PUBLIC MATTER - NOT DESIGNATED FOR PUBLICATION

FILED SEPTEMBER 8, 2011

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. 09-O-10247
	)	
GEORGE A. JUAREZ,	)	OPINION
	)	
A Member of the State Bar, No. 75295.	)	
	)	

Respondent, George A. Juarez, is appealing the hearing judge's culpability findings that he committed the unauthorized practice of law (UPL), he failed to act competently, and his misconduct constituted moral turpitude.[1] The hearing judge recommended that Juarez be actually suspended for six months. On appeal, Juarez urges that his conduct was neither willful nor grossly negligent, but does not propose what, if any, discipline is appropriate. He also asserts that there was no evidence of client harm. The State Bar is not appealing, but it contends that six months' actual suspension may be insufficient to protect the public or to impress on Juarez the seriousness of his ongoing misconduct.

Upon our de novo review of the record (Cal. Rules of Court, rule 9.12), we adopt the hearing judge's culpability findings, and find additional culpability due to Juarez's efforts to mislead a superior court judge. We also assign more weight in aggravation and less weight in mitigation. This is Juarez's third disciplinary proceeding. Considering his prior record and his

[1] Juarez does not contest the hearing judge's finding that he failed to cooperate with the State Bar.

ongoing inattention to his professional responsibilities, we recommend that Juarez's discipline should be increased from six months to one year of actual suspension.

I. PROCEDURAL AND FACTUAL BACKGROUND

A. Juarez's Prior Suspensions

Juarez was admitted to practice in 1977. He was suspended from September 16 to October 28, 2004, for not paying his dues. He was subsequently suspended between September 3 and December 15, 2008, for failing to pay a fee arbitration award. In 2008, Juarez was publicly reproved for failing to appear at two scheduled client meetings and failing to update his client as to the case status. Finally, in 2010, he was disciplined and suspended for 30 days for failing to comply with several conditions of his reproval.

B. The Whipple Matter

Between 2002 and 2006, Juarez was of counsel to the law firm of Clarkson, Gore and Marsella (the Clarkson firm) in Torrance, California. While working there, Juarez defended Stewart Whipple Jr. in a trade secrets case against Diamond Game Enterprises, Inc. (Diamond Game litigation). Diamond Game claimed that Whipple misappropriated proprietary information, including its customer lists, when he left the company. In late 2005, Juarez negotiated a settlement that required Whipple to make periodic payments of $30,000 to Diamond Game and guarantee specified minimum purchases of Diamond Game's products. As part of the settlement, the parties agreed to dismiss the lawsuit, but they further agreed that the superior court would retain jurisdiction to enforce the settlement agreement. Shortly thereafter, the settlement began to fall apart.

In early 2006, Juarez left the Clarkson firm to move to Northern California as a sole practitioner. He contracted with the UPS Store, a private mailbox store in Lafayette, which became his official State Bar membership address. After his relocation, Juarez continued to

represent Whipple's interests in the Diamond Game litigation. When Diamond Game's attorney wrote to Whipple in May 2006 asking him if Juarez still represented him, Whipple immediately responded by e-mail, with a copy to Juarez, stating: "*George Juarez continues to represent me in this matter*. . . . Please direct your correspondence to his attention." (Italics added.)

Diamond Game's attorney then wrote to Juarez on June 23, 2006, demanding Whipple's compliance with the terms of the settlement agreement and providing notice of Diamond Game's intention to obtain a court-ordered judgment enforcing the agreement if the matter was not resolved. Juarez replied on June 29, 2006, advising Diamond Game's counsel of his new contact information, including his mailing address at the Lafayette UPS store, his telephone number and e-mail address. Juarez urged an amicable resolution "rather than escalating the disputes which will necessarily involve Diamond Game in further litigation. . . ." The exchange of letters between Juarez and Diamond Game's attorney continued for six months, with each side increasing its demands and counter-demands.

On April 12, 2007, Diamond Game's counsel filed a motion in superior court to enforce the settlement agreement and to enter judgment for Diamond Game (Motion to Enforce Settlement). The motion was served on Juarez by overnight Fed Ex delivery at the Lafayette UPS Store. A Fed Ex tracking record confirms delivery of the motion to that address, but Juarez maintains he did not actually receive it. He failed to file a reply to the motion and the superior court entered judgment against Whipple on May 9, 2007, for nearly $124,000, plus post-judgment interest. On May 11, 2007, Diamond Game served a Notice of Ruling and a copy of the proposed Judgment on Juarez by U.S. mail at the Lafayette UPS store. Juarez again claims he did not receive these documents. Whipple learned of the judgment several months later in August 2007, and he contacted Juarez.

