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**STATE BAR COURT  
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**STATE BAR COURT OF CALIFORNIA**

**REVIEW DEPARTMENT**

In the Matter of	)	Case No. 15-O-13576
	)	
ROBERT E. GENTINO,	)	OPINION
	)	
A Member of the State Bar, No. 93808.	)	
_____	)	



A hearing judge found Robert E. Gentino culpable of three counts of misconduct: failure to perform legal services with competence, failure to communicate, and misrepresentation to his client constituting moral turpitude. The judge applied standard 2.11,<sup>1</sup> which provides for presumptive discipline of actual suspension or disbarment for acts involving moral turpitude. However, after weighing significant factors in aggravation and mitigation, the hearing judge concluded that a departure from standard 2.11 was justified and recommended a one-year stayed suspension.

Both Gentino and the Office of Chief Trial Counsel of the State Bar (OCTC) appeal. Gentino argues that the evidence failed to establish his culpability, and that the judge excluded admissible evidence that Gentino sought to introduce. He also argues that the aggravating factors warranted less weight and that he is entitled to more mitigation.<sup>2</sup> OCTC asks that we affirm the hearing judge's culpability findings, seeks additional aggravation for indifference, and requests that the mitigation weight be decreased. At trial, OCTC sought a 30-day actual

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<sup>1</sup> Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct. All further references to standards are to this source.

<sup>2</sup> Having independently reviewed all arguments set forth by Gentino, those not specifically addressed have been considered and are rejected as having no merit.

suspension. On review, it submits that the recommended discipline should be “at least” a 30-day actual suspension.

Upon our independent review of the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge’s findings of fact and of culpability for failure to perform with competence and failure to communicate. However, we do not find that Gentino made a misrepresentation constituting moral turpitude. We uphold the judge’s aggravation and mitigation findings, with modifications. Given that we do not find culpability for misrepresentation, we applied and weighed the factors under a different standard than the hearing judge used. Considering the overall balance of aggravation and mitigation, we also find that a one-year stayed suspension is appropriate discipline.

## I. PROCEDURAL BACKGROUND

On July 20, 2016, OCTC filed a four-count Notice of Disciplinary Charges (NDC) against Gentino. Specifically, OCTC alleged that he: (1) intentionally, recklessly, or repeatedly failed to perform legal services with competence during his representation of Desiree Galvez in an action entitled *Constantina Pair v. Desiree Galvez, et al. (Pair)*, in willful violation of rule 3-110(A) of the Rules of Professional Conduct;<sup>3</sup> (2) failed to inform his client of numerous significant developments in the *Pair* matter, in violation of section 6068, subdivision (m), of the Business and Professions Code;<sup>4</sup> (3) made representations to his client that he knew, or was grossly negligent in not knowing, were false, thereby committing an act involving moral

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<sup>3</sup> All further references to rules are to this source, unless otherwise noted. Under rule 3-110(A), “A member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence.”

<sup>4</sup> All further references to sections are to this source. It is the duty of an attorney, under section 6068, subdivision (m), “To respond promptly 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.”

turpitude, dishonesty, or corruption, in willful violation of section 6106;<sup>5</sup> and (4) concealed additional facts from his client when he knew, or was grossly negligent in not knowing, that the concealment was dishonest, thereby committing an act involving moral turpitude, dishonesty, or corruption, in willful violation of section 6106.

Trial took place on October 25, 26, and 27, 2016. The hearing judge issued her decision on January 24, 2017.

## II. FACTUAL BACKGROUND<sup>6</sup>

Gentino was admitted to the practice of law on December 16, 1980. On October 28, 2013, Galvez hired Gentino to represent her in *Pair*, which was pending in Los Angeles County Superior Court. On November 1, 2013, Gentino filed a demurrer and cross-complaint. The parties attended a Case Management Conference (CMC) on January 15, 2014, which was continued to March 17, 2014. On March 4, 2014, the plaintiff filed a first amended complaint, which mooted the demurrer.

