

FILED AUGUST 18, 2009

**REVIEW DEPARTMENT OF THE STATE BAR COURT**

In the Matter of	)	<b>No. 04-O-11552 (06-O-10952; 06-O-15463)</b>
	)	
<b>JUAN CHACON</b>	)	
	)	<b>OPINION ON REVIEW; ORDER</b>
A Member of the State Bar.	)	
_____	)	

**I. INTRODUCTION**

The State Bar charged Respondent, Juan Chacon, with 17 counts of misconduct in three client matters from January 2004 until March 2007. The hearing judge found Chacon culpable of 11 counts in two client matters, and recommended he receive three years actual suspension subject to a four-year stayed suspension and probation.<sup>1</sup> The State Bar requests review, urging disbarment, but does not challenge the trial court’s culpability findings. Chacon has three prior records of discipline and he did not participate in these review proceedings. Upon independent review (*In re Morse* (1995) 11 Cal.4th 184, 207), we find Chacon culpable for 13 of the 17 counts of misconduct in all three client matters, and dismiss the remaining counts for lack of proof or as duplicative. Due to the nature of Chacon’s misconduct and his extensive record of prior discipline, we recommend that he be disbarred.

We adopt the hearing judge’s findings of fact but differ with certain conclusions of law and culpability findings. Although the State Bar does not contest the hearing judge’s culpability

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<sup>1</sup> The body of the trial decision states separately that the recommended period of actual suspension is both three years and four years. Since the recommendation itself recites a three-year period of actual suspension, we adopt this as the period intended by the hearing judge, and conclude that any reference to a four-year actual suspension was made in error.

findings, we analyze each charge pursuant to our obligation to conduct independent review of the record. (Cal. Rules of Court, rule 9.12.) In doing so, we find greater culpability than did the hearing judge. However, we recommend disbarment even on the more limited culpability found by the trial court.

## **II. PROCEDURAL BACKGROUND**

Chacon's alleged misconduct in three client matters was prosecuted in two proceedings that were consolidated. In March 2007, the State Bar filed a Notice of Disciplinary Charges (NDC) alleging misconduct in the first two client matters (04-O-11552 and 06-O-10952). After trial, the case was submitted in January 2008. However, in November 2007, the State Bar had filed a second NDC charging misconduct in a third client matter (06-O-15463). In March 2008, the hearing judge vacated the January submission of the first case and consolidated it with the newly filed second case. In May 2008 the hearing judge conducted a trial in the second case, and in September 2008 issued a decision on all three client matters in the consolidated cases. The State Bar timely requested review on October 3, 2008, and filed its opening brief on December 15, 2008. Chacon failed to respond or appear in these proceedings before the Review Department.

## **III. TIMELINE OF PRIOR DISCIPLINES**

As detailed below, the Supreme Court has disciplined Chacon on three prior occasions since he was admitted to the bar in 1989. The first was for misappropriation, failing to delivery client property, falsely stating the amount of a settlement, and failing to cooperate with the State Bar. The later two were for violations of probation. (Std. 1.2(f); *Barnum v. State Bar* (1990) 52 Cal.3d 104, 113 [prior record of discipline includes violation of probation].) In 2003, the Court ordered that Chacon be placed on probation and suspended for 75 days beginning December 18, 2003 (75-day suspension). He violated this probation in 2004 and 2005. As a result, the Court

revoked his probation and lifted the previous stay of a one-year suspension, but reinstated it and placed him on probation for two years subject to a 90-day actual suspension beginning October 2, 2005 (90-day suspension). Chacon violated his probation again in January 2006. The Supreme Court ordered the probation revoked, lifted the stayed suspension and imposed the full one-year actual suspension, beginning September 22, 2006 (one-year suspension).

#### **IV. CULPABILITY**

##### **A. Case Number 04-O-11552 (Jaimes Matter)**

###### **1. Factual Findings**

In August 1999, Rocio Jaimes retained Chacon to represent her in a workers' compensation matter involving back injuries. In July 2001, Jaimes also hired Chacon to represent her in a separate personal injury matter resulting from an automobile accident. Jaimes speaks and reads only Spanish, and testified that Chacon was "never polite," would "get angry" and "yell" at her for not signing documents and treated her "very badly." At one point, he threatened to sue her. Chacon testified that he is fluent in Spanish and communicated directly with Jaimes.

