PUBLIC MATTER - NOT DESIGNATED FOR PUBLICATION

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matters of	Nos. **05-O-03160, 05-O-03161**
JOE MENDIVEL and GERALD J. JANSEN,	**OPINION ON REVIEW**
Members of the State Bar.	

Respondents Joe Mendivel and Gerald J. Jansen opened a law office and practiced workers' compensation law in Illinois from approximately July 2004 to April 2005. Neither one was licensed to practice law in Illinois during this time and they had not properly associated with a licensed Illinois lawyer. We find that their actions constituted a willful violation of rule 1-300(B) of the Rules of Professional Conduct,[1] which prohibits the unauthorized practice of law (UPL) in another jurisdiction.

Based on their UPL in Illinois, the hearing judge recommended that each respondent be actually suspended from practice for 30 days as a condition of a longer stayed suspension. The State Bar appeals, seeking at least six months' actual suspension by arguing that there are more factors in aggravation and fewer in mitigation than the hearing judge found. Mendivel and Jansen did not appeal, but urge us to dismiss the case for insufficient evidence of culpability. Alternatively, if we find culpability, they ask for a reproval at most.

Although we must independently review the record (Cal. Rules of Court, rule 9.12), we do not address respondents' arguments regarding culpability or their request for reduced discipline since they did not seek review and those issues are not properly before us. We defer to

[1]Unless noted otherwise, all later references to rules are to the provisions of the Rules of Professional Conduct of the State Bar.

the hearing judge's credibility findings that both Mendivel and Jansen honestly believed they could represent Illinois claimants. Nevertheless, we find in aggravation that the operation of their Illinois law practice was surrounded by multiple acts of dishonesty. As such, the aggravation greatly outweighs the mitigation, and we therefore recommend an increase in the actual suspension from 30 to 90 days.

I. FINDINGS OF FACT

We adopt the hearing judge's findings of fact, except as noted, which were principally based on a stipulation between the parties. We summarize below those facts as enhanced by the record.

Mendivel was admitted to practice law in California in 2001, and Jansen was admitted in 1996. Neither has a record of prior discipline.

Prior to 2004, Mendivel and Jansen practiced primarily workers' compensation law as a partnership with offices in Santa Ana, Visalia, and San Diego. Their office manager was Adriana Campos. In the summer of 2004, due to changes in California workers' compensation practice that resulted in lower fees to applicants' counsel, Mendivel and Jansen opened a law office in Chicago to represent applicants before the Illinois Workers' Compensation Commission (Commission), which provided for higher fees.[2] They planned to remain in California and to supervise the Chicago office by telephone, email, facsimile, and periodic visits. Although Jansen sought admission to the Illinois Bar during this time, neither he nor Mendivel was ever licensed to practice law in Illinois at any time while their Chicago office was open.[3]

Both Mendivel and Jansen claim they were unaware that Illinois law requires a person to be a member of the Illinois Bar in order to practice workers' compensation law. However,

[2]Prior to January 2005, the Commission was called the Illinois Industrial Commission.

[3]After the Chicago office was closed, Jansen was admitted to practice law in Illinois in May 2005.

neither of them conducted adequate research to ascertain the requirements before they opened their Chicago office. They relied on Campos, their California office manager, to collect the necessary forms and talk to clerks at the Commission in Chicago. While Mendivel testified that he reviewed the rules governing practice before the Commission, he never asked the Commission or an Illinois attorney whether a non-licensed person could practice workers' compensation law in the state. Jansen admitted he relied on Mendivel and did not do any independent research.

Before opening the Chicago office, Mendivel and Jansen met with Brendan Ozanne, a California attorney. Ozanne passed the Illinois Bar examination in 1996, but had never completed the process of getting admitted to the Illinois Bar. Although he indicated an interest in joining the proposed Chicago firm, Ozanne never agreed to become a partner or to have his name used in connection with the firm. Yet Mendivel and Jansen proceeded to open the Chicago office under the name "Mendivel, Jansen & Ozanne." In the fall of 2004, after the office was open, Ozanne told Jansen he had decided not to join the Chicago firm. Although respondents testified that they took steps to remove Ozanne's name, it continued to appear on forms filed with the Commission until as late as February 2005.

