FILED JUNE 18, 2009

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	**Case No.: 06-O-15136-DFM**
	)	
JOEL LESLIE,	)	
	)	**DECISION**
Member No. 162475,	)	
	)	
A Member of the State Bar.	)	
	)	

I. INTRODUCTION

In this contested, original disciplinary proceeding, the Office of the Chief Trial Counsel of the State Bar of California (hereafter State Bar) initially charged respondent **JOEL LESLIE** with three counts of professional misconduct. However, in its posttrial brief filed on March 27, 2009, the State Bar moved to dismiss count 2 for want of proof. The court grants the State Bar's motion to dismiss and DISMISSES count 2 with prejudice. (See *In the Matter of Kroff* (Review Dept.1998) 3 Cal. State Bar Ct. Rptr. 838, 843 [the dismissal of a count after a trial on the merits is always with prejudice].)

As set forth *post*, the court finds, by clear and convincing evidence, that respondent is culpable on count 1, but not count 3. Accordingly, the court will dismiss count 3. Moreover, the court concludes that the appropriate level of discipline to recommend to the Supreme Court is one year's stayed suspension and two years' probation on conditions, including a 30-day suspension.

II. PERTINENT PROCEDURAL HISTORY

The State Bar filed the notice of disciplinary charges (hereafter NDC) in this proceeding on August 20, 2008. Respondent filed his response to the NDC on October 30, 2008.

The trial was held on February 17, 18, and 19, 2009. The State Bar was represented at trial by Deputy Trial Counsel Larry DeSha. Respondent acted as counsel for himself.

On March 27, 2009, each party filed a posttrial brief. Then, on April 20, 2009, each party filed a reply brief to the other's posttrial brief. Also, on April 20, 2009, the court took the matter under submission for decision.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on the evidence presented during the course of the trial in this matter.

Jurisdiction

Respondent was admitted to the practice of law in this state on December 14, 1992, and has been a member of the State Bar of California since that time.

Facts

In May 2002, respondent requested that he be enrolled as an inactive member of the State Bar of California. (Bus. & Prof. Code, § 6005;[1] State Bar of California Rules 2.30, 2.31.) In his request, respondent asked that his voluntary inactive enrollment be made retroactive to January 1, 2002. The State Bar honored respondent's request and enrolled him inactive effective January 1, 2002. (State Bar of California Rule 2.30(A).)

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[1] Unless otherwise indicated, all further statutory references are to the Business and Professions Code.

In August 2003, while he was inactive, respondent was contacted by Maureen Kane, a nonattorney, regarding the possibility that he might act as her "legal coach as . . . someone [she] could consult with" regarding a lawsuit that she was considering filing. The contemplated lawsuit arose out of the administration of a probate estate of which Kane was a beneficiary. She was unhappy with how it had been handled. Kane was represented by an attorney in the probate matter, but was considering filing and handling the contemplated lawsuit in propria persona. At the same time, she was also looking for an attorney to handle the contemplated lawsuit on a contingency basis.

When she contacted respondent in August 2003, Kane knew that respondent was an inactive member of the State Bar. Respondent told Kane that he was interested in going forward with the engagement. And he told her that he anticipated re-activating his status with the State Bar "within the next month or so, unless it becomes necessary to do so prior to that time. (I have been inactive this year because of sabbatical)."

The communications between Kane and respondent were never in person, but only by telephone, mail, and email. In a follow-up email to respondent that is dated August 23, 2003, Kane made it clear that she wanted *an attorney* to act as her consultant and that she contemplated that her consultant would be providing her with what clearly amounted to legal advice. In her August 23 email, Kane stated:

> I think I can claim [emotional distress], but it would help if I could consult with *an attorney* about the best way to go about working it up, and also have *an attorney* review my Summons & Complaint before I file it. Similarly I need to clarify if it's best to file in Long Beach Superior Court (the attorney has his office in Long Beach) or in Orange County (where the case was in probate court). . . . And discuss whether I'm correct in my interpretation of statute of limitations starting Feb. '03.

(Italics added.)

