**PUBLIC MATTER - NOT DESIGNATED FOR PUBLICATION**



**REVIEW DEPARTMENT OF THE STATE BAR COURT**

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| In the Matter of | ) | No. **06-O-13322** |
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| **BRADFORD ERIC HENSCHEL,** | ) | **OPINION ON REVIEW AND ORDER** |
| | ) | |
| A Member of the State Bar. | ) | |
| | ) | |

Respondent Bradford Eric Henschel requests review of a hearing judge's recommendation that he be disbarred due to his unauthorized practice of law (UPL) involving moral turpitude. Henschel cites numerous procedural errors and asserts that he committed no ethical misconduct.[1] The State Bar requests that we adopt the hearing judge's recommendation.

Since this is Henschel's third discipline matter, we must consider applying standard 1.7(b), which provides for disbarment "unless the most compelling mitigating circumstances clearly predominate." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.7(b).)[2] After our independent review of the record (Cal. Rules of Court, rule 9.12), we agree with the hearing judge's culpability determinations and find no compelling mitigation to justify departure from the disciplinary standard that calls for Henschel's disbarment.

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[1] We have considered each issue Henschel raises on appeal. Those issues not addressed in this opinion are dismissed as meritless or frivolous.

[2] Unless otherwise noted, all further references to "standard(s)" are to this source.

## I. FACTS

Henschel was admitted to practice law in California on November 9, 1989, and has been a member of the State Bar ever since.[3] He has been disciplined twice before.

In February 1997, Henschel stipulated that he "be suspended from the practice of law in the State of California for a period of 120 days" for ethical misconduct in four matters between 1993 and 1996. His wrongdoing involved presenting a claim not warranted under existing law and failing to: obey court orders, cooperate with the State Bar, perform competently, communicate, return client papers, and refund unearned fees. Henschel's misconduct caused significant harm and he displayed a lack of candor and cooperation, as well as indifference toward rectification for the consequences of his behavior.

In February 2002, Henschel agreed to an 18-month actual suspension for ethical misconduct in four additional matters between 1995 and 2000. He engaged in UPL that involved moral turpitude, violated court orders, failed to competently perform, failed to return client papers, and improperly withdrew from representation. As in his first disciplinary matter, Henschel's misconduct caused significant harm. And again he exhibited a lack of candor and cooperation along with indifference toward rectification for the consequences of his actions. Effective January 15, 2003, the Supreme Court placed Henschel on probation for five years and suspended him from the practice of law for 18 months. It also ordered his suspension to continue until he proved his rehabilitation, fitness to practice and present learning and ability in the general law. (Std. 1.4(c)(ii).)

In January 2006, we denied Henschel's petition for relief from actual suspension because he failed to make the necessary showing under standard 1.4(c)(ii). (*In the Matter of Henschel* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 867.) We reached this conclusion partly due to

[3] We address more fully below Henschel's jurisdictional claim that he is not a State Bar member.

Henschel's post-suspension conduct involving persistent disrespect for the judicial system and continued unwillingness to accept responsibility for his ethical transgressions. (*Id.* at pp. 879-880.) As a result, Henschel remains suspended from the practice of law in California in accordance with the Supreme Court's 2003 order.

The present case arises from Henschel's conduct approximately six months after our January 2006 published opinion. While employed as a paralegal for attorney Frank Williams, Henschel sent an email to Gregory L. Rickard, an attorney appointed to represent Lamont DeVault in a criminal appeal. In the email, Henschel stated that he and Williams were working on a federal writ for DeVault and needed Rickard to provide DeVault's file. When Rickard checked the State Bar website, he learned of Henschel's suspension. He then notified Henschel that he would talk to Williams upon receipt of written confirmation of the DeVault representation. Subsequently, Henschel met Rickard at a local chapter meeting of the California Appellate Defense Counsel in San Diego and attempted to discuss legal issues in the DeVault matter. During this meeting, he confirmed to Rickard that he was suspended. Rickard declined to discuss the case with Henschel but reiterated that he would be willing to discuss it with Williams.

After that San Diego meeting, Henschel sent Rickard an email on June 8, 2006, expressing several legal opinions about DeVault's case and Rickard's conduct.[4] Before sending

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[4] The relevant portions of the email are as follows:

"Mr. Williams and I need your file, especially if you have learned something that should NOT be included in the Writ we have been hired to write.

As you also must be aware, failure to give a client his file to his new attorney gives rise to a cause of action for malpractice among other ethical issues.

