PUBLIC MATTER

FILED

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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of	)	Case Nos.: **13-O-16607-PEM (14-O-02064); 14-O-05540 (14-O-05882; 15-O-10366; 15-O-10884) (Cons.)**
MANUEL LOPEZ,	)	
Member No. 40235,	)	**DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**
A Member of the State Bar.	)	

Introduction[1]

In this contested disciplinary proceeding, respondent **Manuel Lopez** is charged with 17 counts of professional misconduct involving five client matters and trust account violations. The charged misconduct includes: (1) failing to report judicial sanctions; (2) failing to obey court orders; (3) failing to respond to client inquiries; (4) failing to perform with competence; (5) accepting fees from a non-client; (6) failing to refund unearned fees; (7) failing to render accounts of client funds; (8) failing to properly withdraw from employment; and (9) commingling personal funds in client trust account.

The court finds, by clear and convincing evidence, that respondent is culpable of all of the charged misconduct. In light of the serious nature and extent of respondent's misconduct, as well as the aggravating circumstances, including his three prior records of discipline, the court recommends that respondent be disbarred.

[1] Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

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Significant Procedural History

1. First Notice of Disciplinary Charges

On November 21, 2014, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a notice of disciplinary charges (NDC) in case Nos. 13-O-16607 and 14-O-02064. On February 3, 2015, the State Bar filed a notice of motion and motion for entry of default. And on February 20, 2015, the State Bar Court issued its order entering default and order enrolling inactive based on respondent's failure to respond to the NDC.

On March 9, 2015, respondent file a motion to set aside the default. And on March 24, 2015, the State Bar filed an opposition. On May 8, 2015, the court found respondent's motion to set aside the default was procedurally deficient in that respondent did not include a proposed verified response to the NDC. The court granted respondent's motion provided that he submit a verified response to the NDC by May 19, 2015. On May 18, 2015, respondent submitted his proposed verified response. On June 2, 2015, the court set aside respondent's default.

2. Second Notice of Disciplinary Charges

A second NDC (case Nos. 14-O-05540; 14-O-05882; 15-O-10366; and 15-O-10884) was filed on July 21, 2015; and on August 10, 2015, respondent filed his response.

On August 17, 2015, the two NDCs were consolidated for trial.

A stipulation as to facts and admission of documents was filed on October 21, 2015. A three-day trial was held on October 21, 22, and 23, 2015. The State Bar was represented by Senior Trial Counsel Lara Bairamian. Attorney Franklin S. Adler represented respondent.

Following closing briefs filed on November 3, 2015, the court took this matter under submission.[2]

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on June 6, 1967, and has been a member of the State Bar of California at all times since that date.

First NDC

1. Case No. 13-O-16607 – The Sanctions Matter

Facts

Respondent represented Aoreo Perez Cruz (Cruz) in an appeal with the U.S. Court of Appeals for the Ninth Circuit in docket No. 13-50099 (Cruz appeal matter). On April 3, 2013, after failing to pay filing and docketing fees, the appellate court ordered Cruz to pay the filing and docketing fees within 14 days of the April 3, 2013 order. On May 8, 2013, the appellate court ordered respondent to pay the filing and docketing fees within 14 days of the May 8, 2013 order and to file proof of such payment, or to file a motion to proceed in forma pauperis. At no time did respondent pay the filing and docketing fees and file proof of such payment, or file a motion to proceed in forma pauperis as ordered on April 3, 2013, and May 8, 2013.

On June 5, 2013, the appellate court ordered respondent to show cause in writing, within 14 days, why monetary sanctions should not be imposed upon him. On July 31, 2013, the appellate court served the June 5 order on respondent again. On October 22, 2013, the appellate court found that respondent failed to file a written response as to why monetary sanctions should not be imposed upon him. The appellate court imposed a $2,000 sanction against respondent for

[2] Respondent's reply to the State Bar's closing trial brief filed November 12, 2015, to which the State Bar objected, is hereby stricken since this matter was already submitted on November 3, 2015.

failing to comply with the court's rules and orders. The sanctions were ordered to be paid within 21 days after the filing of the order, which took effect on November 14, 2013.