Kane and respondent reached an informal agreement under which respondent would provide Kane with the desired services for which respondent would be compensated on an hourly basis. She then sent him materials to review. On receiving those materials, respondent reminded Kane that he was "currently inactive with the bar and . . . not able to give any legal advice until such time as I [become] active. That being said, 1) I do plan on becoming active shortly, and 2) I may be able to help you in my capacity as a J.D. in any case." Respondent then proceeded to research and evaluate the issues Kane raised. His initial efforts included researching and analyzing legal issues related to the filing of Kane's proposed lawsuit and, on September 25, 2003, traveling to a law library and researching a possible draft complaint, including the ability of a beneficiary of an estate to sue the administrator of that estate and the ability of the beneficiary to sue the estate administrator's attorney under tort theories when there is no direct attorney-client relationship between the beneficiary and the administrator's attorney. Even though he was inactive when he performed this work, respondent intended to bill Kane for it. In fact, respondent billed Kane for much, if not all, of this work after he became active again.

On October 12, 2003, Kane sent respondent an email in which she informed respondent that she had mailed a copy of a complaint she drafted to him for his review. Respondent replied in an email in which he stated: "it is unclear to me as to exactly what you would like me to do with the material once I receive same, and, of course, if you are intending that we now embark on a professional relationship and that I bill you for services."

On October 15, 2003, Kane sent respondent another email. The following excerpts from that October 15 email again make *clear* that Kane intended respondent to perform services that constitute the practice of law.

> If it's agreeable with you, what I would like is to use you as a consultant while I do the work, asking you questions I'm unable to answer and getting your comments and criticisms of my proposed filings. . . .

> Here are some examples of my questions: (1) Was I correct in choosing Long Beach Superior Court? Reading carefully the Cover Pages (which I sent you), it seems to me that I might be forced to choose Orange County Superior Court. I chose Long Beach SC because (a) that's where the Defendants do their business (seemingly not of court interest in malpractice) and (b) it's MUCH easier for me to get to (I don't drive).
>
> (2) If you don't go "active" status, would I be able to include request for your fees from defendants if I win the malpractice case? . . .[[2]]
>
> (3) Am I correct in naming both people as Defendants (my probate attorney said the Judge ruled both Defendants committed the offense), or must I only name Sheridan?
>
> (4) Do you agree with my decision to choose "unlimited" rather than "limited." My research shows that in "limited," I can only request over $25,000 for the attorney fees if the attorney assisted with the malpractice case; not for the two probate attorneys' fees. That's why I chose "unlimited," but "limited" seems easier.

Included as an attachment to Kane's October 15 email was a draft complaint that Kane had prepared. In that same email, Kane asked respondent to review her draft complaint and to make any revisions he thought "helpful." She also asked respondent for "suggestions regarding the damages requested." In addition, Kane stated that she had mailed "the accompanying forms to file a lawsuit" (i.e., a Civil Case Cover Sheet, Statement of Location, etc.) to respondent and asked him to verify whether she had filled the forms out correctly. Without question, Kane was seeking legal advice from respondent.

On October 16, 2003, Kane and respondent had a lengthy telephone conversation about the overall situation, including the formalization of a written agreement governing respondent's services. According to respondent, he testified without contradiction, that Kane and he agreed, during their October 16 telephone conversation, "that Respondent would provide Ms. Kane with

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[2] Later in this same email, Kane stated: "Also, my understanding is that if you are still not active, I will not be able to request attorneys fees for any monies paid to you."

consultations that were of an educational nature, that were non-specific to her case, that any assistance to her would be of a scrivener or clerical nature; and further that any conversations were for discussion purposes only and would not be taken as legal advice." The court, however, finds that respondent's testimony regarding his October 16 telephone conversation with Kane lacks credibility, if not candor. (See, e.g., *Warner Bros. Records, Inc. v. Golden West Music Sales* (1974) 36 Cal.App.3d 1012, 1017, fn. 7, ["A trial judge is not bound to accept as true the sworn testimony of a witness even in the absence of evidence contradicting it. . . ."].) What is more, even if the court were to find respondent's testimony credible, it would not affect the court's culpability findings or discipline recommendation because (1) the parties' agreement and subjective understanding are irrelevant to whether respondent engaged in the unauthorized practice of law in violation of sections 6125 and 6126 and (2) respondent provided Kane with more than just educational consultations and clerical/scrivener assistance while he was inactive.

On October 17, 2003, Kane mailed respondent a letter in which she set forth the terms of the agreement they had discussed the day before. In her October 17 letter, Kane stated:

> Per our telephone conversation yesterday, enclosed please find the $1,000 retainer you requested. [¶] Our agreement is that I am handling this case in pro per in so far as possible, while you are available for consultation at a rate of $50/hour.