As an Appellate Specialist you must be aware of your obligation to turn over the file and any information that affects the client either beneficially or adversely. Moreover, if you refuse to hand over the file and we miss the filing date of July 13, 2006 as a result of your refusal and Mr. DeVault's Writ doesn't raise a critical issue, as you raised in your PFR but not in the Direct Appeal, as you did in this case, the fault for your actions would

the email, Henschel did not discuss any of its legal contentions with Williams. In fact, Williams testified that at the time he did not have the DeVault file to review, did not discuss the case issues with Henschel and did not authorize Henschel to have a legal discussion about the case with Rickard. Concerned by Henschel's actions, Rickard reported the matter to the State Bar. After receiving written confirmation from DeVault that he retained Williams, Rickard released his file to Williams.

## II. JURISDICTION

Henschel claims the State Bar Court has no jurisdiction over him because he is not a member of the State Bar due to his stipulated suspension. We find no merit to this claim. Although the Supreme Court suspended Henschel from practicing law, doing so did not

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be attributed to Mr. DeVault unless IAC [ineffective assistance of counsel] on appeal is raised by Mr. Williams.

Mr. Williams is very busy and since both he and I are members of the State Bar Association, there would be no reason for Mr. Williams to claim to represent Mr. DeVault unless he really was hired by Mr. DeVault. It's obvious common sense and the right thing to do.

It is now June 8, 2006, and we don't have much time left to write the Writ. Also, you never explained to me why you raised issues in your Petition for Review to the California Supreme Court that were not raised in the Direct appeal, and one of those issues was the alibi defense.

I need Mr. DeVault's file to prepare the writ adequately in time to comply with Federal Law, as you well know. I will even accomodate [sic] you by driving to San Diego, yet again, and picking up the file from your office.

Mrs. DeVault is [sic] quite upset when I gave her the news that you didn't want to give us the file and that you wanted proof beyond that required by the State Bar. If this Writ is not filed on time she is made [sic] enough to initiate a lawsuit and jurors in LA HATE lawyers who quibble amongst themselves or take money and don't get the work done at all or file late and lose their clients [sic] rights. The public expect [sic] us to act with reasonableness and if the Federal Public defender steps in and gets Mr. DeVault out all three of us will be in trouble both professionally and financially. I am sure none of us wants that kind of trouble.

As I said, Mr. Williams is very busy and that explains why he hasn't written to you but he asked Mr. DeVault, by Mail to send you a release, which you demanded and is not required by Rules of Professional Responsibility.

If I don't hear from you soon, I will tender my resignation to Mr. Williams on this case, and I will let you two sort it all out.

Brad Henschel, JD Member of the State Bar of California"

discontinue his membership in the State Bar. Unless the Supreme Court files an order disbarring him or accepting his resignation, he remains a member of the State Bar of California. (See Bus. & Prof. Code, § 6002;[5] Cal. Rules of Court, rule 9.20(d).) As a member who is presently not entitled to practice law due to his suspension, Henschel is still an attorney subject to the disciplinary and regulatory jurisdiction of the State Bar of California. (Rules Proc. of State Bar, rule 2.76.)

## III. CULPABILITY

### A. COUNT ONE: UPL (BUS. & PROF. CODE, § 6068, SUBD. (a)[6])

The State Bar alleged that Henschel failed to support the laws of the State of California because he violated sections 6125[7] and 6126[8] by identifying himself as responsible for writing the writ, identifying himself as a member of the State Bar, and making legal arguments in his June 8, 2006, email to Rickard when he was suspended from practicing law. The hearing judge concluded that Henschel violated sections 6125 and 6126 by expressing legal opinions to Rickard. We agree.

When Henschel expressed multiple legal assertions in his email to Rickard, he engaged in the practice of law. He asserted that Rickard's failure to provide the file raised ethical issues and the potential for a malpractice action. He also claimed that Rickard had a legal obligation not

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[5] Unless otherwise noted, all further references to "section(s)" are to the Business and Professions Code.

[6] Section 6068, subdivision (a), makes it the duty of an attorney "[t]o support the Constitution and laws of the United States and of this state."

[7] Under section 6125, "No person shall practice law in California unless the person is an active member of the State Bar."