From about July 1, 2004, to April 2005, Mendivel and Jansen represented approximately 100 clients with cases before the Commission from their Chicago law office. They used letterhead bearing a Chicago address and listing themselves as attorneys. The letterhead contained no disclaimer that they were not admitted in Illinois. Neither Mendivel nor Jansen ever told any of these clients that they were not admitted to practice law in Illinois.

Mendivel and Jansen staffed the Chicago office with one receptionist and one paralegal, Alonzo Alcaraz. Alcaraz conducted all of the initial client interviews and obtained their signatures on fee agreements, medical authorization forms, and other forms required by the

Commission. With Mendivel's authorization, Alcaraz routinely indicated on mandatory forms that the client was being represented by the law firm of "Mendivel, Jansen & Ozanne," and signed Mendivel's name as the attorney making the appearance. These completed forms were then served and filed with the Commission.

Mendivel also authorized Alcaraz to sign Mendivel's name to Attorney Representation Agreement forms. These forms set forth the maximum fees that could be charged, made those fees subject to Commission approval, and provided that the "attorney states that he or she has explained each provision of the agreement to the client." Neither Jansen nor Mendivel met with any of the Illinois clients before they signed these agreements.

The Application for Benefits included a Proof of Service form provided by the Commission. The form stated at the top: "If the person who signed the *Proof of Service* is not an attorney, this form must be notarized." The form then included blanks for such a notarization. Mendivel authorized Alcaraz to sign Mendivel's name to these proofs of service, falsely affirming that Mendivel had mailed copies of the Application to the other parties, thereby avoiding the need to have the proofs notarized.

Mendivel and Jansen testified that they thought the involvement of an Illinois attorney was not warranted during the first year the Chicago law office was open. They understood that Commission cases, like California workers' compensation cases, were not typically ready for settlement or adjudication for a year or more after filing because the applicants' injuries could not be accurately assessed until they had stabilized. If an appearance by an attorney was necessary, they planned to hire a contract attorney from Illinois.

In the meantime, Mendivel and Jansen believed they adequately oversaw the activities of the office. They testified that their office manager, Campos, reviewed the paperwork being generated by the Chicago office on a daily basis. In addition, since all of their offices shared a

computer network, Mendivel stated that he periodically checked electronically on the work being done on the Illinois cases.[4] Jansen visited the Chicago office approximately four times and Mendivel visited it twice. Neither Mendivel nor Jansen held any in-person meetings with clients from the Chicago office, but both spoke on the telephone with several Illinois clients.

On March 11, 2005, Kathryn Kelley, an attorney for the Commission, wrote a letter to Mendivel and Jansen, advising them that "only attorneys licensed to practice in the State of Illinois may appear on behalf of parties to litigation before the [Commission] (50 Illinois Administrative Code § 7020.40)." She stated that 80 cases listing their Chicago firm as attorney of record had been filed with the Commission, but it had been brought to the Commission's attention that none of the named members of the firm was a member of the Illinois Bar. The letter concluded: "Since our records indicate that you are not authorized to appear on behalf of parties to litigation before the Commission, you are required to provide a written explanation within 5 business days as to whether any other individuals or employees associated with your firm are licensed to practice law in Illinois."

On March 21, 2005, Jansen responded to the Commission's letter. He stated that Ozanne had previously passed the Illinois Bar, filed paperwork with the Illinois Committee on Character and Fitness and expected a response "anytime." Jansen further stated: "In the interim, Mendivel, Jansen and Ozanne have hired Marc E. Stookal, Esq. as its licensed attorney for the State of Illinois. As of the date of this letter, Mr. Stookal has only [been] required to appear once before the Commission." Jansen failed to disclose that Ozanne never completed his application to be admitted in Illinois and never joined the firm.