At the conclusion of her letter, Kane asked that respondent sign and return the letter if it met with his approval (hereafter October 17, 2003, letter agreement). Notably, the October 17, 2003, letter agreement does not contain anything suggesting that Kane and respondent agreed that his services would exclude the giving of legal advice (and the practice of law) Nor does the letter agreement contain anything that suggests Kane and respondent agreed to limit respondent's services to merely educating Kane in basic legal concepts and principles non-specific to her lawsuit or limiting respondent's services to those of a scrivener or clerical assistant.

On October 20, 2003, while he was inactive, respondent prepared a draft complaint for Kane which, according to his subsequent bill, included "4 causes of action and novel theories of recovery."

On the following day, October 21, 2003, respondent telephoned the State Bar and asked how he could be restored to active status. He was told that he needed to submit a written request and to pay $170 in bar dues. On that same day, respondent mailed a written request and a $170 check to the State Bar, which the State Bar received no later than October 28, 2003.

On October 22, 2003, respondent signed the October 17, 2003, letter agreement and returned it to Kane without modification. Respondent's failure to modify the October 17, 2003, letter agreement so that it reflects that Kane and he agreed that he would provide only non-specific educational consultations, which would not be taken as legal advice, and clerical/scrivener assistance is strong circumstantial evidence supporting the court's adverse credibility finding, *ante*, with respect to respondent's testimony about the parties' October 16 telephone conversation.

On October 24, 2003, respondent sent Kane an email in which he stated that he was "winding up research" on the question of venue. In addition, he stated that he was looking into the question of what damages Kane could seek, as well as the overall likelihood that she would prevail. On the following day, October 25, 2003, respondent sent Kane an email in which he stated, as an "initial" conclusion, that venue would be proper in either Long Beach or Orange County, but that "I am still finalizing research on this topic so will let you know."[3] In that same email, respondent stated: "Certainly, I can see that a great deal of effort has gone into the

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[3] The fact that respondent was still researching venue as of October 25, 2003, belies his claim that venue was "merely a preliminary and non-controversial matter, and thus would not rise to the level of practicing law."

Complaint that you drafted; nevertheless, my true feeling regarding the Complaint is that much of it needs to be modified/redrafted – practically from scratch."

On October 27, 2003, Kane sent respondent an email in which she asked respondent to "redraft the Complaint as you see appropriate."

The State Bar enrolled respondent as an active member on October 28, 2003.[4] Thereafter, on November 16, 2003, respondent sent Kane an email in which he billed her for the legal services he had performed to date (hereafter November 16, 2003, email bill).[5] The November 16, 2003, email bill included, inter alia, the following entries:

> September 20, 2003 Analyze correspondence from Client dated Aug 25, 2003; review secondary authorities described therein 0.50
>
> September 25, 2003 Research right of beneficiaries to sue under tort theories where no direct attorney client relationship exists (including Saks v. Damon Raike (1992) & City of Atascadero v. Merril Lynch (1998)) 1.50
>
> September 25, 2003 Research Client Right to Sue administrator of Estate of which client is beneficiary even though no client-attorney relationship exists (Sodikoff v. State Bar (1975)) 1.5
>
> September 27, 2003 Analyze Correspondence to client from State Bar dated Aug. 25, 2003 .25
>
> September 29, 2003 Analyze cheque/draft of $65,519.79 from J. Sheridan to client .25

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[4] Some of the State Bar records regarding respondent's request to be enrolled active have been lost, precluding any determination as to precisely when the State Bar received and processed respondent's check. Respondent testified that he was told during the phone conversation that he would be reinstated retroactively to the date of the phone call (October 21), once the State Bar received his $170 check. However, after careful consideration, the court does not find respondent's testimony on this issue credible. Accordingly, the court finds that the State Bar's membership records are accurate. And those records show that respondent was not enrolled active until October 28, 2003.

[5] Respondent's claims that the November 16, 2003, email bill "was not for legal services" and was merely a draft (or proposed) bill are not credible. Moreover, in his final bill to Kane, which is discussed *post*, respondent describes his November 16, 2003, email bill as "a proper billing."