Juarez filed a motion to vacate the judgment with supporting declarations in the superior court on September 28, 2007, claiming relief under Code of Civil Procedure section 473, subdivision (b), because of inadvertence, mistake and excusable neglect (Motion to Vacate). He asserted in his pleading and his declarations that he had not received actual or constructive notice of the Motion to Enforce Settlement or any notice "that Diamond Game *intended* to file such a motion." (Italics added). Juarez also claimed that service of the Motion to Enforce Judgment on him was improper because the Clarkson firm was counsel of record and he had not formally substituted into the case as attorney of record. In a second declaration filed on October 23, 2007, Juarez attested that he never informed the attorney for Diamond Game that he was authorized to accept service or appear on Whipple's behalf.[2]

Juarez did not disclose to the superior court that at the outset of the post-settlement dispute, Whipple had informed Diamond Game's counsel that Juarez continued to represent him and had instructed that all correspondence be sent to Juarez. Juarez also did not disclose to the superior court that he drafted numerous letters on behalf of Whipple in an extensive exchange of correspondence with Diamond Game's attorney attempting to negotiate a resolution of the post-settlement dispute. Finally, Juarez did not disclose that the parties had agreed that the superior court would retain jurisdiction in the Diamond Game litigation specifically to enforce the settlement agreement.

The superior court judge denied the Motion to Vacate, finding that Juarez was counsel of record and that Whipple had actual notice by virtue of Diamond Game's service of the pleadings on Juarez. Juarez appealed and the Court of Appeal affirmed the denial of the Motion to Vacate in April 2009.

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[2] Juarez designated himself in the Motion to Vacate as "Attorney for Defendant . . . Whipple" even though he had not filed a substitution of attorney. The superior court took note of this inconsistency in Juarez's position, observing that Juarez had "checkmated" himself.

After Whipple complained to the State Bar, it filed a Notice of Disciplinary Charges (NDC) on February 8, 2010, alleging the following misconduct in the Whipple matter: UPL in 2004 and 2008 involving acts of moral turpitude; failing to inform a client of significant developments in 2004 and 2008; seeking to mislead a judge in 2007 involving acts of moral turpitude; failing to perform with competence in handling an intellectual property defense in 2007; and failing to cooperate in the 2009 State Bar investigation.

II. DISCUSSION

A. Count One: UPL (Business and Professions Code Sections 6068, subdivision (a), 6125 and 6126)[3]

Juarez is charged in Count One with violating section 6068, subdivision (a), because he practiced law between September 16, 2004 and October 28, 2004, while suspended for non-payment of his State Bar membership dues in violation of sections 6125 and 6126;[4] and again between September 3, 2008 and December 15, 2008, while he was suspended for non-payment of a fee arbitration award.

As to the first period of UPL, Juarez stipulated that he practiced law while he was suspended in 2004, but he argues that his UPL was neither willful nor intentional since he was unaware that his 2004 dues had not been paid and that he was suspended. Juarez believed that the Clarkson firm's office manager would pay his dues since he requested it, but he never confirmed the payment nor did he have an agreement with the Clarkson firm that it would pay his dues. We find that Juarez was grossly negligent under the circumstances, which is sufficient to support culpability for UPL. (*In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 91 [UPL if attorney creates false impression of current license to practice].)

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

[4] Sections 6125 and 6126 provide the basis for imposition of professional discipline. (*In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229, 237.)

As to the second period of UPL, Juarez admits that he knew about his suspension in 2008 because he received several communications from the State Bar advising him of his status. But, he argues that he did not perform any substantive legal work during that time. The record shows otherwise. Beginning on September 15, 2008, and continuing through November 14, 2008, Juarez represented Whipple in the appeal of the denial of his Motion to Vacate in the Diamond Game litigation. During this time, Juarez sent Whipple at least four e-mails about the appeal status and advised him of the procedural parameters affecting the filing of the briefs. These e-mails constitute the practice of law. (*Birbrower, Montalbano, Condon & Frank v. Superior Court* (1998) 17 Cal.4th 119, 128 [practice of law embraces wide range of activities, including legal advice and perfecting rights in matters connected with law]; *Morgan v. State Bar* (1990) 51 Cal.3d 598, 603 [application of legal knowledge constitutes practice of law].)

