PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed September 16, 2022

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	15-O-15162
	)	
WILLIAM AUGUST SALZWEDEL,	)	OPINION
	)	
State Bar No. 225331.	)	
	)	

William August Salzwedel was charged with four counts of professional misconduct related to his representation of an elderly client in a trust matter. A hearing judge found Salzwedel culpable of two counts of misconduct: (1) acquiring a pecuniary interest adverse to a client without complying with the rule requiring disclosure, advice, and written consent; and (2) failing to maintain respect for the courts and judicial officers. The judge recommended an actual suspension of six months, with conditions, including continuing the suspension until Salzwedel pays restitution.

Salzwedel appeals, denying culpability and asserting that the proceeding should be dismissed. The Office of Chief Trial Counsel of the State Bar (OCTC) does not appeal and supports the hearing judge's culpability findings and discipline recommendation.

Upon our independent review of the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge's culpability determinations and discipline recommendation. A six-month actual suspension and a requirement that Salzwedel pay restitution are necessary to protect the public, the courts, and the legal profession.

I. PROCEDURAL BACKGROUND

OCTC filed a Notice of Disciplinary Charges (NDC) on October 13, 2017, and Salzwedel filed his response on November 7. Shortly thereafter, the matter was abated through February 24, 2020, while the underlying civil proceeding was pending. The case was again abated on March 27, 2020, through May 19, 2021, due to the COVID–19 pandemic and related issues. On July 27, 2021, the parties filed a Stipulation as to Facts and Admission of Documents (Stipulation). Trial was held July 27 through 30. The parties submitted closing briefs on August 13 and, on October 28, the hearing judge issued her decision. Salzwedel filed a request for review on November 8 and his opening brief on April 25, 2022. OCTC filed a responsive brief on June 7. We denied Salzwedel's June 27 request to file a late rebuttal brief and to continue oral argument. We heard oral argument on July 13.

II. FACTUAL BACKGROUND[1]

In 1993, Lester Moore and his wife created the Moore Family Trust (Trust), naming themselves as trustees and their daughter as successor trustee and remainder beneficiary. The Trust contained a competency clause that authorized two designated licensed physicians to determine the competency of any trustee and to remove such trustee upon their joint decision and confirmation in writing that the trustee was no longer competent. Moore's wife died in 2001, leaving Moore as the remaining trustee.

In August 2009, Moore appointed his daughter as his attorney-in-fact due to his age (80) and the expectation he would need assistance managing his financial affairs due to his dementia. He began receiving treatment for his dementia a few months later. In early 2010, two of Moore's treating physicians issued letters informing Moore's daughter that he suffered from

[1] The facts 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).)

dementia, which caused him to become easily confused and impaired his judgment, reasoning, and ability to process and retain information. They concluded Moore was no longer competent and recommended that his daughter's authority under the Trust be activated to protect Moore from the undue influence of others. Around the same time, Moore's daughter discovered that he was giving large amounts of money to his girlfriend. When she brought up the issue with her father, he accused his daughter of stealing money from the Trust. On September 28, 2010, Moore signed a revocation of the power of attorney previously given to his daughter.

On October 7, 2010, Moore hired Salzwedel to amend his estate plan and file an elder abuse petition against Moore's daughter. They entered into a written fee agreement that Salzwedel would pursue a financial elder abuse claim and prepare amendments to Moore's estate plan. Salzwedel promptly prepared, and Moore signed, three documents: (1) Moore's resignation as trustee; (2) a partial revocation and modification of the Trust, which removed the daughter as the successor trustee and named Salzwedel as temporary successor trustee; and (3) a durable power of attorney appointing Salzwedel as Moore's attorney-in-fact. Salzwedel made the modification to the Trust without having a copy of it. He did not advise Moore that he could seek the advice of an independent attorney regarding the consequences of naming Salzwedel as the sole temporary trustee while also representing him as his attorney. Salzwedel also failed to provide a writing to Moore describing his services as trustee or the costs for those services and did not ask for Moore's written consent to the terms naming himself as successor trustee.

On October 12, 2010, Salzwedel notified Moore's daughter about the changes to the Trust and that he had been appointed attorney-in-fact for Moore. Salzwedel accused the daughter of violating her duties as trustee.[2]

[2] Subsequently, the daughter accounted for her trustee activities, showing no misappropriation of Trust funds as Salzwedel claimed.