Respondent did not report to the State Bar, in writing, within 30 days of the time he had knowledge of the imposition of the $2,000 judicial sanctions against him.

On April 14, 2014, after the expiration of the date by which respondent was to pay the court ordered sanctions, respondent requested that the appellate court rescind the sanctions. In his motion to rescind the sanctions, respondent wrote, "Many things got out of control as a result of no power and staff problems. I apologize to the Court. It was an embarrassing situation. My office suffered a financial slump and I could not pay for transcripts and could not finance costs at the time." On May 12, 2014, the appellate court denied respondent's request to rescind the sanctions. The appellate court granted respondent one final opportunity to pay the sanctions within 21 days of the May 12, 2014 order. To date, respondent has not paid the court ordered sanctions.

Conclusions

Count 1 - (§ 6068, subd. (o)(3) [Failure to Report Sanctions])

Section 6068, subdivision (o)(3), provides that within 30 days of knowledge, an attorney has a duty to report, in writing, to the State Bar the imposition of judicial sanctions against the attorney of $1,000 or more which are not imposed for failure to make discovery.

By failing to report to the State Bar the $2,000 sanctions the U.S. Court of Appeals for the Ninth Circuit imposed on him on October 22, 2013, in the Cruz appeal matter, respondent willfully violated section 6068, subdivision (o)(3).

Count 2 - (§ 6103 [Failure to Obey a Court Order])

Section 6103 provides, in pertinent part, that a willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the

attorney's profession, which an attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment.

By failing to comply with the April 3, 2013 and May 8, 2013 court orders to pay the filing and docketing fees or to file a motion to appear in forma pauperis, and by failing to comply with the July 31, 2013, October 22, 2013, and May 12, 2014 court orders to pay the monetary sanctions issued against him in the Cruz appeal matter, respondent willfully violated section 6103.

2. Case No. 14-O-02064 – The Diaz Matter

Facts

On March 12, 2013, the Los Angeles County Superior Court accepted Marisol Diaz's (Marisol) plea of nolo contendere to one count of inflicting corporal injury to her spouse and sentenced her to five years in prison. Her spouse, Jose Diaz (Diaz), thought that five years in prison was too long in view of the fact that his wife had mental health problems. On September 14, 2013, Diaz met with respondent to discuss getting Marisol out of prison. Respondent told Diaz the only way to get the issue of Marisol's sentencing before the court was to file a petition challenging Marisol's criminal conviction. On that day, Diaz paid and retained respondent to file a habeas petition on Marisol's behalf for a fee of $2,500. Respondent also promised to visit Marisol in prison.

In November 2013, Diaz called respondent requesting a status of the habeas petition. After receiving the request respondent demanded an additional $2,000 to complete the habeas petition. Diaz told respondent that he did not have the $2,000, but that Marisol's parents would be willing to pay the additional fees. On December 20, 2013, Marisol's parents, Joe and Susie Garcia (Garcias), paid respondent an additional $2,000 to represent Marisol in her habeas petition. At no time did respondent obtain Marisol's informed, written consent to receive

compensation from the Garcias for his representation of Marisol. Furthermore, once respondent received the fee from the Garcias, Diaz never heard from respondent though he called respondent at least a hundred times between December 2013 and September 2014.

At no time did respondent file a habeas petition challenging Marisol's criminal conviction or perform any legal service on behalf of Marisol. Furthermore, he did not visit Marisol in prison as he had promised or inform Diaz that there was no basis for the habeas petition. On March 18, 2015, after receiving a complaint from the State Bar by the Diazes, respondent provided a $2,000 refund to the Garcias. At no time did respondent refund any portion of the $2,500 unearned fees to Diaz.

Count 3 - (§ 6068, subd. (m) [Failure to Communicate])

Section 6068, subdivision (m), provides that an attorney has a duty to promptly respond to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

Between December 2013 and September 2014, respondent failed to respond promptly to Diaz's telephonic status inquiries in a matter in which respondent had agreed to provide legal services, in willful violation of section 6068, subdivision (m).

