PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **STEPHEN EDWARD GALINDO,** **Member No. 76481,** A Member of the State Bar.	**Case No.: 15-O-13901; 15-O-13970; 15-N-15375; 16-O-12529-DFM** **DECISION AND ORDER**

INTRODUCTION

Respondent **Stephen Edward Galindo** (Respondent) is charged here with seven counts of misconduct. The seven counts include allegations of willfully violating (1) Business and Professions Code[1] section 6068, subdivision (a) (failure to comply with law – unauthorized practice of law) [two counts]; (2) section 6106 (moral turpitude – unauthorized practice of law); (3) section 6106 (moral turpitude – misrepresentation) [two counts]; (4) California Rules of Court, rule 9.20 [failure to obey rule 9.20]; and (5) section 6068, subdivision (k) (failure to comply with conditions of probation). This court finds misconduct as set forth below. Moreover, in view of Respondent's misconduct and the aggravating factors, the court recommends, inter alia, that Respondent be disbarred from the practice of law.

PERTINENT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed in this matter by the State Bar of California on June 15, 2016.

[1] Unless otherwise noted, all future references to section(s) will be to the Business and Professions Code.

On July 18, 2016, the initial status conference was held in this case. At that time the case was given a trial date of September 22, 2016, with a two-day trial estimate. In addition, a pretrial conference was scheduled for September 12, 2016, with the parties ordered to disclose anticipated evidence and file pretrial conference statements on or before September 6, 2016.

On July 25, 2016, Respondent filed his response to the NDC.

The State Bar complied with its obligations to disclose evidence and file a pretrial conference statement by September 6, 2016. Respondent did not. When the pretrial conference was held on September 12, 2016, Respondent had still not disclosed his anticipated evidence or served and filed a pretrial conference statement. As a result, the court ordered a continued pretrial conference on September 19, 2016, and issued a written order that Respondent file his pretrial conference statement by that time.

The second session of the pretrial conference was conducted on September 19, 2016. Respondent filed his pretrial conference statement at that conference. In conjunction with the pretrial conference, the State Bar notified this court that one of the complaining witnesses, a deputy sheriff, was scheduled to be out of the state at the time of the scheduled trial, and it asked that an additional day of trial be scheduled in October for the purpose of allowing that witness to testify. At the same time, the State Bar asked this court to exclude Respondent's evidence at trial, based on its complaint that he had failed to comply with his discovery and pretrial disclosure obligations. Because Respondent had presented his anticipated exhibits to the State Bar at the second session of the pretrial conference, albeit belatedly, this court declined to exclude the evidence he had disclosed but reserved until ruling on the motion with regard to any undisclosed evidence. However, the court issued an order allowing for a deferred day of trial in

October, both to address the problem of the unavailable witness and to cure any potential prejudice to the State Bar resulting from Respondent's late disclosure of evidence.[2]

Trial was commenced and conducted on September 22 and 23, 2016, as originally scheduled, and a third day of trial was scheduled for October 18, 2016. Thereafter, that third day of trial was conducted on October 18, 2016, at which time the trial was completed and the matter submitted for decision. The State Bar was represented at trial by Deputy Trial Counsel Shataka Shores-Brooks. Respondent acted as counsel for himself.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on Respondent's response to the NDC and the documentary and testimonial evidence admitted at trial.

Jurisdiction

Respondent was admitted to the practice of law in California on December 21, 1977, and has been a member of the State Bar at all relevant times.

General Background

On April 29, 2015, the California Supreme Court filed an order (No. S224662) suspending Respondent from the practice of law for one year, stayed, and placing him on probation for one year subject to various conditions, including that he be actually suspended from the practice of law for a minimum of the first 30 days and until he presents proof of his payment in full of the two $1,000 sanction orders previously ordered by the Los Angeles Superior Court in 2013 and 2014. The Supreme Court's order was served on and received by Respondent, and it became effective on May 29, 2015, at which point Respondent's actual suspension began. Because Respondent, at the time of the trial of this matter, had still not paid

[2] The State Bar made no objection at trial that Respondent was then seeking to introduce evidence that had previously not been disclosed. Accordingly, the balance of its motion to exclude was rendered moot and denied.

all of the sanctions ordered by the Los Angeles Superior Court, he has remained ineligible to practice law at all times since May 29, 2015.

Case No. 15-O-13901 (Cuellar Matter)

On August 3, 2015, more than 30 days after his suspension began but while it remained in effect, Respondent telephoned the Baldwin Park Police Department to assist a friend, David Cuellar, to try to arrange for the release of Cuellar's automobile, which had been impounded as a result of a hit-and-run collision. Cuellar was a suspect in the collision. On reaching the department, Respondent was connected with Sergeant/Detective Andy Velebil (Velebil), who had responsibility for investigating the situation. At the outset of the call, Respondent identified himself to Velebil as the attorney for the Cuellar family and indicated that he was also informally representing Allstate Insurance in the situation. He stated that he was calling to see if the impounded car could be released.