In December 2010, the daughter filed a petition for conservatorship in superior court. In February 2011, she filed a petition in probate court to determine Moore's capacity to execute the estate planning documents. The two matters were consolidated (the *Moore* matter). Judge Glen M. Reiser presided over the *Moore* matter and repeatedly warned Salzwedel that he had a conflict of interest in acting as both the trustee and Moore's attorney. The court appointed Lindsay Nielson as receiver for both Moore's personal assets and the Trust's assets, effective February 22. Salzwedel submitted bills to Nielson for approval. Nielson expressed concerns about the bills, but paid them nonetheless.[3] Salzwedel testified that he believed Moore authorized the bills because Moore never objected to them.

In a March 2011 hearing, Salzwedel agreed to Nielson's proposal to become temporary successor trustee to both Moore's personal assets and the Trust's assets. Judge Reiser stated the proposal was a "really good idea," and the daughter's attorney also agreed to this arrangement. Later, Salzwedel emailed the court, objecting to Nielson managing Moore's personal assets, stating it was tantamount to a conservatorship, which he and Moore opposed. The court then redesignated Nielson as the receiver for both the personal and Trust assets due to Salzwedel's "litigational posturing," resulting in Salzwedel remaining as the temporary successor trustee.

In February 2012, the court appointed Mary Shea from the Ventura County Public Defender's Office as co-counsel for Moore, and Angelique Friend, a professional fiduciary, as temporary conservator of Moore's person and estate. Friend then terminated Salzwedel as Moore's attorney. In May, the court removed Salzwedel as trustee, appointed Friend as

[3] Nielson repeatedly expressed concerns about the amounts Salzwedel charged, believing them to be excessive. Nielson suggested Salzwedel needed to document the amounts spent doing legal work for the Trust, the amounts spent fulfilling trustee duties, and the amounts spent on doing personal services for Moore, such as driving him to the doctor.

temporary successor trustee, and ordered Salzwedel to render an accounting for the Trust from October 2010 through March 2012.

In June 2012, Salzwedel filed a petition to settle his account; however, Friend and the daughter objected. Judge Reiser expressed concern that Salzwedel billed and paid himself $148,015.11, and then approved the payments in his role as trustee, during a time when Moore was "clearly susceptible to elder abuse."

The court disapproved of Salzwedel's fees and medical expert expenses absent a showing that the services benefitted Moore in the amounts charged and that Moore had the capacity to contract for and approve of Salzwedel's fees when services were rendered. He billed his attorney rate of $180 per hour for doing non-legal services (e.g., driving Moore to the bank and doctor's appointments and his girlfriend to the hospital, arranging home care services, scheduling a dermatology appointment, arranging driving lessons for Moore, doing medical research, and searching for Moore when he went missing from the hospital). He also billed Moore for talking to the State Bar when he was being investigated for this disciplinary matter. In addition, Salzwedel charged his attorney rate for performing trustee duties such as overseeing property management and paying property taxes.

A surcharge trial was held concerning Salzwedel's fees, costs, and withdrawals from Moore's accounts. On September 25, 2013, the court filed its decision finding Salzwedel surcharged Moore's accounts by $96,077.14. The court found that,

> Salzwedel was predominantly fighting for his own economic interest, and was not fighting for Mr. Moore's rights. The Court finds that he prevailed upon Mr. Moore, who was a senior with conceded memory issues and prior dementia diagnoses to engage counsel. In that context, Salzwedel infused himself as the trustee of the Moore Family Trust, infused himself as the agent under a Power of Attorney signed by Mr. Moore, and infused himself as the attorney for Mr. Moore with a perceived license to utilize as much of the estate as necessary to satisfy Mr. Salzwedel's vision of what fighting is all about as opposed to the propriety of serving the needs of a prospective and possible conservatee. [¶] Ultimately, even during the conservatorship proceedings, Mr. Salzwedel was drafting testamentary

> documents for signature by [Moore] which would have had the effect of disinheriting his own family in favor of one of Salzwedel's allies.

The court determined that Salzwedel failed to keep adequate time records, used Moore's resources to learn the law, wasted time in preparing documents that were not used, and billed his attorney rate for non-attorney services. Judgment was entered against Salzwedel for $96,077.14, and prejudgment interest and costs were awarded to the conservator of Moore's estate.