Count 4 - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence.

Respondent intentionally, recklessly, or repeatedly failed to perform with competence, in willful violation of rule 3-110(A), by failing to file the habeas petition, or perform any other legal service. Most notably, respondent never visited his client. His excuse for failing to visit her was that she was mentally unbalanced. This court is of the opinion that even a mentally unbalanced person is entitled to meet her attorney.

Count 5 - (Rule 3-310(F) [Accepting Fee from a Non-Client])

Rule 3-310(F) provides that an attorney must not accept compensation for representing a client from one other than the client unless, among other things, the attorney obtains the informed written consent.

On December 20, 2013, respondent accepted $2,000 from the Garcias as compensation for representing their daughter Marisol, without obtaining her informed written consent to receive such compensation, in willful violation of rule 3-310(F).

Count 6 - (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned.

Respondent received advanced fees of $2,500 from Diaz on behalf of Marisol, and $2,000, from his client's parents, the Garcias, for purposes of representing Marisol on a habeas corpus petition challenging her criminal conviction. Respondent performed no legal services of value on behalf of the client, and therefore, did not earn the $4,500 in advanced fees. Respondent has failed to refund the unearned fees promptly, upon respondent's constructive termination of employment on December 21, 2013, in willful violation of rule 3-700(D)(2).

Second NDC

3. Case No. 14-O-05540 – The Martinez Matter

Facts

On October 7, 2012, Omar Martinez (Martinez) retained respondent for a fee of $1,200 to represent him in a traffic violation matter, which was scheduled to be heard on or before November 22, 2012, in the East Los Angeles Courthouse. Respondent did not take care of the matter prior to November 22, 2012, nor is there any evidence that he appeared in court on behalf of Martinez at the traffic court hearing. On November 22, 2012, Martinez called respondent's

office to see what had happened with the citation. Respondent did not call Martinez back so Martinez assumed that respondent had taken care of his case.

At no time did respondent notify Martinez that he failed to appear at the November 22, 2012 traffic court hearing. On August 23, 2014, Martinez received a notice from the police department that a warrant had been issued for his arrest. Martinez was surprised and thought it was probably a mistake; so he called respondent's office. When respondent did not return Martinez's phone call, Martinez wrote respondent a letter in Spanish and stopped by his office to deliver the letter in person. Respondent was not in his office at the time so Martinez gave the letter to Anna Lopez (Anna) in the office. Martinez later asked Anna if she had delivered his letter to respondent. She said she had.

At the same time she referred Martinez to a paralegal, Laverne Hardin (Hardin) who could help him deal with the citation and warrant. Hardin recommended that Martinez go to court and take care of the matter himself and then write a letter to the State Bar regarding respondent's conduct. Neither Hardin nor Anna charged Martinez anything for their advice. In fact, Hardin drafted the complaint letter Martinez sent to the State Bar.

Two weeks later, Martinez complained to the State Bar, respondent went to Martinez's father's job site and gave Martinez's father $500 to give to Martinez. Respondent also promised to pay back the remainder of the $1,200. Respondent's last installment refund payment was July 3, 2015. When he met with Martinez at that July 3 meeting, respondent admitted that he never went to court on Martinez's behalf. Respondent also asked that Martinez withdraw his State Bar complaint.

Respondent did not render an appropriate accounting to Martinez regarding those funds following his constructive termination of the attorney-client relationship on November 22, 2012.

Conclusions

Count 1 - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

By failing to appear at the traffic court hearing scheduled for November 22, 2012, on behalf of Martinez, respondent intentionally and recklessly failed to perform with competence in willful violation of rule 3-110(A).

Count 2 - (Rule 3-700(A)(2) [Improper Withdrawal from Employment])

Rule 3-700(A)(2) prohibits an attorney from withdrawing from employment until the attorney has taken reasonable steps to avoid reasonably foreseeable prejudice to the client's rights, including giving due notice to the client, allowing time for the employment of other counsel, and complying with rule 3-700(D) and other applicable rules and laws.