### A. March 17, 2014, CMC

Gentino did not attend the CMC on March 17, 2014. He was scheduled for three court appearances that morning, each beginning at 8:30 a.m. He checked in to the other two matters first, and, by the time Gentino arrived for the *Pair* hearing at 8:35 a.m., the judge had already held the CMC. The judge issued a minute order and a case management order, both noting that no appearance was made on behalf of Galvez. The minute order specified that trial was set for

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<sup>5</sup> Under section 6106, “The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise . . . constitutes a cause for disbarment or suspension.”

<sup>6</sup> We base the factual background on trial testimony, documentary evidence, and the hearing judge’s factual findings, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).) We also give great weight to the judge’s credibility findings. (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [hearing judge best suited to resolve credibility questions “because [the judge] alone is able to observe the witnesses’ demeanor and evaluate their veracity firsthand”].)

September 8, 2014, and directed the parties to file trial briefs, witness lists, and exhibit lists five days before the trial date.

The plaintiff was ordered to provide notice. On March 18, 2014, the plaintiff served Gentino with a Notice of Ruling regarding the CMC, but it did not include the judge's order to file trial briefs and related lists five days before trial. Gentino did not check the Los Angeles Superior Court's local rules to ascertain if he had to fulfill any particular requirements to prepare for trial, nor did he obtain a copy of the minute order to confirm the judge's ruling.

**B. Default Entered**

On March 4, 2014, the plaintiff filed a first amended complaint. In response, on July 7, 2014, Gentino filed a demurrer and motion to strike portions of the amended complaint, and received a hearing date of September 8, 2014, the date set for trial. Gentino did not seek an order to shorten time for the hearing on the demurrer so it could be addressed prior to the trial date.

Galvez did not know that Gentino had filed a demurrer. She knew that a court date was set for September 8, but she was not sure why. She testified she believed they were going to court to get "an extension of some sort."

On September 8, 2014, Gentino reviewed the court's tentative ruling striking both the demurrer and the motion to strike. He did not tell Galvez about the tentative ruling. On Gentino's advice, Galvez waited in the hallway during the demurrer hearing, at which the judge upheld his tentative ruling. The minute order states, "this day's trial date was known to all parties at the time of the filing of the first amended complaint and demurrer and motion and demurring party had the opportunity to respond, and chose not to." The order further states, "Pursuant to Section 471.5 CCP<sup>7</sup>, the Court finds Defendant's responsive pleading to the

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<sup>7</sup> Code of Civil Procedure section 471.5 provides that when an amended complaint is filed, the defendant shall answer within 30 days after service, or such other time as the court may direct, and that judgment by default may be entered upon failure to answer.

amended complaint [demurrer and motion to strike] to be grossly untimely and orders default entered as to Defendant Desire [sic] Galvez . . . , and her answer stricken.” After ruling on the demurrer, the court held a default “prove up” trial and found in favor of the plaintiff, awarding \$37,526.95<sup>8</sup> in damages.

Gentino did not remain in the courtroom during the “prove up” trial. Instead, he left to speak with Galvez. He told her that she had lost her case because the court made an error. Gentino testified that he also told Galvez that his demurrer was untimely. Based on his remarks, Galvez believed she had lost the case, but testified that Gentino told her he would “fall on his sword” and do something to save her case. Gentino confirmed that he told Galvez he would be able to save her case from the default entered against her.

On September 18, 2014, plaintiff’s counsel served Gentino with the proposed Judgment, which included a memorandum of costs. The costs were \$4,417.95, resulting in a total judgment of \$41,944.90. On September 23, 2014, Gentino emailed Galvez a copy of the proposed Judgment with no explanation. She replied that same day, asking, “So am I not going to trial? I owe \$42,000.00 basically? . . . Not really sure what this means.” Gentino replied that he would “file a motion to vacate Order striking our demurrer and vacated [sic] default judgment which will likely be granted. Then you go to trial.” Gentino did not inform Galvez that the Judgment was filed on October 9, 2014.