Salzwedel filed a request for a new trial, which was denied. He then appealed the surcharge decision and order. The appellate court affirmed the judgment, commended the probate court's ruling and rationale, and ordered a copy of the opinion be sent to the State Bar for possible discipline. The appellate court stated, "Retained counsel for an elderly person suffering from dementia must safeguard the well-being of the person and his or her financial resources. [Salzwedel] did neither." The appellate court agreed with the probate court that Salzwedel put his own financial interests ahead of Moore's interests. The appellate court found substantial evidence to support the finding that Salzwedel's fees were unreasonable, including his drafting an elder abuse petition that was never filed, his preparation of trust amendments and estate planning documents that were neither signed nor filed, his bills to the Trust for educating himself on conservatorship law, and his failure to keep adequate time records. Salzwedel's request for a rehearing was denied by the appellate court. He then filed a petition for review in the California Supreme Court, which was also denied.

On April 26, 2017, Salzwedel filed a complaint for injunctive and declaratory relief and damages in federal court against Judge Reiser, Shea, Friend, Moore's daughter and her attorney, the appellate court that affirmed the surcharge order and decision in the *Moore* matter, the Chief Justice of California, the entire judicial branch of California, and others. (*Salzwedel v. State of California et al.* (C.D. Cal., No. 17-cv-03156).) Salzwedel alleged he was deprived "of his right to represent his client and appear in litigation without animus and insults coming his way from

Judge Glen Reiser, the [appellate court], and other defendants . . . ." He alleged that Judge Reiser conspired against Salzwedel and retaliated against him for defending Moore's civil rights.[4] Salzwedel alleged Judge Reiser conspired with Friend and others to force Salzwedel to remain as trustee with the intent to later enter a surcharge judgment against Salzwedel, thus intending to do Salzwedel harm. Salzwedel declared that Judge Reiser did this because Salzwedel refused to violate his duty of loyalty to Moore. He alleged Judge Reiser had "animus hatred" towards him due to Salzwedel's refusal to allow Nielson to be appointed temporary successor trustee. Salzwedel claimed Judge Reiser was "punishing" him for abiding by his duty of loyalty to Moore and discriminated against him on the basis of Moore's disability.

Salzwedel reasserted these claims in a first amended complaint that he filed in November 2017, alleging discrimination, retaliation, and unequal treatment in the *Moore* matter. He alleged Judge Reiser engaged in unfavorable treatment of him regarding the accounting for "discriminatory and retaliatory reasons." Salzwedel claimed the court used the accounting as a way to punish him "for personal and wrongful reasons" and to "treat him unequally compared to similarly situated persons." Salzwedel claimed this retaliation by Judge Reiser was without any justification. He stated this retaliation "was evident in that [the court] saw no purpose whatsoever in [Salzwedel's] being paid for the protected activity of defending Lester Moore's fundamental rights."

On April 4, 2018, the district court granted the defendants' motion to dismiss the first amended complaint and Salzwedel appealed. The United States Court of Appeals for the Ninth Circuit affirmed the district court, and then denied Salzwedel's subsequent petition for hearing

[4] Friend and Moore's daughter testified in this disciplinary proceeding, stating that they did not observe Judge Reiser retaliating against Salzwedel. Friend attested she has appeared in Judge Reiser's courtroom over 200 times, and she has never seen him be vindictive, express hatred toward anyone, or retaliate against any attorney.

en banc. Salzwedel filed a petition for certiorari in the Supreme Court of the United States, which was denied, and his request for reconsideration was also denied.

III. CULPABILITY[5]

A. Count Two: Adverse Interest to Client (Rules Prof. Conduct, rule 3-300)

Count two alleged that Salzwedel violated rule 3-300 of the Rules of Professional Conduct[6] when he agreed to be the trustee of Moore's trust, while also serving as Moore's attorney, and failed (1) to fully disclose in writing the agreement's terms, (2) to advise in writing that Moore may seek the advice of an independent lawyer, and (3) to obtain Moore's written consent to the agreement. Rule 3-300 provides that to "enter into a business transaction with a client" or "knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client," an attorney must (1) ensure the transaction or acquisition and its terms are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client, (2) advise the client in writing that the client may seek the advice of an independent attorney, and (3) acquire the client's written consent to the terms of the transaction or acquisition. The hearing judge found culpability under count two because Salzwedel failed to comply with rule 3-300 prior to becoming the trustee of the Trust.