During the call, Velebil asked Respondent to provide his State Bar membership number. When Respondent did so, Velebil ran the number on the State Bar's website, which showed that Respondent was suspended and not entitled to practice law. When Velebil informed Respondent of what he had just seen on the State Bar's website, Respondent indicated that his suspension had been for only 30 days, that this 30-day suspension had now expired, and that contrary indication on the State Bar's website represented some sort of misunderstanding. Velebil then informed Respondent that he would not discuss the matter any further with Respondent until the State Bar's website indicated that Respondent was again eligible to practice. After terminating the call, Velebil acted that same day to report Respondent's actions to the State Bar.

Count 1 – Section 6068, subd. (a) [Unauthorized Practice of Law]

In this count, the State Bar alleges:

On or about August 3, 2015, Respondent held himself out as entitled to practice law when Respondent was not an active member of the State Bar by

identifying himself as an attorney representing the suspect in a criminal investigation, in violation of Business and Professions Code, sections 6125 and 6126, and thereby willfully violated Business and Professions Code, section 6068(a).

Section 6068, subdivision (a), makes it the duty of an attorney "[t]o support the Constitution and laws of the United States and of this state." Section 6125, provides that "No person shall practice law in California unless the person is an active member of the State Bar." Section 6126, subdivision (b), states that "Any person who has been involuntarily enrolled as an inactive member of the State Bar, or has been suspended from membership from the State Bar, or has been disbarred, or has resigned from the State Bar with charges pending, and thereafter practices or attempts to practice law, advertises or holds himself or herself out as practicing or otherwise entitled to practice law, is guilty of a crime punishable by imprisonment in the state prison or a county jail." Where it is contended that a member has violated sections 6125 and 6126, the appropriate method of charging those violations in a disciplinary proceeding is to charge a violation of section 6068, subd. (a). (See *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 495, 506.)

Respondent's actions in representing that he was an attorney to Velebil, without affirmatively qualifying that statement with the disclosure that he was suspended and not then eligible to practice law, constituted a violation of the prohibition of section 6126 against holding himself out as entitled to practice law. (See *Bluestein v. State Bar* (1974) 13 Cal.3d 162, 175, fn. 13; *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 903; and *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 90-91 [and cases cited therein].) As the case law was summarized by the Review Department in its *Wyrick* decision, "[A]n attorney cannot expressly or impliedly create or leave undisturbed the false impression that he or she has the present or future ability to practice law when in fact he or she is or will be on suspension." (*In the Matter of Wyrick, supra*, 2 Cal. State Bar Ct. Rptr. at p. 91.)

Respondent's unqualified representations to Velebil that he was an attorney violated this prohibition and represented a willful violation by Respondent of section 6068, subdivision (a).

Count 2 – Section 6106 [Moral Turpitude]

In this count, the State Bar alleges:

> On or about August 3, 2015, Respondent held himself out as entitled to practice law when Respondent knew, or was grossly negligent in not knowing, Respondent was not an active member of the State Bar by identifying himself as an attorney representing the suspect in a criminal investigation, and thereby committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption. The paramount purpose of the moral turpitude standard is not to punish practitioners but to protect the public, the courts, and the profession against unsuitable practitioners.

When a suspended attorney holds himself out as eligible to practice law, either affirmatively or by failing to disclose the member's ineligible status, and that misrepresentation is knowingly false or results from gross negligence, the act involves moral turpitude and is a violation of the prohibition of section 6106. (*In the Matter of Wyrick, supra.*)

Here, Respondent's statements to Velebil were knowingly false. Respondent was well-aware that he remained ineligible to practice at the time of his conversation with Velebil, and he makes no claim to the contrary. Despite this awareness, he both impliedly represented that he was then eligible to practice law and affirmatively misrepresented to the police officer that his suspension had ended at the 30-day mark. Both of those actions by Respondent were acts of moral turpitude and willful violations by Respondent of the prohibition of section 6106.

Case No. 15-N-15375 (Rule 9.20 Matter)

As previously noted, Respondent's actual suspension was ordered to continue until Respondent presented proof to the Office of Probation of his payments of the two $1,000 sanction orders previously issued by the Los Angeles Superior Court. During the trial of this matter, Respondent testified that he has still not paid that sanction orders. As a result, he still remains suspended from the practice of law.

In the event that Respondent remained actually suspended for 90 days or longer, the Supreme Court's order of April 29, 2015, required him to comply with rule 9.20 of the California Rules of Court (rule 9.20). More specifically, the order provided:

> If Stephen Edward Galindo remains actually suspended for 90 days or more, he must also comply with California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of this order. Failure to do so may result in disbarment or suspension.