**C. Motion to Reconsider and Vacate**

On December 5, 2014, Gentino filed a “Motion to Reconsider and Vacate Order Striking Demurrer and Motion to Strike and Entry of Default Judgment, or Alternatively, to Vacate Order Striking Demurrer and Motion to Strike and Entry of Default Judgment.” The hearing on the

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<sup>8</sup> We note that the plaintiff erroneously listed \$37,526.98 as the amount of judgment on the memorandum of costs.

motion was scheduled for December 31, 2014. Gentino emailed Galvez a copy of the motion on December 22, 2014, without providing any explanation.

On December 30, 2014, the court issued a tentative ruling denying Gentino's motion on multiple grounds. Specifically, the ruling indicated that the motion to reconsider under Code of Civil Procedure section 1008, subdivision (a), was denied because it failed to establish new law to support reconsideration, as required by the statute. Further, the court found that the entry of judgment precluded it from reconsidering its motion orders. The tentative ruling also stated that the motion to vacate under Code of Civil Procedure section 473, subdivision (b), was denied because no evidence to support excusable mistake or neglect was presented, and because Gentino did not attach a copy of the answer or other pleading proposed to be filed, as required by the statute. After receiving the tentative ruling, Gentino filed a notice by fax at 2:41 p.m. that same day, indicating that he was withdrawing the motion. He did not appear at the hearing or inform Galvez about the tentative ruling or his withdrawal of the motion. At the hearing, the court noted Gentino's failure to appear and entered the tentative ruling as the order of the court.

**D. Gentino Takes No Further Action to Appeal Default Judgment**

Between January 2 and January 8, 2015, Gentino and Galvez exchanged emails to schedule a meeting about her case status. On January 8, 2015, Gentino sent Galvez a copy of his motion to reconsider and vacate, again without any explanation. She replied by email the same day, indicating that she had read his emails and printed the attachments. Her email also said that her "case was lost due to an untimely filing" and pointed out that Gentino had told her that she would be able to appeal. She asked him, "Did the judge accept that appeal? If yes, where do we go from here? If no, where do we go from here?" In reply, Gentino explained that the "demurrer was struck due to the Court's belief that the filing was untimely though the Motion authorities support the timeliness of the demurrer." He also asserted that he had six months from

the September 8, 2014, trial date to file another motion, "which removes discretion and makes it mandatory to grant the motion on an attorney affidavit of fault." Gentino stated that he was willing to file such a motion, but wanted to discuss it with her first.

Gentino and Galvez met on January 14, 2015, to discuss the reasons for and against filing a second motion to vacate. He informed her that another motion would cost additional attorney fees and risk increasing the amount of the judgment. They continued to communicate between January and April of 2015, but Galvez did not decide whether Gentino should file the new motion. When she asked him for his opinion, he responded that it was her decision. On April 29, 2015, Gentino emailed Galvez and told her that since she had not yet made a decision, he would file the motion, and she could later withdraw it. He also advised her she could consult with another professional, to which Galvez replied that she would seek a second opinion. On April 30, 2015, Gentino again emailed Galvez, reported that he had reserved May 29 for the new motion to vacate, and asked whether he should file it before she substituted him out of the case. Galvez replied the same day, stating that she did not plan to replace him and that she assumed the motion was fine. In April of 2015, she discovered that Pair had placed liens on her bank accounts, resulting in approximately \$2,000 being removed from her accounts.

On May 5, 2015, Galvez emailed Gentino and directed him to file the motion to vacate. On May 29, 2015, she sent him an email saying she thought the hearing was set for that day and asking him when she should go to court. Gentino did not respond. On June 4, 2015, she emailed Gentino to find out if he had filed the motion to vacate and to ask how Pair was allowed to place liens on her accounts. On June 9, 2015, Galvez emailed Gentino to ask again if he had filed the motion to vacate since she "began asking almost 6 weeks ago." Gentino replied that he had

reserved the date of May 31, 2015,<sup>9</sup> for a hearing on the motion, but did not file the motion “while [he] awaited [her] decision since January whether [she] wanted to keep the result, or pay additional fees and costs to challenge it by a motion for affidavit of fault.” He also disclosed that, even though he did not believe he was at fault, he had been willing to take the blame if she wished to pursue the motion. Finally, he wrote to her that if her new attorney believed Gentino was at fault, Galvez could pursue an action against him for any damages she believed he had caused.