On review, Salzwedel argues the hearing judge erred in relying on *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752 to establish culpability. Fonte represented a

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[5] OCTC must prove culpability by clear and convincing evidence. (Rules Proc. of State Bar, rule 5.103; *Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552 [clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command unhesitating assent of every reasonable mind].) We have independently reviewed all of Salzwedel's arguments; any not specifically addressed here have been considered and rejected as without merit. The hearing judge granted Salzwedel's motion to dismiss count one and OCTC's motion to dismiss count three. The parties do not challenge these dismissals on review, and we affirm the dismissal of both counts 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].)

[6] 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.

husband and wife in defending a civil suit related to a sales contract. He later updated a trust agreement for his clients. The update named Fonte as an alternate or successor trustee if either the husband or wife died or was unable to act as trustee. The trust agreement provided that any trustee could lend money to anyone, including the trustee, with a clause that benefits would be withheld if any heir or beneficiary contested a trust provision or an action taken by a trustee. Fonte did not advise his clients they could seek the advice of independent counsel regarding the trust agreement. He discouraged them from naming the husband's daughter as a successor trustee, and he did not give the wife time to read the agreement before signing. The trust agreement gave Fonte unrestricted power as a successor or alternate trustee to borrow trust assets without any security and without oversight. The clause gave Fonte an interest in trust property that was adverse to his clients—he could extinguish their rights and the rights of their heirs and beneficiaries without judicial scrutiny. Fonte failed to disclose the import of this provision, to advise them that they could seek advice from independent counsel, and to secure his clients' written consent to the terms as required under rule 3-300.

Salzwedel asserts that his amendments to his client's Trust do not equate to the *Fonte* trust updates because the amendments Salzwedel drafted did not provide for "immunity from judicial scrutiny" as in *Fonte*. However, *Fonte* did not hold that only such a provision would trigger the requirements of rule 3-300. The holding was simple: before an attorney obtains an interest in trust property that could adversely affect a client, the attorney must fully disclose this interest, give the client the opportunity to consult independent counsel, and obtain the client's written consent. "[Fonte] violated rule 3-300 in drafting and presenting the . . . trust agreement by failing to explain in writing the import of his power as successor or alternate trustee to his clients and its possible impact on their interests in the trust, and by not advising his clients in writing to seek the advice of independent counsel." (*In the Matter of Fonte*, *supra*, 2 Cal. State

Bar Ct. Rptr. at p. 760.) We agree with the hearing judge that, like Fonte, Salzwedel is culpable of violating rule 3-300 for not fulfilling the duties required under the rule when he amended the Trust.

Salzwedel also claims on review that rule 3-300 is unconstitutional as applied to him. This argument is unsupported, as is his argument that he did not have adequate notice that he was being charged with the adverse interest portion of rule 3-300. We agree with OCTC that Salzwedel's actions amount to a business transaction with a client. (See *In the Matter of Fonte*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 760 [court labeled drafting of trust naming attorney trustee a "transaction" under rule 3-300]; *Schneider v. State Bar* (1987) 43 Cal.3d 784, 796 ["transaction" where attorney drafted trust naming himself trustee, which required disclosure, advice, and consent under former rule 5-101].)[7]

Even if Salzwedel's actions were not considered to be a "business transaction" under rule 3-300, he had notice that he was being charged under the rule, which includes acquiring an "interest adverse to a client." Notice is adequate if the attorney is fairly apprised of the charges before the proceedings commence. (*Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 929 [adequate notice requires attorney be apprised of charges].) Salzwedel was apprised of a rule 3-300 charge in the NDC. In addition, in his response to the NDC, he wrote, "Respondent denies that he ever entered into a 'business transaction' with Lester Moore within the meaning

[7] Salzwedel cites American Bar Association (ABA) Formal Ethics Opinion No. 02-426 (2002), which provides that "appointing a fiduciary is not a 'business transaction with a client,'" and does not "require the client to give her signed, informed consent to the essential terms of the arrangement after receiving the lawyer's written advice to seek independent legal advice." This opinion analyzes ethical issues under the Model Rules of Professional Conduct, not the California Rules of Professional Conduct, and does not consider California case law. As discussed *ante*, our case law clearly holds that the requirements of rule 3-300 apply where an attorney drafts a trust instrument giving the attorney an interest in trust property that could adversely affect the client. Accordingly, this ABA ethics opinion is not determinative to Salzwedel's culpability here.

of . . . [r]ule 3-300. Respondent also denies that he acquired any ownership, possessory, security, or other pecuniary interest that was adverse to Lester Moore." Further, at trial, Salzwedel testified, "when an attorney becomes trustee of his client's revocable trust, I don't see how that creates an interest adverse – an interest of the trustee adverse to the settlor . . . ." His response and his testimony clearly demonstrate that Salzwedel had adequate notice of the rule 3-300 charge in the NDC, and thus he was not denied due process.