Chacon failed to inform Jaimes that he was unavailable to act as her attorney during his 75-day suspension. On November 23, 2003, Chacon received notice he would be suspended from the practice of law from December 18, 2003, until March 2, 2004. On January 9, 2004, three weeks after his suspension commenced, Chacon sent Jaimes a letter in Spanish, informing her that he would be off work and away from his office for two months, and that another attorney, Holly Rutkowski, would substitute in for him while he was away.<sup>2</sup> Although the lawsuits were nearly resolved, the cases were still pending. Jaimes signed substitution of

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<sup>2</sup>The hearing judge did not admit the English translation of this letter into evidence. Therefore, we rely solely on the testimony of Chacon and Jaimes regarding the content of the January 9, 2004 letter.

attorney forms provided by Chacon only in the workers' compensation case, so Chacon remained attorney of record in the personal injury action.

## **2. Conclusions of Law**

### **Count One: Failing to Inform Client of Significant Development (Bus. & Prof. Code, § 6068, subd. (m))<sup>3</sup>**

Section 6068, subdivision (m), requires in part that an attorney “keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.” The State Bar charged that Chacon violated this duty because he did not inform Jaimes of his 75-day suspension. Chacon’s inability to practice law during his suspension was a significant development in the case, and he had a duty to advise Jaimes that he could not act as her attorney during this period of time. (*In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 575 [§ 6068, subd. (m) violated when suspended attorney failed to advise client that he was “incapacitated” to practice law and failed to communicate with client].) Jaimes had a right to make an informed decision about whether to have Chacon continue as her attorney of record during a time when he could not practice law. By telling Jaimes only that he would be away from his office and not about his legal unavailability, we conclude that Chacon did not inform her of a significant development and violated section 6068, subdivision (m).

### **Count Two: Improper Withdrawal from Employment (Rules Prof. Conduct, rule 3-700(A)(2))<sup>4</sup>**

Rule 3-700(A)(2) prohibits an attorney from withdrawing “from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the

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<sup>3</sup>All further references to section(s) are to the Business and Professions Code unless otherwise noted.

<sup>4</sup>All further references to rule(s) are to the State Bar Rules of Professional Conduct unless otherwise noted.

client, including giving due notice to the client, allowing time for employment of other counsel . . . and complying with applicable laws and rules.” The State Bar alleged Chacon violated this rule in two ways: 1) he did not inform Jaimes that he was withdrawing as her attorney until January 9, 2004, which was 22 days after his suspension began; and 2) he did not provide Jaimes an opportunity to retain a new attorney before his suspension took effect. We agree.

Chacon informed Jaimes of his suspension three weeks after it went into effect and therefore well after he effectively withdrew from employment. Although Chacon arranged for Rutkowski to replace him in the workers’ compensation matter, the notification was too late. The untimely disclosure denied Jaimes a proper opportunity to hire another attorney of her choice in the worker’s compensation matter or to seek alternate legal representation, if she chose, in the personal injury matter where Chacon remained attorney of record. We find Chacon’s conduct violated rule 3-700(A)(2). (See *In the Matter of Kopinski* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716, 725 [attorney who transferred client’s case to another attorney improperly withdrew from employment when he failed to give client sufficient notice].)

**Count Three: Moral Turpitude (§ 6106)**

Section 6106 prohibits an attorney from “commit[ting] any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise . . . .” The State Bar alleged that Chacon misled Jaimes to believe he was voluntarily taking time off from his practice, instead of informing her that he was unable to represent her during his suspension.

As discussed, Chacon had a duty to communicate to Jaimes that he was not able to act as her attorney during his suspension. Instead, Chacon concealed this and deliberately misrepresented that he was voluntarily taking two months off from work. This statement was false because his absence from the office was involuntary and the suspension lasted for 75 days,

not two months. We conclude Chacon's deception constitutes moral turpitude. (*Arm v. State Bar* (1990) 50 Cal.3d 763, 771, 775 [attorney violated § 6106 when he concealed his suspension by characterizing his unavailability for court hearings as "a problem with the bar"].)