September 30, 2003 Analyze correspondence to State Bar from Client dated April 14, 2003 in preparation for general case background, preparation of pleadings, and response to client inquiries .50

* * *

October 5, 2003 Review/Analyze Memorandum of Points and Authorities re Set Aside 1.5

October 15, 2003 Analyze correspondence to State Bar from Client dated March 14, 2003 1.0

October 20, 2003 Rev & Execute Retainer Agreement [i.e., the October 17, 2003, letter agreement] 0.25

* * *

In the November 16, 2003, email bill, respondent charged Kane for slightly less than 15 hours of services. However, Kane misread the bill as charging her for only 11.40 hours of services.[6] Nonetheless, she decided that respondent's services were too expensive. And, on November 20, 2003, Kane sent respondent a letter, terminating his services and requesting a refund of that portion of the retainer that was unearned.

On January 30, 2004, respondent sent Kane an email labeled "Final Bill" (hereafter final bill). The final bill did not reduce or eliminate any of the charges in the November 16, 2003, email bill. Instead, the final bill contains four new charges for legal services. Notably, the final bill included the following two new charges for legal services that respondent performed before October 28, 2003, while he was still inactive.

September 25, 2003 Travel to and from Law Library re research in preparation for client inquiries and possible draft of Complaint - - - 1.5 hours

October 20, 2003 Prepare draft of Complaint, including 4 causes of action and novel theories of recovery - - - 3.5 hours

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[6] The format of the bill, after being transmitted as an email, became somewhat confusing to read.

With the addition of the new four charges in the final bill, respondent's total billed time exceeded 20 hours, resulting in him declining to refund any portion of the $1,000 retainer. Kane filed for fee arbitration with the Los Angeles County Bar Association. At the arbitration hearing, the arbitrator raised the issue of whether respondent's fee and work was proper. On January 20, 2005, a fee arbitration award in the amount of $1,080 ($1,000 retainer plus $80 in arbitration costs) was made in Kane's favor. Respondent, however, failed to satisfy that award until March 7, 2007, which was more than three years after Kane advanced the retainer to respondent and demanded that respondent refund the unearned portion of it.

Conclusions of Law

Count 1 – Failure to Comply with State Laws (§ 6068, subd. (a))

In count 1, the State Bar charges that respondent violated section 6068, subdivision (a), which requires that attorneys obey the laws of this state and of the United States. More specifically, the State Bar charges that respondent violated his duty, under section 6068, subdivision (a), to obey the laws of this state by engaging in the unauthorized practice of law in violation of sections 6125 and 6126. Section 6125 and section 6126, subdivision (a) both prohibit the practice of law by anyone other than an active member of the State Bar of California.

In this state, " 'to practice as an attorney at law' means to do the work as a business which is commonly and usually done by lawyers in this country." (*People v. Merchants Protective Corp*. (1922) 189 Cal. 531, 535, quoting *People v. Alfani* (1919) 227 N.Y. 334, 339, 125 N.E. 671.) Therefore, "the practice of the law is the doing and performing services in a court of justice in any matter depending therein throughout its various stages and in conformity with the adopted rules of procedure. But in a larger sense it [also] includes legal advice and counsel and the preparation of legal instruments and contracts by which legal rights are secured

although such matter may or may not be depending in a court." (*People v. Merchants Protective Corp., supra*, 189 Cal. at p. 535, quoting *Eley v. Miller* (1893) 7 Ind. App. 529, 535, 34 N.E. 836, 837-838; *Baron v. City of Los Angeles* (1970) 2 Cal.3d 535, 542-543.) In other words, "the practice of law includes giving legal advice and counsel and the mere preparation of legal instruments. [Citation.]" (*Farnham v. State Bar* (1976) 17 Cal.3d 605, 608.) In addition, " '[w]hether a person gives advice as to [local] law, Federal law, the law of a sister State, or the law of a foreign country, he is giving legal advice. . . .' [Citation.]" (*Bluestein v. State Bar* (1974) 13 Cal.3d 162, 173-174.)

"It must be conceded that ascertaining whether a particular activity falls within this general definition may be a formidable endeavor. [Citation.] In close cases, the courts have determined that the resolution of legal questions for another by advice and action is practicing law 'if difficult or doubtful legal questions are involved which, to safeguard the public, reasonably demand the application of a trained legal mind.' [Citations.]" (*Baron v. City of Los Angeles, supra*, 2 Cal.3d at p. 543.) The parties' intent and subjective beliefs are irrelevant to determining whether a particular activity constitutes the practice of law (or the unauthorized practice of law).