Finally, Salzwedel claims that he cannot be culpable under count two because he did not "knowingly" acquire an interest adverse to his client because he did not know the Trust was irrevocable. This argument fails as no precedent holds that transactions with a client must be irrevocable to invoke the requirements of rule 3-300.

B. Count Four: Failure to Maintain Respect for Courts and Judicial Officers (Bus. & Prof. Code, § 6068, subd. (b))

Count four alleged that Salzwedel made inflammatory accusations in the complaint he filed in federal court, in violation of Business and Professions Code section 6068, subdivision (b).[8] Specifically, the NDC alleged Salzwedel stated in the federal complaint that Judge Reiser conspired to retaliate against Salzwedel for his advocacy on behalf of Moore, stating there was "animus and insults" from Judge Reiser and the appellate court, that the court and Judge Reiser had an "animus hatred" towards him and sought to do him harm, that Judge Reiser sought to ensure Salzwedel remained as trustee so a judgment would be entered against Salzwedel, and that Judge Reiser intended to "punish" Salzwedel for "abiding by his duty of loyalty" to Moore.[9] Section 6068, subdivision (b), provides that attorneys have a duty to maintain respect due to the courts of justice and judicial officers. The hearing judge found

[8] All further references to sections are to this source, unless otherwise noted.

[9] Though not pleaded in the NDC, Salzwedel repeated the same accusations in his First Amended Complaint.

culpability under count four because Salzwedel made false statements about Judge Reiser in reckless disregard of the truth—he acted unreasonably by making "outlandish" accusations against a judicial officer without first obtaining concrete supporting evidence.

On review, Salzwedel argues his claims in the federal suit against Judge Reiser were actionable and that the merits of his claims were not decided because the action was dismissed based on standing and the *Rooker-Feldman* doctrine.[10] He continues to assert that he had an actionable claim because Judge Reiser retaliated against him through the surcharge decision for Salzwedel's "constitutionally protected conduct," which he describes as his defense of Moore against the proposed conservatorship.[11] He also asserts he was a victim of "disparate treatment" based on the surcharge decision because Judge Reiser had intended to issue such a decision "over two years before the surcharge trial was even started." He states this disparate treatment is evidenced by (1) how Judge Reiser "coddled" Friend when her accounting "was actually far worse" than Salzwedel's, (2) the approval of the attorney fees for the daughter's attorney "without hardly any real inquiry into the[ir] reasonableness," and (3) how Judge Reiser treated the receiver's fee petition concerning the receiver's work in approving Salzwedel's fees. Salzwedel argues, "The record clearly shows that, at least since April 2011, [Judge Reiser] was out to unfairly 'get' [Salzwedel], and the primary way that he intended that to be done was through the Court's surcharge power in addition to the removal of [Salzwedel] (which happened more than a year before the surcharge was finally decided)." In addition, Salzwedel asserts the

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[10] The *Rooker-Feldman* doctrine "prohibits a federal district court from exercising subject matter jurisdiction over a suit that is a de facto appeal from a state court judgment. [Citation.]" (*Kougasian v. TMSL, Inc.* (9th Cir. 2004) 359 F.3d 1136, 1139.) The doctrine takes its name from *Rooker v. Fidelity Trust Co.* (1923) 263 U.S. 413 and *D.C. Court of Appeals v. Feldman* (1983) 460 U.S. 462.

[11] Salzwedel claims that, even if this is not a constitutionally protected activity, his civil rights were still violated under equal protection guarantees. He provides no argument or authority, and, thus, we reject his claim.

record shows that Judge Reiser was biased against him and "hated [Salzwedel] sticking to [his] duty of loyalty to [Moore] and zealously guarding him against the proposed conservatorship . . . ." Salzwedel argues Judge Reiser demonstrated bias by stating Salzwedel "was engaging in a conflict of interest [by] being trustee." Salzwedel asserts Judge Reiser retaliated against him for his refusal to let the court take control of Moore's personal assets. He also asserts the court attempted to "strongarm" him and invited him to betray his duty of loyalty to Moore. Salzwedel shockingly calls Judge Reiser's intentions "despicable."