[8] Section 6126, subdivision (b) states that "Any person who has been involuntarily enrolled as an inactive member of the State Bar, or has been suspended from membership from the State Bar, or has been disbarred, or has resigned from the State Bar with charges pending, and thereafter practices or attempts to practice law, advertises or holds himself or herself out as practicing or otherwise entitled to practice law, is guilty of a crime punishable by imprisonment in the state prison or a county jail."

only to release the client's file but also to provide information affecting the client. Henschel asserted that failure to provide the file could prejudice DeVault unless a claim of ineffective assistance of counsel was raised on appeal. He stated that Rickard's request for a written release constituted proof not required by the State Bar and unnecessary under the Rules of Professional Responsibility. Finally, Henschel asserted that if the federal public defender had to step in, Rickard would be in trouble professionally. These opinions constituted the practice of law because Henschel interpreted regulations or laws and applied them to the facts of the case. (*Morgan v. State Bar* (1990) 51 Cal.3d 598, 603 [applying legal knowledge and technique constitutes practicing law]; *Agran v. Shapiro* (1954) 127 Cal.App.2d Supp. 807, 818 [layman resolving legal questions with trained legal mind constitutes practicing law].)

Because Henschel was suspended from the practice of law in California on June 8, 2006, he was neither an active member nor entitled to practice law when he sent Rickard the email containing multiple legal assertions. Therefore, Henschel practiced law in violation of sections 6125 and section 6126, subdivision (b), and failed to support the laws of the State of California as charged.[9]

Henschel contends that he was acting as a paralegal and that section 6450 authorized him to make the assertions in his email. To the contrary, section 6450 explicitly prohibits Henschel's conduct. Subdivision (a) defines a paralegal as a person "who performs substantial legal work under the direction and supervision of an active member of the State Bar of California . . . that has been specifically delegated by the attorney . . . ." At the time Henschel sent the email, Williams did not authorize Henschel to convey substantive legal issues to Rickard because

[9] Henschel argues that any finding that he violated section 6126, which is a crime, must be established by proof beyond a reasonable doubt. We reject this argument as inconsistent with Supreme Court precedent. (*Morgan v. State Bar*, *supra*, 51 Cal.3d 598, 604 [where attorney engaged in practice of law while suspended from practice, evidence "clearly show[ed]" that attorney violated section 6126].) Even if his argument had merit, the record establishes beyond a reasonable doubt that he practiced law while suspended and not entitled.

Williams did not have the client file to review and had not discussed the case with Henschel. In fact, during oral argument, Henschel acknowledged that he acted independently of Williams. In this case, Henschel practiced law without the direction or supervision of an active member. Therefore, we reject Henschel's claim as meritless.

We also disagree with Henschel's contention that federal preemption precludes the State Bar from disciplining him in this matter. This defense fails because Henschel provided no evidence that he is a member in good standing of the federal bar. Even if he had, however, it would still be unavailing because he provided legal opinions outside of federal court on issues of California law.

**B. COUNT TWO: MORAL TURPITUDE (§ 6106[10])**

The State Bar alleged that Henschel committed an act involving moral turpitude when he held himself out as eligible to practice law by deceptively describing himself as a "member of the State Bar Association" in his email to Rickard. Asserting one's status as a member of the State Bar can be deceptive because it implies one's ability to practice law. But before Henschel declared in the email that he was a member of the "State Bar Association," he had notified Rickard that he was suspended from the practice of law. Thus, under these limited circumstances, we do not find clear and convincing evidence that Henschel was attempting to deceive Rickard as to his eligibility to practice law.

Nonetheless, we find that Henschel violated section 6106 by intentionally engaging in UPL as discussed in Count One. As early as January 2006, Henschel had actual knowledge that he remained suspended pursuant to the Supreme Court's order. Furthermore, during oral argument, Henschel acknowledged his suspension from the practice of law. Henschel deliberately disobeyed the Supreme Court's suspension order, and we conclude that his conduct

[10] Section 6106 makes "The commission of any act involving moral turpitude, dishonesty or corruption . . . a cause for disbarment or suspension."

involves moral turpitude. (See *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 384 [intentional violation of court order involves moral turpitude].)

## IV. FACTORS IN AGGRAVATION AND MITIGATION

The offering party bears the burden of proof for aggravating and mitigating circumstances. Henschel must establish mitigation by clear and convincing evidence (std. 1.2(e)), while the State Bar has the same burden to prove aggravating circumstances. (Std. 1.2(b).)

### A. AGGRAVATION

The hearing judge found three factors in aggravation and we agree. First, Henschel's extensive record of prior discipline is significant aggravation. (Std. 1.2(b)(i).) Second, he engaged in UPL during this proceeding when he signed a subpoena duces tecum on September 28, 2007, and served it on Rickard. Only the clerk, a judge, or the attorney of record in an action may sign and issue a subpoena duces tecum. (Code Civ. Proc., § 1985, subd. (c).) We consider this UPL as uncharged misconduct in aggravation. (Std. 1.2(b)(iii).) And third, Henschel demonstrated indifference toward rectification for the consequences of his misconduct. (Std. 1.2(b)(v).) He incorrectly continues to believe that his status as a paralegal permitted him to espouse legal conclusions to Rickard. Henschel not only lacks insight regarding his UPL, but he continues, without justification, to disavow the fact that he is subject to our jurisdiction even as a suspended member of the State Bar. He also frivolously subpoenaed approximately 40 witnesses below, including the Chief Justice of the California Supreme Court, and filed no fewer than 13 meritless motions on review. Henschel's conduct demonstrates contempt for these proceedings and further calls into question his fitness to practice law. (*Weber v. State Bar* (1988) 47 Cal.3d 492, 507 ["an attorney's contemptuous attitude toward the disciplinary proceedings is relevant to the determination of an appropriate sanction"].)