Under the foregoing definition and principles, the record clearly establishes that, from mid-2003 until October 28, 2003, respondent repeatedly engaged in the unauthorized practice of law while he was on voluntary inactive enrollment. More specifically, before October 28, 2003, respondent engaged in the unauthorized practice of law (1) by researching and evaluating legal issues (e.g., proper venue) and various documents for Kane and then billing her for those services; (2) by researching and drafting a complaint for Kane, which complaint included "4 causes of action and novel theories of recovery"; and (3) by reviewing the complaint Kane drafted herself and then telling Kane that, in his opinion, her draft complaint needed to be

"modified/redrafted – practically from scratch." Notably, many of these services were performed not only before October 28, 2003, but also before October 21, 2003, which is the first date on which respondent contacted the State Bar to determine how he could be enrolled active.

In short, respondent failed to support the laws of the State of California in wilful violation of section 6068, subdivision (a) when he engaged in the unauthorized practice of law in wilful violation of sections 6125 and 6126, subdivision (a). Even though Kane's knowledge that respondent was inactive precludes a finding either that respondent engaged in the unauthorized practice of law by improperly holding himself as entitled to practice while he was enrolled inactive or that respondent engaged in acts of moral turpitude by deceptively holding himself out as entitled to practice law while he was inactive, Kane's knowledge does not immunize respondent from culpability for the violations of sections 6125 and 6126, subdivision (a) found *ante*. (Cf. *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229, 239.) Similarly, respondent's statements to Kane that he could not provide legal advice until after he became active again does not allow him to otherwise practice law on behalf of a client while inactive right up to the point when he communicates that advice.

At trial, respondent sought to characterize his retention as merely being for the purposes of editing the legal work being prepared by Kane and providing her, not with legal advice, but with consultations that were of an educational nature and not specific to her case. That testimony, as reflected by respondent's demeanor while giving it, is not credible. In addition, respondent's testimony is belied by his own written communications to Kane, including his two bills to Kane. Likewise, respondent's claim that Kane agreed that "any conversations were for discussion purposes only and would not be taken as legal advice," lacks credibility. Even if Kane had made such an agreement with respondent, it would not immunize respondent from culpability for engaging in the unauthorized practice of law. Any characterization of

respondent's services as nonlegal or as not constituting the practice of law by the parties is irrelevant for purposes of determining whether respondent wilfully engaged in the unauthorized practice of law. Often times, what one chooses to call something has little, if anything, to do with what it is. (E.g., *In the Matter of Lais* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907, 923 [parties' characterization of a fee as a "non-refundable retainer fee" is not determinative].)

Count 3 - Illegal Fees (Rule 4-200(A))

In count 3, the State Bar charges that respondent violated rule 4-200(A) of the Rules of Professional Conduct of the State Bar of California (hereafter rule 4-200(A)), which provides, in relevant part, that a member of the State Bar shall not enter into an agreement for, charge, or collect an illegal fee. Specifically, the State Bar charges that "By charging and collecting a $1,000.00 advanced fee from Mrs. Kane when Respondent was not an active member of the State Bar, Respondent wilfully collected an illegal fee." The court cannot agree.

Neither respondent's entry into the October 17, 2003, letter agreement with Kane nor his charging and collecting the $1,000 advanced fee from Kane constitutes a violation of rule 4-200(A). At the time the letter agreement was negotiated and executed, Kane was fully aware that respondent was not authorized to practice law; the agreement on its face does not require respondent to provide legal services; and there were potentially many consulting and clerical services that respondent could have properly provided and charged for without engaging in the unauthorized practice of law. Thus, the record fails to clearly establish that the $1,000 advance fee was an advanced fee for legal services as opposed to an advance fee for consulting or clerical services.

The record supports a conclusion that respondent wilfully violated rule 4-200(A) by subsequently billing and collecting fees from Kane for services which constitute the practice of law that respondent performed while he was inactive. However, the court may not find those

violations because they were never charged.[7] The allegations of Count 3 refer only to the initial advance fee agreement and make no reference to the subsequent bills. "An attorney may not be disciplined for a violation not alleged in the [NDC]. [Citations.]" (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 35].)[8] Accordingly, count 3 is DISMISSED with prejudice.

IV. AGGRAVATING AND MITIGATING CIRCUMSTANCES

Aggravating Circumstances

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b).)[9]

Significant Harm

There is no evidence of any significant harm to the public or to the administration of justice that is separate and apart from the harm to the public and to the administration of justice that it is inherent in unauthorized practice of law. Accordingly, the court does not find any aggravation based on significant harm. (Cf. *In the Matter of Laden* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 678, 684; *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct.