"[C]riticism by an attorney which amounts to an attack on the honesty, motivation, integrity or competence of a judge who has the responsibility to administer the law may . . . be disciplinable under certain circumstances. [Citations.]" (*In the Matter of Anderson* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775, 782.) Knowingly making a false statement or making a false statement with "reckless disregard of the truth" is not constitutionally protected and an attorney may be disciplined for doing so when making attacks on a judge where the statement is false. (*Id*. at pp. 782-783; see also *In the Matter of Parish* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 370, 375.) We use an objective standard where we must determine what a "reasonable attorney, considered in light of all of his professional functions, would do in the same or similar circumstances." (*Standing Committee v. Yagman* (9th Cir. 1995) 55 F.3d 1430, 1437, citing *United States Dist. Ct. v. Sandlin* (9th Cir. 1993) 12 F.3d 861, 864; see also *In the Matter of Anderson*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 782.) "The inquiry focuses on whether the attorney had a reasonable factual basis for making the statements, considering their nature and the context in which they were made." (*Standing Committee v. Yagman*, *supra*, 55 F.3d at p. 1437.)

Salzwedel alleged in the federal complaint that Judge Reiser acted with animus hatred, intended to punish him, and retaliated against him for defending Moore.[12] His allegations as specified in the NDC are not supported by any credible factual basis contained in the record. Therefore, we agree with the hearing judge that Salzwedel's accusations were false; an objectively reasonable attorney would not have made these types of accusations without concrete supporting evidence.[13] No evidence exists in the record that demonstrates Judge Reiser "retaliated" against Salzwedel. In fact, the record shows Judge Reiser determined that Salzwedel improperly charged Moore, and his ruling and rationale were commended by the appellate court. In addition, Judge Reiser took various actions to address Salzwedel's clear conflict of interest throughout the proceedings. Baseless accusations, like the ones Salzwedel made, impair the functioning of the judicial system. (*In the Matter of Anderson*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 782, citing *Matter of Palmisano* (7th Cir. 1995) 70 F.3d 483, 487.) Further, they are not constitutionally protected. (*In the Matter of Anderson*, *supra*, 3 Cal. State Bar Ct. Rptr. at pp. 782-783.) Salzwedel's allegations violated section 6068, subdivision (b), as Salzwedel did not maintain respect for the court, but, rather, made serious and unfounded accusations about Judge Reiser. (See *Ramirez v. State Bar*, *supra*, 28 Cal.3d at pp. 411-412, fn. 12 [attorney subject to discipline for violation of § 6068, subd. (b)].) Accordingly, we affirm the culpability finding for count four.

[12] Salzwedel also accused Judge Reiser and the appellate court of "animus and insults" against him.

[13] Further, we agree with the hearing judge that, at a minimum, Salzwedel made the false statements with a "reckless disregard for the truth." (See *Ramirez v. State Bar* (1980) 28 Cal.3d 402, 411-412 ["conjecture without factual substantiation" demonstrates false statement "made with reckless disregard of the truth" sufficient to find culpability under § 6068, subd. (b)].)

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[14] requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Salzwedel to meet the same burden to prove mitigation.[15]

A. Aggravation

1. Overreaching (Std. 1.5(g))

The hearing judge assigned substantial weight in aggravation under standard 1.5(g), finding Salzwedel overreached in his agreement with Moore and extended his position of trust to the detriment of his client. Salzwedel was in a position of trust with the ability to exert influence over Moore as both a trustee and an attorney. (See *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233, 243-244 [essence of fiduciary relationship is parties do not deal on equal terms].) It was not fair or reasonable for Salzwedel to think he could bill his client, who had a dementia diagnosis, for non-legal services at his regular attorney rate. (See *Bushman v. State Bar* (1974) 11 Cal.3d 558, 563 [exorbitant fees may constitute overreaching].) As noted in the surcharge decision, Salzwedel exploited his position of trust to Moore's detriment. Further evidence of overreaching is found in Salzwedel's argument that Moore, a vulnerable client, "approved" of Salzwedel's billing because he did not object. "[T]he right to practice law 'is not a license to mulct the unfortunate.'" (*Bushman v. State Bar, supra*, 11 Cal.3d at p. 564, citing *Recht v. State Bar* (1933) 218 Cal. 352, 355.) We agree that Salzwedel's overreaching is entitled to substantial weight in aggravation.

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

[15] In his briefing on review, Salzwedel did not make any arguments regarding the hearing judge's aggravation and mitigation findings.