Moreover, Juarez held himself out as entitled to practice during the time he was suspended and while he was representing Whipple in his appeal. This, too, constitutes UPL. (C*rawford v. State Bar* (1960) 54 Cal.2d 659, 666 [UPL includes mere holding out that one is entitled to practice law].) An attorney simply "cannot expressly or impliedly create or leave undisturbed the false impression that he or she has the present . . . ability to practice law. . . ." (*In the Matter of Wyrick, supra,* 2 Cal. State Bar Ct. Rptr. at p. 91.)

Based on clear and convincing evidence,[5] we accordingly adopt the hearing judge's findings that Juarez engaged in UPL in 2004 and 2008 in violation of sections 6125 and 6126 as charged in Count One.

[5] Clear and convincing evidence requires a finding of high probability that is so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

B. Count Two: Moral Turpitude (Section 6106)

We adopt the hearing judge's finding that Juarez was grossly negligent in practicing while he was inactive in 2004 and his intentional acts of holding himself out as entitled to practice in 2008 establish conduct involving moral turpitude in violation of section 6106 as charged in Count Two. (*In the Matter of Wyrick, supra,* 2 Cal. State Bar Ct. Rptr. 83 [finding of moral turpitude based on gross neglect in holding out as entitled to practice].)

C. Count Three: Failure to Communicate (Section 6068, subdivision (m))

The hearing judge dismissed Count Three, finding there was not clear and convincing evidence that Juarez failed to inform his client of significant developments, to wit: he did not advise Whipple in 2004 and 2008 that he was ineligible to practice law while he was representing Whipple in the Diamond Game litigation and appeal. Since Whipple did not testify at the trial below, there was no evidence to refute Jaurez's testimony that he wrote to Whipple to advise of his suspension. We therefore adopt this finding and dismiss Count Three with prejudice.

D. Count Four: Seeking to Mislead a Court (Section 6068, subdivision (d))

Count Five: Moral Turpitude (Section 6106)

The hearing judge dismissed Counts Four and Five, which charged Juarez with seeking to mislead a judge and acts constituting moral turpitude arising from Juarez's Motion to Vacate and supporting declarations, which he filed in the Diamond Game litigation. The hearing judge found that Juarez's arguments in the Diamond Game litigation pleadings were "frivolous" and "lacked legal merit," but they were not inconsistent with the truth or intended to mislead the superior court judge because Juarez had cited to legal authority in support of these arguments.

We disagree with the hearing judge's analysis. We find that Juarez's pleadings and declarations were intended to mislead the superior court into believing there were *factual* bases

for setting aside the judgment in the Diamond Game litigation. In arguing to the superior court that he did not have actual notice of Diamond Game's intention to file the Motion to Enforce Settlement, Juarez failed to disclose the extensive post-settlement correspondence with Diamond Game's attorney in which he was negotiating a resolution of the dispute, all the while raising the specter of additional litigation. Furthermore, in arguing that this was "new litigation" for which he had not formally been retained, Juarez failed to disclose that Whipple had specifically advised Diamond Game's attorney that Juarez continued to represent him in the post-settlement dispute and that the parties had previously agreed the superior court would retain jurisdiction over the post-settlement enforcement of the settlement agreement.

The superior court characterized Juarez's assertions as mere "chutzpah," in part because opposing counsel had made the judge aware of the extensive correspondence that had "gone back and forth between the parties." The superior court further found that Whipple had actual notice by virtue of Diamond Game's proper service of the pleadings on Juarez.

Juarez "clearly had an affirmative duty to inform [the judge] fully and completely as to all relevant facts and circumstances regarding his request [to vacate the judgment]." (*DiSabatino v. State Bar* (1980) 27 Cal.3d 159, 163.) His conduct is expressly proscribed by section 6068, subdivision (d), which states that he shall never "*seek* to mislead the judge. . . *by an artifice* or false statement of fact or law." (Italics added.) We find that even though Juarez did not succeed in misleading the court, he is still culpable because it is a violation of section 6068, subdivision (d), merely to attempt to mislead a judge. (*Davis v. State Bar* (1983) 33 Cal.3d 231, 239-240 [mere presentation of falsity to court is clear violation of § 6068, subd. (d)].)