Respondent failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to Martinez, by failing to take any action on behalf of Martinez before or after November 22, 2012, and thereby constructively terminating employment without giving due notice to his client that he was withdrawing from employment, in willful violation of rule 3-700(A)(2).

Count 3 - (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

Between October 7 and November 17, 2012, respondent received advanced fees of $1,200 from Martinez to appear at a traffic court hearing at the East Los Angeles Courthouse scheduled on or before November 22, 2012. Respondent failed to appear at the traffic court hearing scheduled for November 22, 2012, nor did he perform any legal services for the client, and therefore earned none of the advanced fees paid. Respondent did not return the full amount of $1,200 until July 2015, almost three years later. Therefore, respondent failed to refund promptly, upon respondent's termination of employment on November 22, 2012, the $1,200 fee in willful violation of rule 3-700(D)(2).

Count 4 - (Rule 4-100(B)(3) [Maintain Records of Client Property/Render Appropriate Accounts])

Rule 4-100(B)(3) provides that an attorney must maintain records of all client funds, securities, and other properties coming into the attorney's possession and render appropriate accounts to the client regarding such property.

Between October 7 and November 17, 2012, respondent received from Martinez the sum of $1,200 as advanced fees. Respondent thereafter failed to render an appropriate accounting to Martinez regarding those funds following his constructive termination of the attorney-client relationship on November 22, 2012, in willful violation of rule 4-100(B)(3).

Count 5 - (§ 6068, subd. (m) [Failure to Communicate])

Respondent failed to keep Martinez reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services by failing to inform the client that he failed to appear at the traffic court hearing scheduled for November 22, 2012, in willful violation of section 6068, subdivision (m).

4. Case No. 14-O-05882 – Commingling

Facts

On November 28, 2014, respondent deposited his Social Security check for the month of October 2014, in the amount of $2,011, into his client trust account at Bank of America (CTA) and withdrew $1,911, leaving $100 of respondent's personal funds from the Social Security check in the CTA.

On December 3, 2014, respondent deposited his Social Security check for the month of November 2014, in the amount of $2,015, into his CTA and withdrew $1,915, leaving $100 of respondent's personal funds from the Social Security check in the CTA.

Conclusions

Count 6 - (Rule 4-100(A) [Commingling])

Rule 4-100(A) provides that all funds received or held for the benefit of clients must be deposited in a client trust account and no funds belonging to the attorney or law firm must be deposited therein or otherwise commingled therewith, except for limited exceptions.

By depositing his two Social Security checks into his CTA in November and December 2014, respondent commingled funds belonging to respondent into his CTA, thereby inappropriately using his CTA as a personal account, in willful violation of rule 4-100(A).

5. Case No. 15-O-10366 – The Luna Matter

Facts

On October 1, 2014, Socorro Luna (Luna) retained respondent to represent her in her marital dissolution matter in *Luna v. Luna*, San Bernardino Superior Court, case number FAMRS1303384, including an upcoming hearing scheduled for October 8, 2014, for a fee of $2,000.[3] Luna did not have the $2,000 on October 1 so she returned to respondent's office the next day to give him the $2,000. Respondent was not in so she left the $2,000 with his office manager.

On October 6, her ex-husband called her and they worked out a settlement agreement. She did not contact respondent about the settlement agreement because she assumed she would see him in court on October 8, 2014.

On October 8, 2014, respondent did not appear at the court hearing. In fact, when respondent failed to show at the hearing, Luna called his office from the courthouse, asking where he was. She was told that he had another court appearance in another courthouse and that

[3] At the October 1 meeting, respondent promised he was going to be at her side at the October 8 hearing.

he would come as soon as he could. Luna proceeded to represent herself and show the court the marriage settlement agreement she had reached with her ex-husband on October 6, 2014, without respondent's presence or assistance. On October 8, 2014, the court approved the written settlement agreement.