2. Significant Harm (Std. 1.5(j))

The hearing judge did not find aggravation for significant harm, determining that such a finding would be duplicative for aggravation for failure to pay restitution. While not appealing, OCTC nonetheless argues that we should find aggravation for significant harm because harm resulted from Salzwedel's actions irrespective of his continued failure to make restitution. Salzwedel overbilled Moore and caused the court to expend resources in holding the surcharge trial. Even so, we find OCTC did not establish that this harm was significant to Moore or the administration of justice as required by standard 1.5(j). Accordingly, we do not assign aggravation for significant harm because OCTC has not carried its burden of proving this aggravating circumstance by clear and convincing evidence.

3. Indifference Toward Rectification or Atonement for the Consequences of Misconduct (Std. 1.5(k))

The hearing judge assigned substantial weight in aggravation for Salzwedel's indifference. Salzwedel has failed to recognize the wrongfulness of his misconduct and to accept responsibility, which causes us concern that he would commit future misconduct. (See *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366, 380 [lack of insight into misconduct causes concern that attorney will repeat his misdeeds and is substantial factor in discipline recommendation].) While the law does not require false penitence, it does require that an attorney accept responsibility for wrongful acts and show some understanding of his culpability. (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) Even in this review proceeding, Salzwedel persists in showing disrespect to Judge Reiser, and he does not admit that he failed to follow the clear requirements of rule 3-300. He has shown no remorse for his actions. Therefore, we agree that substantial weight in aggravation is appropriate here under standard 1.5(k).

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

The hearing judge assigned substantial weight in aggravation because Salzwedel has not paid the $96,077.14 surcharge judgment as ordered by the court and has not made any attempt to do so. We agree with the judge's determination. (See *In the Matter of DeClue* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 437, 445 [significant aggravation for failure to repay over $10,000].)

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

The hearing judge assigned substantial weight in aggravation due to Moore's vulnerability. We agree. Moore's age (he was approximately 81 years old when Salzwedel's misconduct began) and dementia made him a vulnerable victim. Salzwedel took advantage of these facts. Accordingly, we affirm the assignment of substantial weight under standard 1.5(n).

B. Mitigation

1. Lack of Prior 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).) The hearing judge assigned limited mitigation for Salzwedel's seven years of practice without discipline. This length of time satisfies the first prong of the standard: no prior record of discipline over many years of practice. (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].) However, the judge did not consider that Salzwedel has failed to demonstrate that his misconduct was aberrational, as required under the second prong of the standard. Due to his complete indifference as discussed above, we assign no mitigation under standard 1.6(a). (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].)

2. Cooperation with OCTC (Std. 1.6(e))

The hearing judge assigned nominal mitigation for Salzwedel entering into the Stipulation, finding that it was of little use in determining culpability and contained facts that were easy to prove. Salzwedel did not admit to any culpability, and the case was complex with a voluminous number of exhibits admitted at trial. Our review of the record shows that Salzwedel entered into a stipulation of mostly easily provable facts, such as filing dates, or dates when correspondence was sent or emails exchanged. We agree with the judge's assignment of nominal weight to this circumstance. (See *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive mitigation weight for admission of culpability and facts].)

V. DISCUSSION

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 Silverton* (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

standard 2.12(a), which provides for disbarment or actual suspension for violations of section 6068, subdivision (b).[16]

The hearing judge relied on *Hogan v. State Bar* (1951) 36 Cal.2d 807 and *Schneider v. State Bar* (1987) 43 Cal.3d 784. Salzwedel did not analyze the discipline recommendation in his opening brief on review. OCTC asserts that *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660 is also instructive.

In *Hogan*, a pre-standards case, the court suspended an attorney for three months when he did not maintain respect due to the courts by referring to a judge in a disparaging way and accusing him of prejudice on the basis of religion.[17] (*Hogan v. State Bar*, *supra*, 36 Cal.2d 807.) In *Schneider*, the court suspended an attorney for 30 days for his failure to give proper notice in a business transaction with clients, as required by the Rules of Professional Conduct. (*Schneider v. State Bar*, *supra*, 43 Cal.3d 784.) That attorney's aggravation for making an intentional misrepresentation was substantially outweighed by the mitigating circumstances, including no prior record of discipline in 13 years of practice, cooperation, considerable evidence of community service, personal difficulties, and an extended period of time having passed after the misconduct with no further discipline. We agree with the hearing judge that Salzwedel's misconduct, along with his aggravating and mitigating circumstances, warrants a recommendation greater than the discipline imposed by Supreme Court in either of the cases analyzed above.