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[7] Moreover, the court declines to rely on these uncharged violations of rule 4-200(A) as uncharged, but proved misconduct aggravation. At the time this matter was set for trial by this court, the State Bar was expressly ordered by this court to disclose prior to the pretrial conference any uncharged misconduct it intended to assert as aggravating evidence. The conduct here was known to the State Bar well prior to the pretrial conference but was not disclosed to respondent as a source of aggravation; nor was any effort made to amend the NDC.

[8] "When the evidence at the hearing discloses misconduct not charged in the original notice, the State Bar may move to amend the notice to conform to the proof; but, if the State Bar fails to do so, the attorney may be disciplined only for the misconduct alleged in the original notice." (*Edwards v. State Bar, supra*, 52 Cal.3d at p. 35; see also *In re Silverton* (2005) 36 Cal.4th 81, 93, fn. 4.)

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

Rptr. 192, 203; see also *In the Matter of Trousil, supra*, 1 Cal. State Bar Ct. Rptr. at p. 240 [the harm to the public and administration of justice, which is inherent in the unauthorized practice of law, limits the nature and scope of lack of harm mitigation].)

Indifference and Lack of Insight

Respondent has demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) He remains defiant and seeks to blame his client for his misconduct by complaining that she continued to ask him to perform legal services for her even though she knew he was inactive. In addition, respondent's meritless and often times convoluted contentions in his posttrial briefs are strong evidence that, even at this late date, he still has very little insight into his unethical behavior. Respondent's indifference and lack of insight are serious aggravating circumstances. (*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 594-595.)

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).)

No Prior Record

As noted *ante*, respondent was admitted to practice in December 1992, and he committed the found misconduct in the latter half of 2003. Accordingly, respondent's misconduct was preceded by more than ten and one-half years of discipline free practice. Respondent is entitled to significant mitigation for these many years of discipline free practice. (std. 1.2(e)(i); *Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [more than 10 years of discipline free practice is entitled to significant mitigation].)

Good Faith

Respondent contends that he "sincerely believed that he was not practicing law under the circumstances of this case and he had no intention of so practicing, not even a small amount" and that he should be given mitigating credit for his good faith mistaken belief. Even if the court were to find that respondent honestly believed that he was not engaging in the unauthorized practice of law, respondent would still not be entitled to any mitigating credit for such a mistaken belief because the belief would not be reasonable.

" 'In order to establish good faith as a mitigating circumstance, an attorney must prove that his or her beliefs were both honestly held and reasonable. [Citation.]' [Citation.] To conclude otherwise would reward an attorney for his unreasonable beliefs and 'for his ignorance of his ethical responsibilities.' [Citation.]" (*In the Matter of Thomson* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966, 976.)

IV. DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession, and maintain the highest possible professional standards for attorneys. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.) In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Although the standards are not binding, they are to be afforded great weight because "they promote the consistent and uniform application of disciplinary measures." (*In re Silverton, supra*, 36 Cal.4th at pp. 91-92.) Nevertheless, the court is " 'not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, we are permitted to temper the letter of the law with considerations peculiar to the offense and the offender.' " (*In the Matter of Van Sickle*

(2006) 4 Cal. State Bar Ct. Rptr. 980, 994, quoting *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.)

Second, the court considers relevant decisional law for guidance. (See *In the Matter of Van Sickle, supra*, 4 Cal. State Bar Ct. Rptr. at p. 996; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

Standard 2.6, which is the applicable standard, provides for sanctions ranging from suspension to disbarment, depending upon the gravity of the offenses and the harm to the client. But the generalized language of standard 2.6 offers little guidance to the court. (*In re Morse* (1995) 11 Cal.4th 184, 206.) Accordingly, the court looks to case law.

The State Bar recommends one year's stayed suspension and two years' probation on conditions, including a 30-day suspension. The State Bar cites several cases in support of its recommendation, including *In the Matter of Trousil, supra,* 1 Cal. State Bar Ct. Rptr. 229; *In the Matter of Mason* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639; and *Farnham v. State Bar, supra*, 17 Cal.3d 605.

In *Trousil*, the attorney was placed on two years' stayed suspension and two years' probation on conditions, including a 30-day suspension because he accepted employment from a client and appeared in bankruptcy court while he was on suspension for nonpayment of State Bar dues. Moral turpitude was not found. He had three prior records of discipline, but there was also compelling mitigation, including mental impairment.