### III. CULPABILITY

#### A. Count One—Failure to Perform Legal Services with Competence (Rule 3-110(A))

In count one, Gentino was charged with “intentionally, recklessly, or repeatedly” failing to perform with competence. We agree with the hearing judge that Gentino was culpable as charged. Initially, Gentino failed to file a timely responsive pleading to the first amended complaint, as required by Code of Civil Procedure section 471.5. After filing the demurrer and motion to strike three months late, he did not ensure that they were heard before the trial date. Further, he did not check the local rules to determine if he needed to file any papers in advance of trial, and, thus, he did not file a trial brief and exhibit and witness lists five days before trial, as required by the judge’s CMC minute order. Gentino testified that he did not review the local rules based on his experience that not all judges followed them. While the notice of the CMC order was served on Gentino, the plaintiff’s counsel failed to include the judge’s instructions about the filings to be made before trial. Gentino should have verified the judge’s orders regarding the trial since he did not attend the CMC.

Gentino then filed an untimely and deficient motion to reconsider and vacate, but did not appear at the hearing after learning of the unfavorable tentative ruling. Although he sent a fax

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<sup>9</sup> Also on June 9, 2015, Gentino emailed Galvez to correct his error and inform her that the reserved hearing date had actually been May 29, 2015.



attempting to withdraw the motion, he never received confirmation that the judge had received it. Finally, he failed to file a subsequent motion to vacate, even though Galvez specifically requested that he do so and after telling her that he had reserved a hearing date in May of 2015.

These repeated failures to perform clearly establish culpability for violation of rule 3-110(A). (*McMorris v. State Bar* (1981) 29 Cal.3d 96, 99 [repeated inattention to client's needs have long been grounds for discipline]; *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 131 [failure to respond to interrogatories, attend arbitration hearing, and appear at status conference about arbitration award constitute violation of rule 3-110(A)]; *In the Matter of Lantz* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126, 133 [even if client could not decide which remedy to pursue, respondent could not simply let months pass with no action and had to pursue remedy warranted by facts or appropriately withdraw from representation].) Moreover, Gentino's failure to file the second motion to vacate when told by his client to do so and to confirm the details of the judge's minute order each constitutes a reckless failure to perform, a separate basis for culpability. (*In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, 7 [attorney's prolonged delay in proceeding with inherently urgent legal matter despite client's repeated requests is reckless failure to perform]; *In the Matter of Lais* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907, 919 [attorney's failure to inform client about, and to answer, cross-complaint is reckless failure to perform].)

Gentino asserts that he has a reasonable explanation for each of his actions and that good faith errors do not warrant discipline. Contrary to his contentions, such misconduct need not involve deliberate wrongdoing. (*Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 932.) His repeated failures to perform, at least two of which were reckless, clearly and convincingly demonstrate his failure to perform with competence.

**B. Count Two—Failure to Communicate (§ 6068, Subd. (m))**

In count two, the hearing judge found that Gentino failed to communicate significant developments to Galvez, in violation of section 6068, subdivision (m). Gentino failed to inform his client that: (1) he did not file a timely responsive pleading to the first amended complaint and that he was over three months late in demurring to the complaint; (2) the Judgment had been entered against her; (3) he filed a notice to withdraw his motion for reconsideration and to vacate that was set for hearing on December 31, 2014; and (4) the court issued an order denying the motion for reconsideration and to vacate. The hearing judge did not make findings on the additional seven allegations in the NDC of failure to communicate.<sup>10</sup>

Gentino argues that the late-filed demurrer, his withdrawal of the motion for reconsideration and to vacate, and the court's denial of the motion for reconsideration and to vacate were not significant developments. We disagree. Each had a legal effect on Galvez's case. The tardy demurrer resulted in entry of a default judgment against her, and Gentino's attempt to withdraw the motion for reconsideration and to vacate and the court's resulting denial of the deficient and late-filed motion turned out to be Galvez's last chance to appeal the court's entry of her default. (See *In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547, 555 [failure to inform client of running of statute of limitations and dismissal of her case for lack of prosecution constitutes violation of § 6068, subd. (m)].)