**B. Case Number 06-O-10952 (Miranda Matter)**

**1. Factual Findings**

In July 2003, Leticia Miranda hired Chacon to represent her in a personal injury matter. Miranda speaks only Spanish. On September 7, 2005, Chacon received notice of his 90-day suspension beginning October 2, 2005. On September 19, 2005, Chacon informed Miranda by letter that her deposition was rescheduled to November 29, 1995, but did not mention his upcoming suspension. On October 1, 2005, the day before his suspension took effect, Chacon met with Miranda and informed her for the first time about the impending suspension. During the meeting, Miranda signed a substitution of attorney form that Chacon had prepared. The substitution placed Miranda in pro per. Chacon did not refer Miranda to another attorney or make arrangements for substitute counsel to replace him.

After Chacon withdrew from employment, Miranda repeatedly and unsuccessfully sought her client file from him in order to provide it to another attorney. She called Chacon's office, but he did not return her call. She also faxed and mailed a written request, but he did not respond. Miranda then spoke with Chacon's secretary and scheduled a meeting with him. When she arrived at his office, it was closed. Chacon has admitted he did not return Miranda's file because he could not locate it.

**2. Conclusions of Law**

**Count Four: Improper Withdrawal from Employment (Rule 3-700(A)(2))**

We find Chacon culpable for violating rule 3-700(A)(2), by withdrawing from employment one day before his suspension took effect. Miranda had no reasonable opportunity

to find new counsel. (*In the Matter of Kopinski, supra*, 2 Cal. State Bar Ct. Rptr. at p. 725.

Further, Chacon failed to take any steps to avoid reasonably foreseeable prejudice to Miranda such as making a referral to or arrangements for substitute counsel.

**Count Five: Failure to Release File (rule 3-700(D)(1))**

The State Bar has alleged a violation of rule 3-700(D)(1) for failing to return Miranda's file to her upon request. This rule requires that an attorney whose employment has terminated must "promptly release to the client, at the request of the client, all the client papers and property." It is undisputed that after Chacon terminated his employment with Miranda and after numerous requests, he never returned her file. We therefore find him culpable of violating rule 3-700(D)(1).<sup>5</sup>

**Count Six: Failure to Respond to Client Inquiries; Failure to Inform Client of Significant Development (§ 6068, subd. (m))**

Chacon failed to advise Miranda of his impending suspension until one day before it took effect and failed to answer Miranda's many inquiries about her case that she made by phone, letter, fax and in person. The conduct constitutes a failure to communicate, as charged in this count by the State Bar.

**Count Seven: Moral Turpitude (§ 6106)**

Chacon is charged with a violation of section 6106 for failing to disclose in his September 19, 2005 letter to Miranda that he was going to be suspended beginning October 2, 2005. The State Bar does not contest the hearing judge's dismissal of the charged based on

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<sup>5</sup> A violation of rule 3-700(D) (failure to return file) may duplicate a portion of conduct disciplinable as a violation of rule 3-700(A)(2) (improper withdrawal). (*In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 280.) However, the NDC here alleges failure to return the file only as a rule 3-700(D) violation. We therefore review violations of rules 3-700(D) and 3-700(A)(2) separately.

insufficient clear and convincing evidence that this conduct constituted moral turpitude. We agree with and adopt the hearing judge's dismissal.

**C. Case Number 06-O-15463 (Rojas Matter)**

**1. Factual Findings**

In July 2002, Chacon filed a lawsuit on behalf of Carmen Rojas, who hired him to pursue her claims resulting from a car accident. Rojas communicated with Chacon in Spanish. The defendant in the lawsuit propounded discovery. Chacon provided responses four months late and only after opposing counsel filed a motion to compel and a request for sanctions. The superior court notified the parties of the scheduled trial date but granted opposing counsel's motion for a continuance. Chacon was sent notice of each of these events, but never informed Rojas.

Four days before his 90-day suspension commenced on October 2, 2005, Chacon notified Rojas of a settlement offer in her case. Rojas told Chacon she wanted time to think about it. Chacon became angry and informed her that she had until that Saturday, October 1, 2005 to decide because he was going to be suspended from the practice of law on October 2, 2005. This was the first time Chacon told Rojas about the impending suspension even though he had known about it since September 7, 2005. Chacon informed opposing counsel and the court of his suspension, but he remained attorney of record for Rojas at her request. During his suspension, he did not communicate with Rojas although she made numerous attempts to contact him to discuss the proposed settlement. Rojas was not informed that Chacon closed his law office sometime in October 2005 and moved to Tennessee where he remained until August 2006. In January 2006, Chacon contacted Rojas and she agreed to settle the case for \$7501. He did not provide her with his telephone number or inform her he was living in Tennessee.