Such conduct is equally violative of section 6106. Acts of moral turpitude include an attorney's concealment as well as affirmative misrepresentations. (*Grove v. State Bar* (1965) 63 Cal.2d 312, 315.) The actual intent to deceive is not necessary; gross negligence in creating a

false impression is sufficient for violation of section 6106. (*In the Matter of Moriarty* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9, 15; *In the Matter of Wyrick, supra,* 2 Cal. State Bar Ct. Rptr. 83, 90-91.) However, because the misconduct underlying the section 6068, subdivision (d) violation is the same as the misconduct supporting a violation of section 6106, we find culpability for acts of moral turpitude under Count Five, which provides for identical or greater discipline. We accordingly dismiss Count Four as duplicative.

E. Count Six: Failure to Perform Competently (Rule 3-110(A))[6]

Juarez is charged in Count Six with intentionally, recklessly or repeatedly failing to perform legal services competently in the Diamond Game litigation in violation of rule 3-110(A). It is undisputed that Juarez failed to timely oppose Diamond Game's Motion to Enforce Settlement, and his untimely Motion to Vacate was denied as unmeritorious.

Juarez rests his entire defense in Count Six on the assertion that he had no actual or constructive notice of Diamond Game's motion. The superior court flatly rejected this assertion and so do we, given that the purportedly defective service occurred not once but twice and involved the critical documents in the Diamond Game litigation, *both* of which were properly served at his official address. Juarez did not complain about any other mail delivery to the UPS Store. His testimony is further contradicted by the Fed Ex proof of delivery of the Motion to Enforce the Settlement at Juarez's official address. (*Jones v. Catholic Healthcare West* (2007) 147 Cal.App.4th 300, 308 [proper service presumed when compliance with statutory requirements for service].) Additionally, there is a presumption of validity as to the superior court's finding that Whipple had actual notice of the motion and notice of judgment by virtue of service of these pleadings on Juarez. (*In the Matter of Lais* (Review Dept. 2000) 4 Cal. State Bar

[6] Unless otherwise noted, all further references to "rule(s)" are to the provisions of the Rules of Professional Conduct of the State Bar.

Ct. Rptr. 112, 117-118.) Juarez's testimony that he did not receive the documents is insufficient to rebut the evidence of actual delivery as well as the strong presumption arising from proper service. We therefore affirm the hearing judge's determination that Juarez failed to perform legal services competently.

F. Count Seven: Failure to Communicate with Client (Section 6068, subdivision (m))

Juarez is charged in Count Seven with failing to communicate with Whipple that a judgment had been entered against him. Whipple did not testify in the hearing below, and the hearing judge dismissed the count for lack of clear and convincing evidence to support the charges. We adopt this finding and dismiss Count Seven.

G. Count Eight: Failure to Participate and Cooperate (Section 6068, subdivision (i))

Juarez does not dispute that he is culpable of failing to cooperate during the investigation in violation of section 6068, subdivision (i), as charged in Count Eight. We adopt the hearing judge's finding of culpability.

III. MITIGATION AND AGGRAVATION

Juarez must establish mitigating circumstances by clear and convincing evidence, while the State Bar has the same burden to prove aggravating circumstances. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Stds. 1.2(b) and (e).)[7]

A. Mitigation

The hearing judge improperly gave mitigating weight to Juarez's evidence of serious health problems in late 2008 and 2009. (Std. 1.2(e)(iv).) Evidence of his health issues was admitted in a prior disciplinary hearing, but no such evidence was admitted in the instant proceeding. Even if, arguendo, we were to rely on the findings in the prior matter, we assign

[7] Unless otherwise noted, all further references to "standard(s)" are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

limited weight to this evidence primarily because Juarez's health problems do not appear to be proximately related in time to his UPL in 2004 or his serious misconduct during his representation of Whipple between 2004 and 2007. (*In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 701.)

The hearing judge gave Juarez mitigating credit for his cooperation in entering into a stipulation of facts (std. 1.2(e)(v)), although she correctly noted that those facts were easily proven. We accordingly give his cooperation minimal weight. (*In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 938.)

Good character is a mitigating factor if established by a wide range of references from the legal and general communities who are aware of the full extent of the misconduct. (Std. 1.2(e)(vi).) The evidence of Juarez's good character was provided by five witnesses, but two of them conceded that if the charges against Juarez were proven, it could potentially cause them to change their favorable opinion of him. We thus assign limited mitigative weight to Juarez's character evidence.