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<sup>10</sup> Based on Gentino's testimony, we also find that, as charged in the NDC but not addressed by the hearing judge, Gentino failed to inform Galvez that: (1) he did not attend the CMC; (2) the court issued a tentative ruling denying the demurrer; (3) he did not file the required documents five days before trial as ordered by the judge; and (4) he did not attend the hearing on the motion to reconsider and vacate the default judgment. As for the remaining three acts charged under count two (that he failed to communicate to the client: (1) that he was not prepared for the September 8, 2014, trial; (2) that he filed an untimely and deficient motion to reconsider and vacate the default judgment on December 5, 2014; and (3) that the court issued a tentative ruling denying the motion), we do not find that they are violations of the statute.

Gentino also claims that he informed Galvez of the Judgment, which was filed on October 9, 2014, and served on him on November 5, 2014, by referencing it in the motion for reconsideration and to vacate that he emailed to Galvez on December 22, 2014, and again on January 8, 2015. However, this notice was not “promptly” delivered, as required by the statute. Also, his email did not offer sufficient explanation to ensure that Galvez understood that the Judgment had been entered, which she clearly did not know even as late as June of 2015, based on her June 4, 2015, email to Gentino asking how Pair was able to place liens on her accounts. We affirm the judge’s finding because the record clearly and convincingly demonstrates that Gentino failed to communicate these significant developments to Galvez.<sup>11</sup> (*In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389, 396–397 [failure to inform client of creditor’s petition for relief from bankruptcy stay and of arbitrator’s decision constitutes violation of § 6068, subd. (m)].)

**C. Counts Three and Four—Misrepresentation/Moral Turpitude (§ 6106)**

In count three, the hearing judge found that Gentino willfully violated section 6106 by falsely representing to Galvez that she lost her case due to an error by the superior court judge. The hearing judge based this culpability finding on the fact that Gentino intentionally neglected to tell Galvez that his untimely filing resulted in the Judgment against her. Gentino testified that he did inform Galvez that his pleading was late. The hearing judge appeared to discount Gentino’s version and to believe Galvez, but did not provide any credibility analysis.

We do not find clear and convincing evidence in the record that Gentino misrepresented to Galvez that she lost her case because of the superior court judge’s error instead of his own untimely demurrer. Gentino and Galvez both testified that Gentino told her that he “would fall

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<sup>11</sup> Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

on his sword” and do something to save her case, as early as September 8, 2014, the day of the hearing. That statement indicates, at a minimum, that Gentino acknowledged fault for the judge’s default ruling, even if Galvez did not fully understand the legal consequences of Gentino’s statement to her that his demurrer was untimely. Given this evidence, we find that OCTC did not meet its burden to prove that Gentino made a misrepresentation to Galvez. (*Galardi v. State Bar* (1987) 43 Cal.3d 683, 689 [all reasonable doubts must be resolved in respondent’s favor].)

Count four alleged moral turpitude for Gentino’s concealment of facts from Galvez. The hearing judge dismissed this count, with prejudice, as duplicative because the concealments it alleged were more appropriately charged as failures to communicate and were duplicative of the charges in count two. OCTC does not challenge this holding, and we affirm.

#### **IV. GENTINO’S PROCEDURAL CHALLENGES FAIL**

Gentino argues that the hearing judge erred in ruling that he could not ask Galvez at trial if she had submitted an application to the Client Security Fund and in preventing Gentino from introducing expert testimony “concerning custom and practice of civil litigation attorneys in Los Angeles.” We find that the judge did not abuse her discretion in making these evidentiary rulings. Hearing judges are accorded wide latitude to receive all relevant evidence, and actual prejudice must be established before a party is entitled to relief. (*In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233, 241; Rules Proc. of State Bar, rule 5.104(F).) We also agree with OCTC that Gentino has not demonstrated any prejudice resulting from the excluded testimony. (*In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456, 469 [to prevail on claim of error, respondent must show specific prejudicial effect].)