After the hearing, Luna requested that respondent return her fee as he had not done any work on her marital dissolution. On December 6, 2014, at the request of Luna, Luna and respondent held an in-person meeting where Luna terminated respondent's employment and requested $1,500 of the $2,000 since respondent claimed that he did show up at the hearing, albeit, after her case was heard. Respondent agreed to refund her $1,500 within one week of their meeting as he was anticipating that he would receive money for debt owed to him.

Three weeks later and after numerous phone calls, it became apparent to Luna that respondent had no intention of refunding her the $1,500. On December 30, 2014, Luna filed an action in small claims court against respondent. On February 11, 2015, Luna obtained a $2,000 judgment against respondent. To date, respondent has not refunded the unearned fees to Luna, nor has he rendered an appropriate accounting to Luna regarding the advanced attorney fees collected on October 2, 2014.

Count 7 - (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

Respondent did not appear at any hearing in Luna's marital dissolution matter, nor did he perform any legal services for the client, and therefore earned none of the advanced fees paid. Respondent failed to refund promptly, upon his termination of employment in or about December 2014, any part of the $2,000 fee to the client, in willful violation of rule 3-700(D)(2).

Count 8 - (Rule 4-100(B)(3) [Maintain Records of Client Property/Render Appropriate Accounts])

Respondent failed to render an appropriate accounting to the client regarding the $2,000 fees upon the termination of respondent's employment in December 2014, in willful violation of rule 4-100(B)(3).

6. Case No. 15-O-10884 – The Garduno-Carillo Matter

Facts

In early December 2014, Claudia Garduno-Carillo retained respondent to file a lawsuit and represent her in a real estate investment dispute for a fee of $2,000. Between December 10 and December 19, 2014 Garduno-Carillo paid respondent $2,000. She told respondent that she expected him to file a lawsuit by the end of December 2014. Garduno-Carillo sent respondent numerous texts and made a number of phone calls inquiring about the status of the case.

In January 2015, Garduno-Carillo made more telephonic status inquiries to respondent. Respondent did not respond to any of Garduno-Carillo's telephonic status inquiries. So Garduno-Carillo had a friend call respondent on January 9, 2015. Respondent answered her friend's telephone call. Respondent agreed to meet with Garduno-Carillo and scheduled an appointment to take place on January 17, 2015. Respondent did not appear at the scheduled meeting with Garduno-Carillo. At no time did respondent file a lawsuit and represent Garduno-Carillo in her real estate investment dispute or perform any legal services on behalf of Garduno-Carillo. At no time did respondent refund the unearned fees to Garduno-Carillo after his employment termination in January 2015.

Conclusions

Count 9 - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

By failing to file a lawsuit or otherwise perform any legal services on behalf of Garduno-Carillo, respondent intentionally, recklessly, or repeatedly failed to perform with competence, in willful violation of rule 3-110(A).

Count 10 - (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

Respondent failed to file a lawsuit, or perform any legal services for the client, and therefore earned none of the advanced fees paid. Respondent failed to refund promptly, upon respondent's termination of employment in January 2015, the $2,000 unearned fees in willful violation of rule 3-700(D)(2) .

Count 11 - (§ 6068, subd. (m) [Failure to Communicate])

Respondent failed to respond promptly to Garduno-Carillo's multiple telephonic status inquiries made between the end of December 2014 and January 2015, in willful violation of section 6068, subdivision (m).

Aggravation[4]

Prior Record of Discipline (Std. 1.5(a).)

Respondent has a record of three prior disciplinary actions.

1. On August 25, 1993, the Supreme Court filed an order in case No. S033229 (State Bar Court case Nos. 86-O-15102 et al.), suspending respondent from the practice of law for six months, stayed, with an 18-month period of probation. Respondent stipulated to committing professional misconduct in seven client matters, including

[4] All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

failure to perform with competence, failure to communicate, and failure to pay client funds promptly.