After unsuccessfully searching for Chacon for approximately six months, Rojas filed a small claims action against him in May 2006 for her share of the settlement proceeds. Chacon



continued the hearing to September 29, 2006, but failed to appear. The court entered judgment against him for \$5500 (the full amount prayed in the complaint) plus \$105 in costs. In November 2006, Chacon received the settlement check for \$7501, and moved to vacate the small claims judgment, asserting that Rojas caused the delay in receiving her funds by refusing to sign the settlement agreement until August 2006. However, Chacon had received the settlement agreement by March 2006 and made no effort to have Rojas sign it until after she filed the small claims action against him.

On January 19, 2007, Chacon and Rojas agreed to vacate the small claims judgment and reached a mediated agreement. Rojas endorsed the \$7501 settlement check Chacon had received in November 2006. According to the agreement, Chacon was to deposit the funds into a trust account and pay Rojas \$5501 by February 9, 2007.

Chacon did not deposit the endorsed settlement check into his client trust account and did not timely pay Rojas. Instead, on February 13, 2007, Chacon returned the endorsed settlement check to opposing counsel and requested two separate checks: one for Rojas and one for himself. At the time, Chacon was serving the one-year suspension that commenced on September 22, 2006, and claimed that opening a client trust account “would be an indication that [he] was practicing law under suspension . . . .” Rojas finally received her settlement check from opposing counsel after March 20, 2007.

As part of Chacon’s 90-day and one-year suspensions, the Supreme Court ordered him to comply with the requirements of California Rules of Court, rule 955.<sup>6</sup> In November 2005, Chacon filed an affidavit of compliance as required under the provisions of rule 9.20(c), declaring under penalty of perjury that he “complied with the [d]uties of . . . suspended attorneys

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<sup>6</sup> This rule has been renumbered as rule 9.20. All further references to former rule 955 are to this current rule 9.20.

pursuant to Rule [9.20] of the California Rules of Court.” In January 2007, Chacon submitted a compliance affidavit stating under penalty of perjury that he had no clients as of November 2006. In March 2007, he submitted another compliance affidavit, again stating under penalty of perjury that he had no clients as of November 2006. He attached a declaration to his March 2007 affidavit stating that “I have had no clients since October 2005 and prior to closing my office, my former clients retained new counsel and to my knowledge all files have been delivered to the appropriate clients with the apparent exception of the Carmen [sic] Miranda file.”

## **2. Conclusions of Law**

### **Count One: Failure to Respond to Client Inquiries (§ 6068, subd. (m))**

Chacon failed to respond to Rojas’ inquiries in October 2005 and beyond. He did not notify Rojas that a request for sanctions was filed, that a trial date was set in her case and subsequently continued and that he closed his law office and moved to Tennessee. We conclude Chacon violated section 6068, subdivision (m).

### **Count Two: Failure to Withdraw from Employment (Rule 3-700(B)(2))**

The State Bar alleges that Chacon failed to withdraw from employment when he knew or should have known that continued employment would result in a rule violation. However, the NDC alleges at Count Three that Chacon improperly withdrew from employment. Based on our conclusion in Count Three below that Chacon did, in fact, improperly withdraw from employment, we dismiss this count with prejudice.

### **Count Three: Improper Withdrawal from Employment (Rule 3-700(A)(2))**

We find that Chacon improperly withdrew from employment, as charged by the State Bar. While still Rojas’ counsel of record, Chacon closed his law office and moved to Tennessee for almost one year without providing Rojas proper notice or any means of contacting him.

Also, he informed Rojas of his suspension only four days before it took effect, which did not afford Rojas adequate time to seek replacement counsel.

**Count Four: Failure to Deposit Client Funds in Trust (Rule 4-100(A))**

Rule 4-100(A), which requires that “All funds received or held for the benefit of clients by a member . . . shall be deposited in one or more identifiable bank accounts labeled ‘Trust Account,’ ‘Client’s Funds Account’ or words of similar import, maintained in the State of California . . . .” Chacon is culpable for this rule violation because he never deposited the settlement check into a trust account even after Rojas endorsed it and after he had agreed at the small claims mediation to do so.