Finally, the hearing judge gave Juarez mitigating credit for favorable evidence of his significant community service over the past several years to his church, a nearby town, a service club and other nonprofit organizations. We give substantial credit in mitigation for Juarez's impressive community and pro bono work. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785 [community service is mitigating factor entitled to considerable weight].)

B. Aggravation

Juarez has been disciplined twice before and his prior discipline is a significant aggravating circumstance. (Std. 1.2(b)(i).) In February 2008, he was publicly reproved for misconduct in 2004 involving a failure to appear at two scheduled client meetings and for failing to update his client as to the status of the case as required by section 6068, subdivision (m).

There were no aggravating circumstances, but mitigation was accorded for Juarez's many years of practice without discipline.

As a condition of his reproval, Juarez was ordered to comply with several requirements. (Cal. Rules of Court, rule 9.19.) He failed to satisfy many of them, including timely filing four quarterly reports and his final report and timely completion of Ethics School. As a result, in October 2010, the Supreme Court imposed a second discipline and suspended Juarez for one year, stayed, on conditions of probation including a 30-day actual suspension. He was given mitigation credit for serious emotional and physical illness at the time of his noncompliance, as well as for his remorse and cooperation, which was offset by his failure to reply to the Office of Probation and his multiple acts of misconduct.

In the instant case, the hearing judge found in aggravation that Juarez committed multiple acts of misconduct. (Std. 1.2(b)(ii).) We agree.

Furthermore, we adopt the hearing judge's finding of significant aggravation due to the substantial harm that Juarez caused Whipple. (Std. 1.2(b)(iv).) Juarez's incompetence caused Whipple to suffer the imposition of a six-figure default judgment and the loss of his opportunity to timely appeal from that judgment.

Finally, we assign additional aggravation to Juarez's lack of insight into the seriousness of his misconduct and his indifference towards rectification. (Std. 1.2(b)(v).) A review of his disciplinary record establishes his chronic inattention to his professional responsibilities in connection with this proceeding. These collective failures strongly suggest that Juarez has not learned any lessons from his ongoing involvement in the discipline process. We are further troubled that he continues to argue that he was not the counsel of record in the Diamond Game litigation despite the findings of the superior court and the Court of Appeal and the overwhelming facts to the contrary. Juarez's conduct "reflects a seeming unwillingness even to

consider the appropriateness of [his legal strategy] or to acknowledge that at some point his position was meritless or even wrong to any extent. Put simply, [respondent] went beyond tenacity to truculence." (*In re Morse, supra*, 11 Cal.4th 184, 209; see also *Maltaman v. State Bar* (1987) 43 Cal.3d 924, 958 [meritless defenses show lack of insight into wrongfulness of one's actions].)

IV. LEVEL OF DISCIPLINE

The purpose of attorney discipline is not to punish, but to protect the public, the courts and the legal profession. (Std. 1.3.) We thus look to the nature and extent of Juarez's misconduct in considering the appropriate level of discipline. His misconduct spanned five years and involved misleading a court, moral turpitude, UPL, failure to act with competence and failure to cooperate in the State Bar's investigation.

The standards serve as guidelines (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994), which are entitled to great weight because they promote " ' "the consistent and uniform application of disciplinary measures.' [Citation.]' " (*In re Silverton* (2005) 36 Cal.4th 81, 91.) Several standards are applicable, but we consider standard 1.7 (b) to be the most relevant because this is Juarez's third disciplinary proceeding.[8] Standard 1.7(b) provides for disbarment "unless the most compelling mitigating circumstances clearly predominate."

The hearing judge did not recommend disbarment because of Juarez's "compelling" mitigation. We do not find that the mitigative evidence is compelling or clearly predominates

[8] The other applicable standards are standard 2.3 [suspension to disbarment recommended for acts of moral turpitude and intentional dishonesty, depending on extent of harm and relationship to law practice]; standard 2.4(b) [reproval to actual suspension recommended for failure to competently perform services and failure to communicate, depending on extent of misconduct and client harm]; and standard 2.6 [suspension to disbarment recommended for UPL and for failure to cooperate in investigation depending on gravity of offense or harm to victim].

after we balance it against the substantial aggravating factors. However, the Supreme Court has not automatically applied standard 1.7(b) despite the absence of compelling mitigation. (See, e.g., *Conroy v. State Bar* (1991) 53 Cal.3d 495 [one-year actual suspension for failure to act competently and misrepresentations involving moral turpitude, even though no mitigation and two prior disciplines]; *Blair v. State Bar* (1989) 49 Cal.3d 762 [two years' actual suspension for three priors and "marginal" mitigation].) This court also has not reflexively applied standard 1.7(b), but has done so "with an eye to the nature and extent of the prior record. [Citations.]" (*In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208, 217.)