## V. AGGRAVATION AND MITIGATION

Standard 1.5 requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Gentino to meet the same burden to prove mitigation.

### A. Aggravation

#### 1. Multiple Acts (Std. 1.5(b))

In its Opening Brief on Cross-Review, OCTC states that, while the hearing judge found Gentino's multiple acts of misconduct to be an aggravating factor, she did not assign a specific weight. OCTC thus requests that we treat the judge's finding as "serious" because Gentino's misconduct was not aberrational since it involved three different ethical violations over a period of one year. We have found that Gentino is culpable of two ethical violations (failure to perform with competence and to communicate) that comprised multiple acts. (*In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 279 [multiple acts as aggravation are not limited to counts pleaded].) Additionally, we also find that his 35 years of discipline-free practice demonstrate that his misconduct here was, in fact, aberrational. Overall, based on these findings, we assign moderate weight to the judge's finding of aggravation for multiple acts.

#### 2. Significant Harm to Client (Std. 1.5(j))

OCTC does not challenge the hearing judge's finding of significant aggravation for the harm Gentino caused to Galvez. Gentino submits that "[a]lthough the untimely demurrer and motion to strike resulted in Galvez's default and deprived her of the opportunity to defend at trial," substantial harm did not occur because no evidence was introduced that Galvez could have obtained a better result had she gone to trial. We affirm the judge's finding because Galvez was significantly harmed—the entry of a default judgment of over \$40,000 and the ensuing liens on her accounts—without having an opportunity to defend herself at trial. (*In the Matter of Bach*

(Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646 [aggravation for significant harm found where attorney failed to pursue client's case, resulting in dismissal of case and inability to obtain damages even where record demonstrated that she could not have expected significant damage award had her case gone to trial].)

### **3. OCTC's Request for Additional Aggravation for Indifference**

OCTC asserts that additional aggravation should be assigned for Gentino's indifference because of his lack of remorse and recognition of wrongdoing and his failure to make amends to Galvez. Gentino submits that he has the right to defend himself. His opposition to the charges against him was based on his honest belief that he did nothing wrong, and cannot form the basis for a finding of indifference. We decline to find additional aggravation as OCTC requested because Gentino's arguments in this proceeding do appear to be a good faith attempt to defend himself, which does not support a finding of indifference. (*Harris v. State Bar* (1990) 51 Cal.3d 1082, 1088; *Van Sloten v. State Bar, supra*, 48 Cal.3d at pp. 932–933 [indifference finding not justified where attorney's attitude is based on honest, but mistaken, belief in his innocence].)

## **B. Mitigation**

### **1. No Prior Record (Std. 1.6(a))**

The hearing judge assigned significant mitigation for Gentino's 35 years of practice without discipline. Standard 1.6(a) states that mitigation may be assigned for absence of prior discipline over many years "coupled with present misconduct, which is not likely to recur." OCTC submits that this lengthy period of discipline-free practice warrants only moderate mitigation because Gentino's misconduct is likely to recur. OCTC bases this position on its claim that Gentino was indifferent and thus his misconduct was not an aberration. Gentino argues that he is entitled to significant mitigation. We affirm the finding of significant mitigation

because, as discussed above, Gentino's 35 years of discipline-free practice demonstrate that his misconduct here was aberrational, and, as also discussed above, we do not find indifference.<sup>12</sup>

## **2. Good Character (Std. 1.6(f))**

Standard 1.6(f) allows mitigation for "extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct." The hearing judge assigned significant weight based on Gentino's presentation of five witnesses who testified to his good character. They included two attorneys, two business owners, and the president of a nonprofit animal rescue organization. All five spoke very highly of Gentino's good character, describing him as having the "highest of integrity," "very high moral values," and as being "[a]bsolutely honest." One of the five witnesses did not have a full understanding of the charges against Gentino. Gentino asks that we affirm the judge's findings.