In *Lingwood*, we recommended an actual suspension of 60 days for an attorney's violations of rule 3-300 and her fiduciary duties under the Probate Code. While acting as a trustee, Lingwood improperly made a loan from the trust to herself and violated her fiduciary

[16] Standard 2.4 provides that suspension is the presumed sanction for rule 3-300 violations.

[17] Aggravating and mitigating circumstances were not discussed.

duties to the beneficiaries when she did not provide notice to them that she was making the loan. She repaid the loan in full with interest. Lingwood had no aggravating circumstances and received significant mitigation for no prior record of discipline in 15 years of practice, cooperation for admitting to culpability, extraordinary good character, and community service. Lingwood's misconduct is less extensive than Salzwedel's, as her misconduct only related to her duties under a trust and did not involve additional misconduct that Salzwedel has for the section 6068, subdivision (b), violation. Lingwood had four mitigating circumstances that substantially exceed Salzwedel's one mitigating factor with only nominal weight. Salzwedel has substantial aggravation, while Lingwood had none. Accordingly, a sanction of more than 60 days is appropriate in this matter.

In addition to case law guiding us to an appropriate discipline recommendation, Salzwedel's overall aggravation, which consists of four substantial circumstances that greatly outweigh his nominal mitigation, warrants a sanction above the lower end of the discipline spectrum specified in standard 2.12(a). (See std. 1.7(b) [greater sanction needed to fulfill purposes of discipline when aggravation outweighs mitigation].) Thus, an actual suspension of six months is an appropriate sanction under these circumstances. (See std. 1.2(c)(1) [actual suspension is generally for 30 days, 60 days, 90 days, six months, one year, 18 months, two years, three years, or until specific conditions are met].) In addition, we recommend that Salzwedel remain suspended until the surcharge judgment is paid in full. This requirement is rehabilitative and reinforces the importance of obeying court orders. (See *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 869.) If he remains suspended for two years or longer, he must establish rehabilitation before returning to practice. Accordingly, we affirm the hearing judge's recommendations.

VI. RECOMMENDATIONS

We recommend that William August Salzwedel, State Bar Number 225331, 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 and Until Restitution with Conditional Standard 1.2(c)(1) Requirement.** William August Salzwedel must be suspended from the practice of law for a minimum of the first six months of his probation, and will remain suspended until both of the following requirements are satisfied:

    a. William August Salzwedel makes restitution to the Conservator of the Estate of Lester G. Moore, or to such other recipient as may be designated by the Office of Probation or the State Bar Court, in the amount of $96,077.14 plus 10 percent interest per year from September 25, 2013 (or reimburses the Client Security Fund, to the extent of any payment from the Fund to such payee, in accordance with Business and Professions Code section 6140.5). Reimbursement to the Fund is enforceable as a money judgment and may be collected by the State Bar through any means permitted by law. Salzwedel must furnish satisfactory proof of restitution to the State Bar's Office of Probation in Los Angeles (Office of Probation); and

    b. If Salzwedel remains suspended for two years or longer, he must provide proof to the State Bar Court of his rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, 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, William August Salzwedel 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 Office of Probation with Salzwedel's first quarterly report.

3. **Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions.** William August Salzwedel 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, William August Salzwedel 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.

Salzwedel 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, William August Salzwedel 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, Salzwedel may meet with the probation case specialist in person or by telephone. During the probation period, Salzwedel 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 William August Salzwedel's probation period, the State Bar Court retains jurisdiction over him to address issues concerning compliance with probation conditions. During this period, Salzwedel 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, Salzwedel 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.** William August Salzwedel 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, Salzwedel 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.** Salzwedel 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. Salzwedel 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. Salzwedel 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, William August Salzwedel 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, Salzwedel 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 William August Salzwedel 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.** William August Salzwedel 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 Salzwedel 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 William August Salzwedel 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 Salzwedel 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 William August Salzwedel 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.[18] Failure to do so may result in disbarment or suspension.

IX. COSTS

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment, and may be collected by the State Bar through any means permitted by law. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against an attorney who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

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[18] 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, Salzwedel 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).)

X. MONETARY SANCTIONS

We do not recommend the imposition of monetary sanctions in this matter, as this matter was commenced before April 1, 2020. (Rules Proc. of State Bar, rule 5.137(H).)

McGILL, J.

WE CONCUR:

HONN, P.J.

STOVITZ, J.*

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