Juarez's initial misconduct was not serious, resulting in a public reproval. His second discipline was the result of several probation violations, which were mitigated due to Juarez's serious medical problems. We thus find that "[t]he nature and extent of respondent's two prior records of discipline are not sufficiently severe to justify our recommending disbarment in this proceeding under standard 1.7(b)." (*In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 704.)[9]

We also look to the decisional law to guide our analysis. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.) In recommending six months' actual suspension, the hearing judge relied on disciplinary cases where the gravamen of the misconduct was UPL, which she viewed as central to Jaurez's misconduct. Those cases presented a range of discipline from 30 days to six months of actual suspension.[10] But our concerns go beyond UPL to Juarez's attempts to mislead the court and his lack of competence. His prior record of discipline also weighs heavily

[9] We also acknowledge that some of the current misconduct occurred before the imposition of his prior discipline, which further diminishes the impact of standard 1.7(b). (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618-619.)

[10] The cases considered by the hearing judge were *Chasteen v. State Bar* (1985) 40 Cal.3d 586; *Farnham v. State Bar* (1976) 17 Cal.3d 605; *In the Matter of Mason* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639; *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585; and *In the Matter of Trousil, supra,*1 Cal. State Bar Ct. Rptr. 229.

in our analysis, as does his persistent indifference to his obligations to fully cooperate in his disciplinary proceedings. " ' "[A]n attorney's contemptuous attitude toward the disciplinary proceedings is relevant to the determination of an appropriate sanction.' " [Citation.]" (*Conroy v. State Bar, supra,* 53 Cal.3d at p. 507.)

The hearing judge's discipline recommendation failed to take into account these additional factors, which in our view demonstrate that more serious discipline is necessary to protect the public, the courts and the profession. Comparable case law supports our recommendation. (*Maltaman v. State Bar, supra,*43 Cal.3d 924 [one-year suspension for attempting to mislead judge with false order to obtain litigation advantage and willful disobedience of court orders, aggravated by failure to recognize wrongdoing and contemptuous attitude toward disciplinary proceedings, but mitigated by no prior discipline]; *Davis v. State Bar, supra,* 33 Cal.3d 231 [one-year suspension for attorney's misrepresentation he was not client's attorney to secure favorable determination in malpractice action, aggravated by his prior discipline involving recurring lack of candor]; *Rodgers v. State Bar* (1989) 48 Cal.3d 300 [two-year suspension for mishandling estate funds and concealing wrongful conduct from probate court, aggravated by significant client harm, dishonesty in disciplinary proceedings and refusal to acknowledge wrongdoing, but mitigated by no prior misconduct].)

Based on the totality of circumstances, we recommend that Juarez be suspended for one year and that the period of stayed suspension be increased from one year to two years.

V. RECOMMENDATION

We recommend that George A. Juarez be suspended from the practice of law for two years, execution stayed, and that he be placed on probation for two years on the following conditions:

1. He must be suspended from the practice of law for the first year of his probation.

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

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 his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, he must report such change in writing to the Membership Records Office and the State Bar Office of Probation.

4. He 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, he must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation during the preceding calendar quarter. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period. 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, he must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein.

6. Within one year after the effective date of the discipline herein, he must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and he will not receive MCLE credit for attending Ethics School.

7. The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the period of probation, if he has complied with all conditions of probation, the two-year period of stayed suspension will be satisfied and that suspension will be terminated.

VI. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Juarez not be ordered to take and pass the Multistate Professional Responsibility Examination as he was ordered to do so by the Supreme Court in its order filed September 21, 2010, imposing discipline in Supreme Court No. S184645 (State Bar Court case no. 09-H-12713).

VII. RULE 9.20

We further recommend that Juarez be ordered to comply with the requirements of 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, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

VIII. COSTS

We further 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 and as a money judgment.

EPSTEIN, J.

WE CONCUR:

REMKE, P. J.

PURCELL, J.