction for the at-issue misconduct. (Std. 1.7(a) [most severe sanction shall be imposed where multiple sanctions apply].) The most severe sanction applicable here is under standard 2.11 and provides for actual suspension or disbarment for an act of moral turpitude.<sup>23</sup> Standard 2.11 provides, “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 practice of law.” The hearing judge recommended a 45-day actual suspension. OCTC argues that a six-month actual suspension is warranted due to Shkolnikov’s serious misconduct. Shkolnikov did not appeal and asks us to affirm the hearing judge’s recommendation.

For guidance, the hearing judge looked to *Wren v. State Bar* (1983) 34 Cal.3d 81 and *Gold v. State Bar* (1989) 49 Cal.3d 908. In *Wren*, the attorney failed to prosecute a client’s claim, did not communicate adequately with a client, misrepresented the status of the case to his client, and gave misleading testimony in the disciplinary proceeding. *Wren* had no prior disciplinary record in over 20 years of practice. The court determined that a 45-day actual suspension was warranted. The court in *Gold* looked to the *Wren* decision and determined that

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<sup>23</sup> Standards 2.7(b) and 2.19 are also applicable and provide for actual suspension.

the misconduct in the two cases was similar. In *Gold*, the attorney failed to perform the services for which he was hired, failed to communicate with his clients, and intentionally misrepresented to a client that he had settled her case when it had been dismissed. The court considered in mitigation that (1) Gold paid the client the \$900 he had represented was her portion of the settlement, (2) he was not motivated by a desire for personal enrichment, and (3) he had practiced law for over 25 years with no prior discipline. No aggravating circumstances were found. Gold was ordered actually suspended for 30 days. The hearing judge found that Shkolnikov's mitigation was less than Gold's and a suspension longer than 30 days would be appropriate. The judge found that Shkolnikov's mitigation was more similar to Wren's but considered that Wren made misrepresentations in his testimony in addition to his client. Here, we find that Shkolnikov is entitled to limited or minimal mitigation in four circumstances. We disagree that this is of similar weight to Wren's 20 years of discipline-free practice. Shkolnikov's mitigation is much less. In addition, Shkolnikov has aggravation for multiple acts and significant harm; aggravation was not discussed in *Wren*. We look to other cases for additional guidance.

OCTC asks us to consider *Harris v. State Bar* (1990) 51 Cal.3d 1082, *King v. State Bar* (1990) 52 Cal.3d 307, and *Foote v. State Bar* (1951) 37 Cal.2d 127. The attorney in *Harris* was actually suspended for 90 days for her misconduct including abandoning a client for four years and failure to communicate. The court found that Harris's client suffered substantial prejudice and Harris failed to show remorse or an understanding of her wrongdoing. The court gave some mitigation for Harris's illness, but found that it did not excuse four years of neglect and failure to communicate. Harris also had 10 years of discipline-free practice. We find that the balance of Shkolnikov's aggravation and mitigation is similar to Harris's. Shkolnikov did not fail to show

remorse, but he had additional misconduct including moral turpitude for his misrepresentation to Herrera.

*King v. State Bar, supra*, 52 Cal.3d 307 involved a three-month actual suspension. King willfully neglected his clients in two matters, resulting in an \$84,000 uncollected malpractice judgment against King. King's mitigating circumstances included 14 years of discipline-free practice, depression, divorce, and financial problems. In aggravation, there was a serious financial loss to one client, emotional distress to another client, and King's failure to appreciate the severity of his misconduct. Shkolnikov asserts that we should not compare his case to King's as there was no finding here that he did not accept responsibility for his misconduct. We agree that there was no such finding here and that Shkolnikov's aggravation is less than King's. But Shkolnikov's mitigation is also less than King's. We agree with OCTC that this case is instructive due to the similarities to the instant matter: the neglect in two client matters and the significant harm to clients. However, as was the case in *Harris*, missing from *King* is a moral turpitude violation.