OCTC argues that Gentino's good character evidence should not be given significant mitigation weight because five witnesses do not meet the standard's requirement of a "wide range of references," citing *In the Matter of Lindmark* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 668, 674 (testimony of four character witnesses, one physician and three attorneys, given less weight because they were "few" in number). In response, Gentino cited to *In re Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 591–592, where we accorded significant mitigation for good character to testimony of three witnesses: two attorneys and a fire chief.

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<sup>12</sup> The Supreme Court and this court have often assigned substantial or considerable mitigation for lack of prior discipline even where the current misconduct is serious or not aberrational. (See *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49; *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735, 749; see also *Edwards v. State Bar* (1990) 52 Cal.3d 28, 31, 32, 36, 39 [mitigation credit given for almost 12 years of discipline-free practice despite intentional misappropriation and commingling]; *Boehme v. State Bar* (1988) 47 Cal.3d 448, 452–453, 454–455 [22 years of practice without prior discipline important mitigating circumstance despite attorney's misappropriation and lack of candor to court]; *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59, 69 [credit given for no prior history of discipline in 14 years of practice where attorney converted client funds and deceived clients].)

Particularly, those witnesses in *Davis* had long-standing familiarity with the attorney and broad knowledge of his good character, work habits, and professional skills.

Those factors are not present in Gentino's case, and thus we find the *Davis* case distinguishable. While Gentino presented five witnesses, they did not have a broad range of knowledge about Gentino, and one witness did not know about the charges. (See *In re Aquino* (1989) 49 Cal.3d 1122, 1131 [seven witnesses and 20 letters of support not "significant" evidence of mitigation because witnesses were not aware of details of misconduct].)

Accordingly, we assign moderate mitigation for Gentino's evidence of good character.

### **3. Pro Bono and Community Service**

The hearing judge assigned significant weight for Gentino's pro bono and community service. She found that he performed a wide variety of services, including volunteering at the United Methodist Church, serving as a scout master for the Eagle Scouts, feeding the homeless at Thanksgiving, serving on the Board of Directors of Cat & Canine Assistance, Referral and Education (CARE), and providing substantial pro bono legal services for CARE. In 1982, Gentino was recognized by the State Bar for his pro bono work. He was also acknowledged by the Los Angeles Municipal Court for his service as a temporary judge for multiple years between 1990 and 2000.

OCTC submits that Gentino should not receive substantial mitigation for these activities because they are not current, and because they do not demonstrate that his conduct is not aberrational. OCTC does not present authority to support these assertions, and we have found none. We note that Gentino's pro bono and community work on behalf of CARE, for which the Legislature commended him in 2012, is recent and has continued to the present day. Further, as we have found, his misconduct in this case was aberrational. Therefore, we affirm the hearing judge's finding that substantial mitigation be assigned for Gentino's pro bono work and



community service. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785 [service to community is mitigating factor entitled to considerable weight].)

#### **4. Gentino's Request for Additional Mitigation**

Finally, we reject Gentino's request for additional mitigation for his good faith belief that no deadline applied for him to file a demurrer to the first amended complaint. (Std. 1.6(b).) To receive mitigation for a good faith belief, Gentino must show that it is honestly held and objectively reasonable. (*In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 653 [to establish good faith as mitigating circumstance, attorney must prove that belief was honestly held and reasonable]; std. 1.6(b).) We find that it was not reasonable for Gentino to believe that he had no deadline to file a demurrer since Code of Civil Procedure section 471.5 clearly mandated that his response was due within 30 days of service. Ignorance of the applicable statute does not constitute a reasonable good faith belief. (*In the Matter of McKiernan* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420, 427 ["it is [not] appropriate to reward respondent for his ignorance of his ethical responsibilities"].)