2. On April 18, 1996, the Supreme Court filed an order in case No. S051589 (State Bar Court case Nos. 94-O-12220 et al.), suspending respondent from the practice of law in California for one year, stayed, with a three-year period of probation, including a 60-day actual suspension. Respondent stipulated to committing professional misconduct in two client matters, including failure to perform with competence, failure to inform client of significant development, and improper withdrawal of employment.
3. On November 2, 2001, the Supreme Court filed an order in case No. S100293 (State Bar Court case No. 98-O-02455), suspending respondent from the practice of law in California for one year, stayed, with a two-year period of probation. Respondent stipulated to committing professional misconduct in one client matter, including failure to perform with competence.

Multiple Acts of Wrongdoing (Std. 1.5(b).)

Respondent's misconduct evidences multiple acts of wrongdoing in six different matters, including: (1) failing to report judicial sanctions; (2) failing to obey court orders; (3) failing to respond to client inquiries; (4) failing to perform with competence; (5) accepting fees from a non-client; (6) failing to refund unearned fees; (7) failing to render accounts of client fund; (8) failing to properly withdraw from employment; and (9) commingling personal funds in client trust account.

Significant Harm to Client/Public/Administration of Justice (Std. 1.5(j).)

Respondent's failure to return unearned fees to Diaz, Luna, and Garduno-Carillo clearly deprived them of their funds and caused them harm. In the Luna matter, although Luna took

respondent to small claims court for the return of her fees and prevailed, respondent has yet to comply with the judgment.

In the Martinez matter, respondent's improper withdrawal of employment significantly harmed his client. Respondent's failure to appear at the traffic court hearing resulted in a warrant for Martinez's arrest. Despite knowing about the warrant, respondent did nothing, leaving the client to resolve the matter on his own.

Indifference Toward Rectification/Atonement (Std. 1.5(k).)

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. "The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for his acts and come to grips with his culpability. [Citation.]" (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.)

In this proceeding as well as in his closing brief, respondent maintains that he is not culpable of any misconduct or that his conduct is mitigated by the actions of Anna Lopez and Lavern Hardin. He insists on blaming these two individuals for all his problems and accused them of intercepting his mail and contacting his clients. Yet, there was no nexus shown between any of their alleged acts and respondent's malfeasance. For example, his failure to report the judicial sanctions, his acceptance of fees from a non-client, his failure to return unearned fees, his failure to render an accounting, his failure to appear in court, and his depositing his Social Security checks in the CTA have no correlation to any of the alleged actions of Anna and Hardin. The court finds this and other respondent's arguments unmeritorious and rejects them.

It is clear that respondent fails to appreciate or understand the significance of his misconduct. Respondent's failure to accept responsibility for actions which are wrong or to

understand that wrongfulness is considered an aggravating factor. (*Carter v. State Bar* (1988) 44 Cal.3d 1091, 1100-1101.)

Failure to Make Restitution (Std. 1.5(m).)

To date, respondent has failed to make restitution to Diaz, Luna, and Garduno-Carillo. Respondent's failure to make restitution is an aggravating circumstance.

Mitigation

Good Character (Std. 1.6(f).)

Respondent had one character witness who had no knowledge of the charged misconduct. He is not entitled to mitigation for good character because he had only one witness. This did not constitute a broad range of references from the legal and general communities. (*In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160.)

Respondent was President of the Mexican-American Political Association and claims that he was most instrumental overseeing the congressional passage and presidential signing of the 1986 Immigration Act. But, because there is no evidence of recent community activities or pro bono efforts and because his community work had already been considered in mitigation in his first prior record of discipline in 1993, respondent's past community involvement is not a mitigating factor.

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney but to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (Std. 1.1; *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 1095, 1090; *In the Matter of Koehler* (Review

Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Standard 1.7(a) provides that when two or more acts of misconduct are found, and different sanctions are prescribed for each act, the most severe sanction must be imposed.

Standards 1.7(b) and 1.7(c) provide, in pertinent part, that the specific sanction for the particular violation found must be balanced with any mitigating or aggravating circumstances, and if the net effect demonstrates that a greater or lesser sanction is needed to fulfill the primary purposes of discipline then it is appropriate to impose or recommend a greater or lesser sanction.