OCTC submits that *Foote v. State Bar* (1951) 37 Cal.2d 127 is most on point. *Foote* involved an attorney who dismissed a will contest without authority and lied to his clients, stating that a hearing on the contest would be held in the future. The clients did not learn about the dismissal until after the probate proceedings were completed and the time to oppose the probate had expired. Foote's numerous misrepresentations were found to involve moral turpitude and the court imposed a nine-month actual suspension. OCTC maintains that because Shkolnikov has some mitigation and Foote had none, that lesser discipline than *Foote* is appropriate. We agree.

We find that *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269 is also instructive. Dahlz was culpable of violating the same rules and statutes as Shkolnikov:

moral turpitude (§ 6106), failure to perform (rule 3-110(A)), improper withdrawal (rule 3-700(A)(2)), and failure to respond to a reasonable client status inquiry (§ 6068, subd. (m)).

Dahlz did not do any substantive work on his client's case for over five years. When a status conference was approaching, Dahlz telephoned the opposing attorney and told her that his client no longer wanted to pursue her claim, which was not true. When he was terminated, he failed to advise his client of upcoming events in her case and failed to give her the case file. Dahlz received aggravation for a single prior record of discipline (no actual suspension), lack of candor for misrepresentations made to the State Bar investigator and false testimony in State Bar Court, multiple acts of misconduct, and significant harm to the client. He received slight mitigating credit for pro bono work and community service. We recommended a one-year actual suspension primarily based on Dahlz's attempt to mislead the State Bar investigator, his false testimony, and his lie to the opposing party to the detriment of his client. Shkolnikov has substantially less aggravation than Dahlz and slightly more mitigation. Therefore, a sanction less than one year of actual suspension would be appropriate. *Dahlz* is informative as it is a more-recent case applying the standard for moral turpitude.

In the Herrera matter, Shkolnikov committed a violation involving moral turpitude when he misrepresented to his client that he settled her case when that was false. Instead, he misled Herrera to believe that he was still working on her case when it was actually dismissed. And the dismissal was a result of Shkolnikov's failure to perform competently when he did not serve the defendant in Herrera's case for nearly three years. In the Macias matter, he improperly withdrew from employment when he stopped providing services and then eventually misled his clients to believe that he was working on their case. Shkolnikov's inattention to his clients in these matters is serious misconduct, especially because it involves dishonesty. (See *Rhodes v. State Bar* (1989) 49 Cal.3d 50, 60 [fundamental rule of legal ethics is that of common honesty].) The case

law and standard 2.11 require that Shkolnikov be actually suspended. Applying the factors in standard 2.11, the degree of the recommended discipline is informed by Shkolnikov's serious misconduct in two client matters; the harm caused to both Herrera and the Maciases, including the dismissal of their cases; and the fact that all of the misconduct related to Shkolnikov's practice of law.<sup>24</sup>

The cases mentioned above provide structure to fashioning the appropriate discipline for Shkolnikov's misconduct. The *Harris* and *King* cases guide us to a sanction higher than an actual suspension of 90 days because neither of those cases involved culpability for moral turpitude, which is present in this matter. At the other end of the discipline spectrum are the *Foote* and *Dahlz* matters. *Dahlz* received a one-year actual suspension for the exact violations as Shkolnikov; however, *Dahlz* was also found to have made misrepresentations to the State Bar, which we do not find here.<sup>25</sup> *Foote* received a nine-month actual suspension for lying to his clients, which established a moral turpitude violation. However, *Foote* had less mitigation than Shkolnikov. Under standard 1.2(c)(1), the typical suspension above 90 days and below one year is six months.<sup>26</sup> Based on the case law, the standards, and the aggravation and mitigation, we find that a six-month actual suspension is appropriate and necessary for the protection of the

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<sup>24</sup> When responding to OCTC's discipline analysis, Shkolnikov stated that he apologized or otherwise admitted liability for his misconduct to his clients. Any apology or admission to his clients, which came years after his misconduct, is not entitled to any special consideration in determining discipline. (See *Hipolito v. State Bar* (1989) 48 Cal.3d 621, 627, fn. 2 ["expressing remorse for one's misconduct is an elementary moral precept"].)