**Count Five: Failure to Pay Client Funds Promptly (rule 4-100(B)(4))**

Rule 4-100(B)(4) requires an attorney to “Promptly pay or deliver, as requested by the client, any funds, securities, or other properties in the possession of the member which the client is entitled to receive.” Although Chacon received Rojas’ settlement proceeds in November 2006, Rojas did not receive her share until the end of March 2007. Chacon’s four-month delay in distributing the settlement proceeds is a violation of rule 4-100(B)(4), particularly since he was aware from the small claims action that Rojas was actively seeking the funds. (See, e.g., *In the Matter of Berg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725, 735 [failure to make disbursement to client for six weeks was material period of time constituting violation of rule 4-100(B)(4)].)

**Count Six: Failure to Perform Competently (Rule 3-110(A))**

Rule 3-110(A) prohibits attorneys from “intentionally, recklessly, or repeatedly fail[ing] to perform legal services with competence.” In representing Rojas, Chacon provided late discovery responses, and only after opposing counsel filed a motion to compel and request for sanctions. Also, Chacon’s conduct surrounding his response to the small claims action and the

unreasonable delay in Rojas receiving the settlement monies is inexcusable. We find that Chacon failed to perform competently in his management of the Rojas Matter.

**Count Seven: Moral Turpitude (§ 6106)**

Chacon made material misrepresentations to the superior court when he moved to vacate Rojas' small claims judgment against him. He falsely claimed that Rojas refused to sign the settlement agreement and that she alone caused the delay in receiving her settlement funds. In fact, Rojas was unable to locate Chacon and the delays were entirely a result of his misconduct. Chacon's misrepresentations violate section 6106.

**Count Eight: Failure to Obey Court Order (§ 6103)**

The State Bar alleged that Chacon violated a Supreme Court disciplinary order requiring compliance with the notice requirements of rule 9.20.<sup>7</sup> Because Chacon sent various letters to Rojas, the superior court and opposing counsel about his impending suspension, we do not find the State Bar presented clear and convincing evidence that Chacon failed to comply with the notice requirements of rule 9.20 as to the Rojas Matter.

**Counts Nine and Ten: Failure to Obey Court Order (§ 6103)  
and Moral Turpitude (§ 6106)**

In count nine, the State Bar charged Chacon with violating two Supreme Court orders requiring his compliance with rule 9.20 on the grounds that compliance affidavits he submitted contained material misrepresentations. The State Bar relied on these same misrepresentations when it charged Chacon with acts involving moral turpitude in count ten. Since we consider count nine duplicative of count ten, we find no culpability on count nine and dismiss it with prejudice. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr.

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<sup>7</sup> Rule 9.20 requires in part that attorneys who have been suspended must give certain notices to clients, the court and opposing counsel.

774, 786-787 [dismissal of duplicative charges appropriate where misrepresentations establishing violation of duty not to mislead judge were included in section 6106 charge].)

As to count ten, the provisions of rule 9.20(c) require an attorney to “file . . . an affidavit showing that he or she has fully complied with those provisions of the order entered under this rule.” Chacon submitted false statements in his affidavits. He asserted in his compliance affidavits and supporting declaration that he had no clients as of November 2006 and October 2005, respectively. In fact, Rojas remained his client at least until she received the settlement in March 2007. Based on these misrepresentations, we conclude that Chacon committed an act of moral turpitude.

## V. FACTORS IN AGGRAVATION AND MITIGATION

### A. Aggravation

#### 1. Prior Record of Discipline (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i)<sup>8</sup>)

Chacon’s extensive record of discipline is a significant aggravating factor under standard 1.2(b)(i). In 2003, the Supreme Court suspended him for 75 days for misconduct in 2001. He misappropriated \$1,395.90, failed to promptly deliver client property, falsely stated the amount of a settlement and the amount he kept as fees and failed to cooperate with the State Bar’s investigation. Chacon’s misconduct caused significant client harm and he received mitigation credit for no prior record of discipline.