Shortly after receiving Kelley's letter, Mendivel and Jansen closed the Chicago office. Jansen and Campos testified that they made efforts to ensure that clients were not left

[4]Despite his testimony, Mendivel failed to notice that Ozanne's name continued to appear on filings with the Commission as late as February 2005.

unrepresented. When they closed the office, no cases had been settled or otherwise resolved, and no fees were ever paid to Mendivel or Jansen.

II. CONCLUSIONS OF LAW

Mendivel and Jansen were each charged with one count of violating rule 1-300(B), which prohibits a member from practicing law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction. The evidence clearly establishes that Mendivel and Jansen held themselves out as entitled to practice law and actually practiced law in Illinois in violation of that state's regulations. They opened a law office in Illinois, used letterhead that stated they were attorneys without noting that they were not licensed in Illinois, advertised their legal services in the state, contracted to perform legal services in the state, and repeatedly filed applications and written appearances as attorneys of record with the Commission.

Generally, Illinois prohibits persons from practicing law in the state "without having previously obtained a license for that purpose from the [state] Supreme Court . . . ." (705 Illinois Compiled Statutes § 205/1.) Like California, Illinois also provides that "an unlicensed person" may not "advertise or hold himself or herself out to provide legal services." (*Ibid.*) These restrictions include prohibiting representation of a party by a person who is not a licensed attorney in a proceeding before the Commission. In particular, 50 Illinois Administrative Code section 7020.40(a) provides: "Only attorneys licensed to practice in the State of Illinois may appear on behalf of parties to litigation before the Industrial Commission . . . Attorneys licensed to practice in states other than Illinois may appear with leave of the Commission." Mendivel and Jansen violated Illinois regulations because they were neither licensed in Illinois nor did they seek leave of the Commission to appear, yet they held themselves out as entitled to practice law and actually practiced law in Illinois.

Further, unlike in California, Illinois law does not allow non-lawyer representation except at a "status call" in routine matters such as "agreed continuances or other agreed ministerial acts." (50 Illinois Administrative Code § 7020.40(b).) However, Mendivel and Jansen undertook all aspects of client representation in Commission cases, including authorizing Alcaraz to interview clients, explain the terms of legal representation, and complete and file applications. These activities constituted the practice of law by non-licensed attorneys in violation of Illinois law. (See *In re Discipio* (1994) 163 Ill.2d 515, 520-527 [645 N.E.2d 906] [interview of workers' compensation clients, completion of appropriate forms and filing with Commission on behalf of clients constitutes practice of law].) Thus, we find that there is clear and convincing evidence that Mendivel and Jansen violated rule 1-300(B) by holding themselves out as entitled to practice law and violated Illinois regulations by actually practicing law in that state.

III. MITIGATION AND AGGRAVATION

The parties bear the burden of proving mitigating and aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, stds. 1.2(b) and (e).[5])

A. MITIGATION

We find that Mendivel is entitled to nominal mitigating credit for his eight years of practice without discipline when the misconduct started. (Std. 1.2(e)(i); *In the Matter of Rech* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310, 316 [eight years of discipline-free practice does not merit significant weight].) However, we decline to give any mitigating credit to Jansen, who had been practicing law for only three years.

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

We also give credit to both for cooperating with the State Bar and entering into a factual stipulation before trial. (Std. 1.2(e)(v).)

In addition, Mendivel and Jansen are entitled to significant credit for their good character evidence. (Std. 1.2(e)(vi).) This evidence consists of 13 reference letters: seven on behalf of Mendivel and six on behalf of Jansen. The letters represent a wide range of references, reflect strong opinions in favor of Mendivel's and Jansen's characters and show that their references knew about the disciplinary charges. Also, both Mendivel and Jansen testified that they had been active in bar association activities over the years and in supporting youth sports activities as coach or referee. Jansen testified to his involvement for more than ten years with the Rotary Club as well as other charitable services. The hearing judge did not make an express finding that they engaged in pro bono or community service, but we regard his finding that Mendivel and Jansen are "active and well-respected members of their communities" as consistent with positive evidence of their community service.