### **VI. DISCIPLINE<sup>13</sup>**

The hearing judge recommended discipline including a one-year stayed suspension. She made this recommendation deviating from standard 2.11, which applies to culpability for moral turpitude, finding that the net effect of the aggravating and mitigating factors justified less than the presumed actual suspension. OCTC asks us to impose at least a 30-day actual suspension based on the hearing judge's culpability findings, which included moral turpitude. Gentino argues that he is not culpable, but if he were found to be culpable, he contends that OCTC's requested discipline is excessive.

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<sup>13</sup> The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys. (Std. 1.1.)

Our discipline analysis begins with the standards, which promote the consistent and uniform application of disciplinary measures and are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 91 [Supreme Court will not reject recommendation arising from standards unless grave doubts as to propriety of recommended discipline].) Here, we apply a different standard than the hearing judge did because we found that Gentino is not culpable of moral turpitude under section 6106. Standard 2.7 applies to both counts of which Gentino was found culpable, providing that “[s]uspension or reproof is the presumed sanction for performance, communication or withdrawal violations, which are limited in scope or time.” (Std. 2.7(a).) This standard also directs that “[t]he degree of sanction depends on the extent of the misconduct and the degree of harm to the client or clients.” Applying these factors to the facts here, Gentino is culpable of multiple acts of misconduct, most notably his reckless failures to perform, which resulted in a substantial default judgment against Galvez. We also weigh the aggravation and mitigation factors—aggravation ranging from moderate to significant for multiple acts and significant harm to his client, and mitigation ranging from moderate to significant for his long period of discipline-free practice, pro bono and community service, and good character. (Std. 1.7(b), (c).)

To determine the appropriate level of discipline within the range allowed, we also consider comparable case law. (*In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160, 168.) Several cases involving culpability for lack of competence and failure to communicate support a stayed suspension with probation conditions. (*Van Sloten v. State Bar*, *supra*, 48 Cal.3d at pp. 933–934 [six-month stayed suspension with period of monitored probation for single act of failure to perform]; see also *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211, 225–226 [one-year stayed suspension and two years’ probation for one count of failing to appear and misleading judge as to client’s status]; *In the*

*Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32, 46 [one-year stayed suspension and two years' probation for intentionally ignoring client instructions, withdrawing from case without notice, and failing to return client files].)

Weighing the totality of factors and considering comparable case law, we find that a one-year stayed suspension, with probation conditions, is appropriate discipline within the presumed range provided by standard 2.7. While Gentino's misconduct caused significant harm to his client, he has otherwise proved significant mitigation overall to justify discipline on the low end of the standard.

## VII. RECOMMENDATION

For the foregoing reasons, we recommend that Robert E. Gentino be suspended from the practice of law for one year, that execution of that suspension be stayed, and that he be placed on probation for one year on the following conditions:

1. He must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation.
2. 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.
3. Within 30 days after the effective date of discipline, he must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, he must meet with the probation deputy either in person or by telephone. During the period of probation, he must promptly meet with the probation deputy as directed and upon request.
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. 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 those sessions. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and he shall not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

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 period of stayed suspension will be satisfied and that suspension will be terminated.

#### **VIII. PROFESSIONAL RESPONSIBILITY EXAMINATION**

We further recommend that Robert E. Gentino be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter and to provide satisfactory proof of such passage to the Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

#### **IX. 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.

McGILL, J.

WE CONCUR:

PURCELL, P. J.

HONN, J.

## 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 Los Angeles, on December 27, 2017, I deposited a true copy of the following document(s):

### OPINION

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

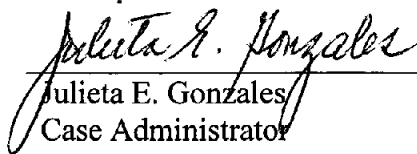
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**ROBERT E. GENTINO  
3330 CAHUENGA BLVD W STE 303  
LOS ANGELES, CA 90068 - 1309**

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

**Brandon K. Tady, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 27, 2017.

  
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Julieta E. Gonzales  
Case Administrator  
State Bar Court