<sup>25</sup> Our finding of a lack of credibility in Shkolnikov's testimony does not equate to clear and convincing evidence that he lied in the disciplinary proceedings. (See *In the Matter of Dahlz*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 282 [discussing distinction between credibility and candor].)

<sup>26</sup> In relevant part, standard 1.2(c)(1) states, "Actual suspension is generally for a period of thirty days, sixty days, ninety days, six months, one year, eighteen months, two years, three years, or until specific conditions are met."

public, the courts, and the legal profession. This discipline will emphasize to Shkolnikov the importance of his ethical duties to his clients.

## **VI. RECOMMENDATION**

We recommend that Edward Shkolnikov, State Bar Number 237116, be suspended from the practice of law for one year, that execution of that suspension be stayed, and that he be placed on probation for one year with the following conditions:

- 1. Actual Suspension.** Shkolnikov must be suspended from the practice of law for the first six months of the period of his probation.
- 2. Review Rules of Professional Conduct.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Shkolnikov must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to his compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Shkolnikov's first quarterly report.
- 3. Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions.** Shkolnikov must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of probation.
- 4. Maintain Valid Official State Bar Record Address and Other Required Contact Information.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Shkolnikov 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. Shkolnikov 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, Shkolnikov 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, Shkolnikov may meet with the probation case specialist in person or by telephone. During the probation period, Shkolnikov 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 Shkolnikov's probation period, the State Bar Court retains jurisdiction over

him to address issues concerning compliance with probation conditions. During this period, Shkolnikov must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to his official State Bar record address, as provided above. Subject to the assertion of applicable privileges, Shkolnikov 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.** Shkolnikov 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, Shkolnikov 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.** Shkolnikov 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.** Shkolnikov is directed to maintain proof of compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of actual suspension has ended, whichever is longer. Shkolnikov 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, Shkolnikov 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,

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

**10. Proof of Compliance with Rule 9.20 Obligation.** Shkolnikov is directed to maintain, for a minimum of one year after commencement of probation, proof of compliance with the Supreme Court's order that he comply with the requirements of California Rules of Court, rule 9.20, subdivisions (a) and (c), as recommended below. Such proof must include: the names and addresses of all individuals and entities to whom Shkolnikov sent notification pursuant to rule 9.20; a copy of each notification letter sent to each recipient; the original receipt or postal authority tracking document for each notification sent; the originals of all returned receipts and notifications of non-delivery; and a copy of the completed compliance affidavit filed by him with the State Bar Court. He is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

## **VII. MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION**

We further recommend that Shkolnikov 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 Shkolnikov 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.

## **VIII. CALIFORNIA RULES OF COURT, RULE 9.20**

We further recommend that Shkolnikov 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.<sup>27</sup> Failure to do so may result in disbarment or suspension.

### IX. MONETARY SANCTIONS

The court does not recommend the imposition of monetary sanctions in this matter, as this matter was submitted for decision in the Hearing Department prior to March 1, 2021, the effective date of amended rule 5.137(H) of the Rules of Procedure of the State Bar, and 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. (See *In the Matter of Wu* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 263, 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].)

### X. COSTS

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

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<sup>27</sup> 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, Shkolnikov is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney’s failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

by the State Bar through any means permitted by law. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against an attorney who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

HONN, J.

WE CONCUR:

PURCELL, P. J.

McGILL, J.

**No. SBC-20-O-30528**

*In the Matter of*  
**EDWARD SHKOLNIKOV**

*Hearing Judge*

**Hon. Dennis G. Saab**

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