Like the hearing judge, we decline to give Mendivel and Jansen credit for good faith as their actions were not reasonably based. (Std. 1.2(e)(ii).) The hearing judge found that Mendivel and Jansen testified credibly that they honestly believed they could represent claimants in Illinois workers' compensation proceedings without being licensed in the state. We give great deference to this credibility finding. (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 315 [hearing judge's determinations of testimonial credibility must receive great weight].) However, even if Mendivel and Jansen honestly believed that Illinois law permitted non-lawyers to represent applicants, we find that belief to be unreasonable. (*In the Matter of Thomson* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966, 976 [good faith belief must be honestly held and reasonable].) They failed to adequately research the requirements of Illinois law and did not consult any of the appropriate regulatory bodies or practitioners

experienced in the field. And Mendivel and Jansen disregarded the plain meaning of the Illinois Administrative Code and Illinois decisional law, which clearly require a lawyer licensed in Illinois to represent applicants.

Finally, we do not adopt the hearing judge's finding that Mendivel and Jansen showed remorse and recognition of wrongdoing by closing the Chicago office and testifying that "they acted in ways that have proved to be less appropriate than they previously believed." (Std. 1.2(e)(vii).) Once it was discovered by Illinois authorities that Mendivel and Jansen were clearly committing UPL, they had little choice but to acknowledge their misconduct and close the office. We decline to find that such coerced remedial behavior is evidence of either remorse or atonement for mitigation purposes. (Cf. *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 519 [restitution paid under threat of disciplinary proceedings does not have any mitigation effect].)

B. AGGRAVATION

In aggravation, we find that Mendivel and Jansen engaged in multiple acts of misconduct. (Std. 1.2(b)(ii).) For almost ten months, they ran a law office in Chicago, advertised in the state, and filed approximately 100 applications with the Commission.

We also find that their misconduct was surrounded by dishonesty, a very significant aggravating factor. (Std. 1.2(b)(iii).) Mendivel authorized Alcaraz to falsely state that an attorney had explained the attorney-client representation agreement to clients and to falsely affirm by proof of service that Mendivel had mailed copies to the parties. Jansen lacked candor when replying to Kelley, the Commission's attorney, that Ozanne was in the process of being licensed in Illinois. He omitted the fact that Ozanne had advised them several months earlier that he would not affiliate with their firm. Jansen's letter misled Kelley about Ozanne's relationship with their firm and his status as an Illinois attorney.

Finally, we do not find that Mendivel and Jansen caused harm to the administration of justice. (Std. 1.2(b)(iv).) While some degree of harm to the administration of justice is inherent in all UPL cases (*In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229, 240), we find it would be duplicative of our UPL culpability finding to rely on this inherent harm in aggravation. The State Bar failed to offer any evidence of actual harm particular to this case to satisfy its burden of proof.

IV. DEGREE OF DISCIPLINE

As in so many cases, the key issue before us is recommending the appropriate degree of discipline based on the facts that are unique to this case. To arrive at the appropriate recommendation, we first review the applicable standards. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090.) Since no standard explicitly addresses violations of rule 1-300(B), the catch-all provision of standard 2.10 applies, assigning discipline ranging from reproval to suspension according to the gravity of the offense or the harm, if any, to the victim.