Standard 1.8(b) provides that, unless the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct, if an attorney has two or more prior records of discipline, disbarment is appropriate if: (1) an actual suspension was ordered in one of the prior matters; (2) the prior and current matters together demonstrate a pattern of misconduct; or (3) the prior disciplinary matters coupled with the current record demonstrate the member's unwillingness or inability to conform to ethical responsibilities.

Standard 2.2 provides that an actual suspension of three months is the presumed sanction for commingling or failing to promptly pay out entrusted funds. While suspension or reproval is the presumed sanction for any other violation of rule 4-100.

Standard 2.7 provides that actual suspension is the presumed sanction for performance, communication, or withdrawal violations in multiple client matters, not demonstrating habitual disregard of client interests.

Standard 2.12(a) provides that actual suspension or disbarment is the presumed sanction for disobedience or violation of a court order related to the attorney's practice law.

Standard 2.12(b) provides that reproval is the presumed sanction for a violation of the duties required of an attorney under section 6068, subdivisions (i), (j), (l), or (o).

Standard 2.19 provides that suspension not to exceed three years or reproval is the presumed sanction for a violation of a provision of the Rules of Professional Conduct not specified in these standards.

Respondent contends that this matter should be dismissed, or in the alternative, if culpability is found, a maximum of six months' actual suspension is adequate. He asserts that Anna and Hardin had sabotaged his practice and that their alleged behavior should relieve him of any culpability of misconduct. The court rejects his assertions.

The State Bar urges respondent be disbarred, in light of his three prior records of discipline under standard 1.8(b). The court agrees.

Under standard 1.8(b), respondent was actually suspended for 60 days in his second prior disciplinary matter. Here, respondent's lack of insight raises concerns as to whether his misconduct may recur and is particularly troubling to this court. He refuses to accept responsibility for his wrongdoing.

There are no compelling mitigating circumstances in this matter. Instead, there is a track record of repeated violations by respondent of his professional obligations for the past 30 years, to the detriment of the public. Respondent's three prior impositions of discipline have not operated to cause respondent to conform his conduct to ethical norms. His extensive record of

prior discipline demonstrated that probation and suspension have proven inadequate in the past to protect against future misconduct, and the record in the current proceeding did not give assurance that such a sanction would ensure that future misconduct would not occur. (*In the Matter of* Rose (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646.) In sum, it is clear that strong steps must be taken to protect the public from future professional misconduct on his part. Consequently, the court finds no reasonable cause to deviate from standard 1.8(b) and recommends that respondent be disbarred for the "protection of the public, the profession, and the courts, maintenance of high professional standards, and preservation of public confidence in the legal profession." (*Rose v. State Bar* (1989) 49 Cal.3d 646, 666.)

Recommendations

It is recommended that respondent **Manuel Lopez**, State Bar Number 40235, be disbarred from the practice of law in California and his name be stricken from the roll of attorneys.

Restitution

The court also recommends that respondent be ordered to make restitution to the following payees:

(1) Jose Diaz in the amount of $2,500 plus 10 percent interest per year from September 14, 2013;

(2) Socorro Luna in the amount of $2,000 plus 10 percent interest per year from October 2, 2014; and

(3) Claudia Garduno-Carillo in the amount of $2,000 plus 10 percent interest per year from December 19, 2014.

California Rules of Court, Rule 9.20

It is further recommended that respondent 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.

Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Order of Involuntary Inactive Enrollment

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that **Manuel Lopez**, State Bar Number 40235, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rules Proc. of State Bar, rule 5.111(D).)

Dated: January 20, 2016

Pat McElroy

PAT McELROY
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); 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 San Francisco, on January 20, 2016, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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 San Francisco, California, addressed as follows:

FRANKLIN SAMUEL ADLER
424 SOUTH BEVERLY DRIVE
BEVERLY HILLS, CA 90212

☐ 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:

Lara Bairamian, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on January 20, 2016.

George Hue
Case Administrator
State Bar Court