## B. MITIGATION

Henschel offered no evidence in mitigation. We adopt the hearing judge's finding that there are no factors in mitigation.

## V. LEVEL OF DISCIPLINE

In determining the appropriate degree of discipline, we first review the applicable standards. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090.) Standard 2.6 specifically addresses Henschel's misconduct and calls for suspension or disbarment when a member willfully violates sections 6125 or 6126. Standard 2.3 calls for actual suspension or disbarment when a member is culpable of an act of moral turpitude, fraud, or intentional dishonesty. Due to Henschel's extensive prior discipline record, we must also consider standard 1.7(b), which calls for disbarment when a member has a record of two prior impositions of discipline "unless the most compelling mitigating circumstances clearly predominate." Henschel established no mitigating factors at all and, absent the most compelling mitigating circumstances, disbarment is the presumptive discipline.

We have considered the facts underlying the prior discipline to avoid a rigid application of standard 1.7(b). The prior record establishes that Henschel has engaged in a "pattern of professional misconduct and an indifference to [the Supreme Court's] disciplinary orders." (*Morgan v. State Bar, supra,* 51 Cal.3d at p. 607.) In each of Henschel's prior disciplinary matters, he failed to obey court orders. In this case, Henschel disregarded the Supreme Court's order suspending him from the practice of law. This is the second time he has engaged in UPL. Moreover, in this and in each of his prior disciplinary matters, Henschel consistently demonstrated indifference toward rectification for his misconduct. His recurring misconduct while on probation, combined with his lack of remorse, reveal that he is unwilling or unable to learn from past mistakes or to conform his behavior to the rules of professional conduct. (*Barnum v. State Bar* (1990) 52 Cal.3d 104, 111.)

Considering the absence of any mitigation, the repetitive nature of his misconduct and his lack of remorse, Henschel is likely to commit future wrongdoing. Therefore, in order to protect the public, preserve the integrity of the legal profession and maintain high standards for attorneys, we find application of standard 1.7(b) appropriate and recommend that Henschel be disbarred. (*Morgan v. State Bar, supra,* 51 Cal.3d at p. 607 [std. 1.7(b) applied where four priors demonstrated pattern of professional misconduct]; *Barnum v. State Bar, supra,* 52 Cal.3d at pp. 111, 113 [std. 1.7(b) applied where no mitigation and attorney unwilling or unable to learn from past mistakes]; *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 841 [std. 1.7(b) applied where current offenses plainly echo four prior records and provide "disturbing repetitive theme"].)

## VI. RECOMMENDATION

We recommend that Bradford Eric Henschel, State Bar number 141888, be disbarred and his name be stricken from the roll of attorneys.

We further recommend that Henschel 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 in this matter.

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

Finally, we recommend that Henschel be ordered to reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and that such payment be enforceable as provided for under Business and Professions Code section 6140.5

## VII. ORDER OF INACTIVE ENROLLMENT

Because the hearing judge recommended disbarment, he properly ordered Henschel to be involuntarily enrolled as an inactive member of the State Bar as required by section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 220(c). The hearing judge's order of involuntary inactive enrollment became effective on July 30, 2009, and Henschel has remained on involuntary inactive enrollment since then and will remain on involuntary inactive enrollment pending the final disposition of this proceeding.

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 Case Administrator 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 June 8, 2010, I deposited a true copy of the following document(s):

OPINION ON REVIEW AND ORDER FILED JUNE 8, 2010

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:

BRADFORD E. HENSCHEL
SHORELINE MOTION PICTURES CORP
RONIN: BAR CRIMES PROJECT
965 N VIGNES ST STE 11
LOS ANGELES, CA 90012

☐ by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

☐ by overnight mail at , California, addressed as follows:

☐ by fax transmission, at fax number . No error was reported by the fax machine that I used.

☐ By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Christine Ann Souhrada, Enforcement, Los Angeles

Charles T. Calix, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 8, 2010.

Milagro del R. Salmeron
Case Administrator
State Bar Court