In 2005, the Supreme Court suspended Chacon for 90 days for failing to comply with probation conditions imposed on him as a result of his prior discipline, including failure to submit a quarterly report and certificates of financial condition. His misconduct began in April 2004 and was aggravated by multiple failures to submit probation reports, indifference toward

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<sup>8</sup>All further references to standard(s) are to this source unless otherwise noted.

rectification, lack of candor, and uncharged misconduct including failing to promptly disburse client funds.

In 2006, the Supreme Court suspended him for one year after he failed to comply with a probation condition requiring him to provide appropriate financial certification with his probation reports. This misconduct began in January 2006 and was aggravated by Chacon's multiple failures to submit financial certifications and his indifference toward rectification.

**2. Multiple Acts of Misconduct and Harm (stds. 1.2(b)(ii) and 1.2(b)(iv))**

Chacon engaged in multiple acts of misconduct (std. 1.2(b)(ii)) and caused significant harm to two clients. (Std. 1.2(b)(iv).) In the Miranda Matter, the client never received her file. In the Rojas Matter, the client was required to pursue a small claims judgment to obtain her settlement funds. We find this harm from multiple acts of misconduct to be aggravating factors.

**B. Mitigation**

**1. Cooperation (std. 1.2(e)(v))**

Chacon cooperated with the State Bar by entering into a factual stipulation at the outset of trial covering background facts and admission of certain exhibits. Although the stipulated facts were not difficult to prove (compare *In the Matter of Silver* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 902, 906 [attorney afforded substantial mitigation for his cooperation by stipulating to facts not easily provable]) and Chacon did not admit culpability, the stipulation was relevant and assisted the State Bar's prosecution of the case. Under these circumstances, we accord Chacon limited mitigation under standard 1.2(e)(v). (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190.)

**2. Emotional Difficulties (std. 1.2(e)(iv))**

The hearing judge concluded that Chacon suffered from emotional difficulties due to "an extremely contentious and difficult divorce at the time of his misconduct." According to the

standards, “Circumstances which shall be considered mitigating are: [¶] . . . . [¶] (iv) extreme emotional difficulties or physical disabilities suffered by the member at the time of the act of professional misconduct which expert testimony establishes was directly responsible for the misconduct; provided that . . . the member has established through clear and convincing evidence that he or she no longer suffers from such difficulties or disabilities.” (Std. 1.2(e)(iv).) The State Bar argues that Chacon failed to provide evidence, via expert testimony or otherwise, establishing that his fourth divorce was directly responsible for his misconduct, and that the divorce no longer affects his practice of law. We agree, and decline to afford him mitigation under standard 1.2(e)(iv). (*Kelly v. State Bar* (1991) 53 Cal.3d 509, 520, fn. 7 [no mitigation for emotional difficulties from divorce absent expert testimony].)

### **3. Good Character (std. 1.2(e)(vi))**

The hearing judge found that Chacon was entitled to “considerable weight” in mitigation for establishing good character through five “very credible” witnesses who testified as to his integrity and overall good character. Under the standards, we afford mitigation for “an extraordinary demonstration of good character [when] attested to by a wide range of references in the legal and general communities . . . who are aware of the full extent of the member’s misconduct.” (Std. 1.2(e)(vi).) The State Bar asserts that Chacon’s witnesses – two attorneys, a U.S. Marshall, an administrative consultant, and a professional interpreter – do not represent a broad range of references and disputes the considerable mitigation weight given by the hearing judge. While we adopt the hearing judge’s finding of good character under standard 1.2(e)(vi), the witnesses do not represent a broad range of references, and we therefore give only limited weight in mitigation. (See *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 387 (six character witnesses, including three lawyers, afforded “limited” mitigation weight as not representing a broad range of references].)

#### **4. Recognition of Wrongdoing (std. 1.2(e)(vii))**

The hearing judge granted mitigation credit for recognition of wrongdoing because Chacon took responsibility for losing Miranda's file. The State Bar urges that this finding is legally and factually incorrect. The standards afford mitigation credit for "objective steps promptly taken by the member spontaneously demonstrating remorse [or] recognition of . . . wrongdoing . . . designed to timely atone for any consequences of the member's misconduct." (Std. 1.2(e)(vii).) Although he admitted losing Miranda's file and apologized at trial, Chacon never took any "objective steps" to mitigate his harm – such as obtaining a duplicate file from the court or opposing counsel. Under these circumstances, we decline to afford him any mitigating credit under standard 1.2(e)(vii).