In *Mason*, the attorney was placed on three years' stayed suspension and three years' probation on conditions, including a 90-day suspension because he made a court appearance and

signed and served a trial brief while on disciplinary suspension. The attorney did not inform either the court or opposing counsel that he was suspended from the practice of law and his unauthorized practice of law therefore involved moral turpitude.

Finally, in *Farnham*, the attorney was suspended for two years on conditions of probation, including a six-month actual suspension because he engaged in the unauthorized practice of law while suspended and also abandoned two clients. The Supreme Court found that the attorney's actions "evidence a serious pattern of misconduct whereby he wilfully deceived his clients, avoided their efforts to communicate with him and eventually abandoned their causes." (*Farnham v. State Bar, supra,* 17 Cal.3d at p. 612.) The attorney also had a prior record of discipline for abandoning his clients' interests in four separate matters and lacked insight into the impropriety of his actions.

On balance, the court finds the State Bar's recommended level of discipline is adequately supported by the standards and case law, particularly *Trousil*,[10] and is the appropriate level of discipline to recommend in this proceeding.

V. DISCIPLINE

For all of the above reasons, the court recommends that **JOEL LESLIE** be suspended from the practice of law for one year; that execution of the one-year suspension be stayed; and that he be placed on probation for two years on the following conditions:

1. Leslie is suspended from the practice of law for the first 30 days of probation.

2. Leslie must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all the conditions of this probation.

3. Leslie must maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation, his current office address and telephone number or, *if no*

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[10] Even though the attorney in *Trousil* had three prior records of discipline and respondent has none, there was compelling mitigation in *Trousil* that is not present in this case.

office is maintained, an address to be used for State Bar purposes. (Bus. & Prof. Code, § 6002.1, subd. (a).) Leslie must also maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation, his current home address and telephone number. (See Bus. & Prof. Code, § 6002.1, subd. (a)(5).) Leslie's home address and telephone number will *not* be made available to the general public unless it is also his official State Bar membership records address. (Bus. & Prof. Code, § 6002.1, subd. (d).) Leslie must notify the Membership Records Office and the Office of Probation of any change in any of this information no later than 10 days after the change.

4. Leslie must report, in writing, to the State Bar's Office of Probation no later than January 10, April 10, July 10, and October 10 of each year or part thereof in which he is on probation (reporting dates). However, if his probation begins less than 30 days before a reporting date, Leslie may submit the first report no later than the second reporting date after the beginning of his probation. In each report, Leslie must state that it covers the preceding calendar quarter or applicable portion thereof and certify by affidavit or under penalty of perjury under the laws of the State of California as follows:

   (a) in the first report, whether he has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation since the beginning of probation; and

   (b) in each subsequent report, whether he has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation during that period.

   During the last 20 days of this probation, Leslie must submit a final report covering any period of probation remaining after and not covered by the last quarterly report required under this probation condition. In this final report, Leslie must certify to the matters set forth in subparagraph (b) of this probation condition by affidavit or under penalty of perjury under the laws of the State of California.

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5. Subject to the proper or good faith assertion of any applicable privilege, Leslie must fully, promptly, and truthfully answer any inquiries of the State Bar's Office of Probation that are directed to him, whether orally or in writing, relating to whether he is complying or has complied with the conditions of this probation.

6. Within one year after the effective date of the Supreme Court order in this matter, Leslie must attend and satisfactorily complete the State Bar's Ethics School and provide satisfactory proof of such completion to the State Bar's Office of Probation. This condition of probation is separate and apart from Leslie's California Minimum Continuing Legal Education (MCLE) requirements; accordingly, he is ordered not to claim any MCLE credit for attending and completing this course. (Accord, Rules Proc. of State Bar, rule 3201.)

7. Leslie's probation will commence on the effective date of the Supreme Court order in this matter. At the expiration of the period of probation, if Leslie has complied with all conditions of probation, the one-year period of stayed suspension will be satisfied and that suspension will be terminated.

VI. MPRE & COSTS

The court further recommends that Leslie be required to take and pass the Multistate Professional Responsibility Examination within one year after the effective date of the Supreme Court's order in this matter. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.)

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

Dated: June 18, 2009.

DONALD F. MILES
Judge of the State Bar Court