Fundamentally, the recommendation of appropriate discipline requires a balanced consideration of the offense and the mitigating and aggravating evidence. (Std. 1.6(b); see, e.g., *Gold v. State Bar* (1989) 49 Cal.3d 908, 914.) Several mitigating factors include Mendivel's and Jansen's character evidence, community service and cooperation during the disciplinary proceedings. These mitigating factors, however, are significantly outweighed by multiple acts of misconduct and ongoing dishonesty over an extended time period both in the UPL and in the Illinois investigation. Mendivel and Jansen authorized false forms to be executed and filed by their paralegal, they permitted clients to believe attorneys had been involved when they had not, and they made misleading statements during the Illinois investigation of their law practice. Such dishonest acts violate the high ethical standards that members of the bar are expected to maintain. The Supreme Court has repeatedly instructed that dishonesty by an attorney seriously

undermines the legal profession. (*Stanley v. State Bar* (1990) 50 Cal.3d 555, 567 [dishonesty and deceit are "inimical to both the high ethical standards of honesty and integrity required of members of the legal profession and to promoting confidence in the trustworthiness of members of the profession"]; *Levin v. State Bar* (1989) 47 Cal.3d 1140, 1147 [dishonest acts manifest an "abiding disregard of '"the fundamental rule of ethics – that of common honesty – without which the profession is worse than valueless in the place it holds in the administration of justice."' [Citation.]".)

In making our discipline recommendation, we find little case law that is comparable or that provides significant guidance. The discipline imposed in UPL cases generally ranges from 30 days to one year of actual suspension (*In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 913-915), and often involves additional misconduct or prior discipline. (*In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585 [60 days' suspension; attorney defaulted during State Bar proceedings and also failed to act competently, resulting in client's case being dismissed, misled client and failed to cooperate during Bar's investigation]; *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343 [one-year suspension; attorney also collected illegal fee, improperly withdrew from employment, lied to client, and had recent discipline].)

Here, we view respondents' UPL as very serious misconduct because it involved over 100 clients and lasted for 10 months. Moreover, their corresponding dishonesty considerably aggravates the misconduct, which justifies a greater actual suspension than the hearing judge recommended. While Mendivel and Jansen performed some ad hoc remote supervision of their Chicago office, it was essentially a lay-dominated law practice and we recognize the potential for great harm in such practices. (See, e.g., *In the Matter of Scapa and Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635 [18-month actual suspension].) Under these circumstances, we

conclude that nothing less than a 90-day actual suspension will serve the purpose of attorney discipline in protecting the public, preserving confidence in the legal profession, and maintaining high ethical standards for attorneys.

V. RECOMMENDATION

We recommend that Joe Mendivel and Gerald J. Jansen each be suspended from the practice of law in California for one year, that execution of that suspension be stayed and that each be placed on probation for two years on the following conditions:

1. Joe Mendivel and Gerald J. Jansen must be suspended from the practice of law for the first 90 days of probation.

2. Mendivel and Jansen must comply with the provisions of the State Bar Act and the Rules of Professional Conduct.

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

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

5. Subject to the assertion of applicable privileges, Mendivel and Jansen must answer fully, promptly, and truthfully, any inquiries of the Office of Probation which are directed to them personally or in writing, relating to whether they are complying or have complied with the conditions contained herein.

6. Within one year of the effective date of the discipline, Mendivel and Jansen must provide to the Office of Probation satisfactory proof of attendance at a session of Ethics School given periodically by the State Bar and passage of the test given at the end of that session;

7. The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this proceeding. At the expiration of the period, if each has

complied with all of the terms and conditions of probation, his one-year period of stayed suspension will be satisfied and terminated.

We also recommend that Mendivel and Jansen each be required 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 in this matter and to provide satisfactory proof of such passage to the Office of Probation within the same period.

We also recommend that Mendivel and Jansen each be ordered to comply with rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, from the effective date of the Supreme Court order. Failure to do so may result in disbarment or suspension.

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

REMKE, P. J.

We concur:

EPSTEIN, J.

PURCELL, J.

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Court Systems Analyst of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on December 21, 2009, I deposited a true copy of the following document(s):

OPINION ON REVIEW FILED DECEMBER 21, 2009

in a sealed envelope for collection and mailing on that date as follows:

☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DAVID ALAN CLARE
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☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

ELI D. MORGENSTERN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 21, 2009.

S. E. Foster

Samantha Foster
Court Systems Analyst
Office of the State Bar Court