#### **VI. LEVEL OF DISCIPLINE**

In determining the degree of discipline to recommend, we consider the standards, which serve as guidelines, as well as prior decisions imposing discipline based on similar facts. (*In the Matter of Taylor, supra*, 1 Cal. State Bar Ct. Rptr. at p. 580.) Several applicable standards would require Chacon's suspension or disbarment. (Stds. 1.7(b), 2.2(b), 2.3, 2.4(b), 2.6 and 2.10.)<sup>9</sup> Since the standards are recognized as guidelines, it is not mandatory for us to recommend either, however. Instead, we review the record and relevant case law to guide us in order to best achieve the purpose of disciplinary proceedings, which is to protect the public, preserve public confidence in the profession and maintain the highest possible standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

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<sup>9</sup>See also rule 9.20(d), which provides in part: "A suspended member's willful failure to comply with the provisions of this rule is a cause for disbarment or suspension and for revocation of any pending probation."



Standard 1.7(b) is most pertinent to the disciplinary analysis in this case. The State Bar argues that disbarment is appropriate based on Chacon's lack of mitigation and prior disciplinary record. The standard provides that, if an attorney "has a record of two prior impositions of discipline . . . the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate." Chacon's mitigation is neither compelling nor clearly predominating. To the contrary, his extensive record of discipline, multiple acts of misconduct, and client harm greatly outweigh the mitigation.

Chacon's present misconduct spanned a time period commencing before and continuing contemporaneously with the misconduct in his third discipline case. Typically, we would diminish the aggravating force of prior discipline under these circumstances. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Court Rptr. 602, 618-619 [where prior misconduct took place during same time period as current misconduct, aggravating force of prior discipline is generally diminished].) However, Chacon also committed significant misconduct after the Supreme Court imposed discipline in his third disciplinary proceeding, indicating to us that he will not conform his behavior to the rules of professional conduct. Giving full weight to the three prior disciplinary matters, we conclude that Chacon's repeated encounters with the disciplinary system have not rehabilitated or deterred him from committing further misconduct.

We find the record and decisional law support our application of standard 1.7(b). As in his prior discipline case, Chacon has again engaged in similar misconduct involving moral turpitude and caused client harm. Disbarment is appropriate for many reasons: (1) There is no compelling mitigation to warrant deviating from applying standard 1.7(b); (2) The risk of future misconduct is great based on a continuing pattern of misconduct despite prior discipline; and (3) Chacon repeatedly demonstrated indifference to probation requirements imposed by successive disciplinary orders of the Supreme Court. (See *Morgan v. State Bar* (1990) 51 Cal.3d 598, 607

[standard 1.7(b) applied to disbar attorney whose behavior demonstrated pattern of professional misconduct]; *Barnum v. State Bar*, *supra*, 52 Cal.3d 104 [disbarment appropriate where attorney twice disciplined for misconduct similar to current proceeding and for violating probation].)

In addition, Chacon's failure to comply with two separate Supreme Court orders requiring him to satisfy the requirements of rule 9.20 further compel us to recommend his disbarment. "[D]isbarment is generally the appropriate sanction for a willful violation of rule [9.20.] [Citations.]" (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Finally, we note Chacon's failure to participate in the proceedings on review. When violation of a Supreme Court order requiring compliance with rule 9.20 is coupled with indifference to successive disciplinary orders and a failure to participate on review, we have recommended disbarment primarily out of concern for public protection. (*In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439, 444.)

## **VII. RECOMMENDATION**

We recommend that Juan Chacon, State Bar number 141465, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys licensed to practice. We further recommend that he be ordered to comply with the provisions of California Rules of Court, rule 9.20 and 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's order in this matter. We further recommend that the State Bar be awarded costs in accordance with section 6086.10, which are enforceable both as provided in section 6140.7 and as a money judgment.

### **VIII. ORDER OF INACTIVE ENROLLMENT**

Pursuant to the provisions of section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 220(c), Juan Chacon is ordered enrolled inactive upon personal service of this opinion or three days after service by mail, whichever is earlier.

PURCELL, J.

We concur:

REMKE, P. J.

EPSTEIN, J.