As previously noted, on May 8, 2015, the Office of Probation mailed a letter to Respondent, notifying him of the effective date of his suspension, outlining the conditions of his probation, and reminding him that the deadline for his conditional obligation to comply with rule 9.20, subdivision (c), was **October 6, 2015.** (Ex. 5, pp. 1 [emphasis was in original].) The letter was also explicit in informing Respondent that this conditional obligation would become an actual obligation in the event he remained suspended "past August 27, 2015." Respondent received this letter.

Respondent then met in person with his assigned probation deputy on July 8, 2015. During that session, the deputy discussed with Respondent his many obligations under the Supreme Court's order.

Respondent remained actually suspended past August 27, 2015, and thus then became obligated to comply with rule 9.20. Despite the provisions of the stipulation executed by

Respondent, the terms of the Supreme Court's order, and the repeated efforts by the Office of Probation to educate him regarding his need to comply with those terms, Respondent failed to file with the clerk of the State Bar Court by October 6, 2015, the compliance declaration required by subdivision (c) of rule 9.20.

On October 21, 2015, the Office of Probation mailed a letter to Respondent, notifying him that he had failed to file a rule 9.20 compliance declaration by the October 6, 2015 deadline. This letter informed Respondent of the ongoing need for him to comply, albeit untimely, with his 9.20, subdivision (c), obligation and explicitly warned him that the compliance statement needed to be filed with the State Bar Court, rather than with the Office of Probation. Indeed, this warning even went so far as to include highlighted language that **"If you send your original affidavit to the Office of Probation, it will NOT be filed with State Bar Court on your behalf."** (Ex. 13, p. 1 [emphasis and underlining in original.) Respondent received this letter but did not act immediately to comply with the rule 9.20 obligation. Instead, on December 6, 2015, two months after the original deadline and after receiving another inquiry from the Office of Probation, Respondent filled out and executed a copy of the 9.20 compliance statement and emailed it to the Office of Probation. It was not filed by him with the State Bar Court until January 25, 2016. (Ex. 18.)

Count 6 - Violation of California Rules of Court, Rule 9.20

By not filing a rule 9.20, subdivision (c) compliance statement with the State Bar Court until January 25, 2016, Respondent willfully violated the order of the Supreme Court, obligating him to file such a compliance statement within 130 calendar days after the effective date of that order if he remained actually suspended for 90 days or more.

Case No. 15-O-13901 (Misrepresentation to State Bar)

On November 23, 2015, a State Bar investigator sent Respondent a letter regarding Velebil's complaint that Respondent had held himself out in August 2015 to then be entitled to practice law. In this letter, the investigator also asked whether Respondent had filed the required rule 9.20 compliance declaration. The inquiry went on to ask: "If so, please provide it? If not, why not?" (Ex. 16, p. 2.)

On December 6, 2015, Respondent sent, via email, a letter to the investigator, responding to her various inquiries. With regard to the inquiry regarding Respondent's compliance with rule 9.20, Respondent replied: "I did not file my 9.20 Declaration until I received your letter. It was an oversight on my part." Respondent then included with this email response an executed rule 9.20 compliance declaration form, indicating that he had signed the form that same day, December 6, 2015, in Rosemead, California. (Ex. 17.)

Respondent did not send this completed form to the State Bar Court for filing until late January 2016.

Count 3 - Section 6106 [Moral Turpitude – Misrepresentation]

In this count, the State Bar alleges:

> On or about December 6, 2015, Respondent stated in writing to the State Bar Investigator, that he filed his 9.20 after he received a letter from the State Bar Investigator dated November 23, 2015, and submitted a copy of a 9.20 declaration dated December 6, 2015, when Respondent knew or was grossly negligent in not knowing the statement(s) were false, and thereby committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

The State Bar has failed to present clear and convincing evidence that the above letter by Respondent with regard to his rule 9.20 obligation constituted an act of moral turpitude. Respondent's brief response to the investigator's inquiry about whether he had previously complied with rule 9.20 was merely an honest acknowledgement by Respondent that he had not

timely filed the required 9.20 compliance declaration by the October 6, 2015 deadline and, further, that he had not taken any steps to comply with that obligation until after receiving the investigator's November 23, 2015 letter.

The fact that Respondent forwarded to the Office of Probation a completed compliance form, bearing the same date as Respondent's letter and affirmatively stating that it had been signed that same day in Rosemead, rather than in Los Angeles, provides no implied representation that the completed form had already been filed in Los Angeles. For the declaration to have already been filed with this court in Los Angeles prior to the time of Respondent's email that day, Respondent would have needed to have had the document hand-delivered to the court prior to sending his email. There is nothing to suggest that he had made any such extraordinary effort. Moreover, if he had arranged to have the document hand-delivered to the court, it would be logical that he would have also had his letter (and the copy of the compliance declaration) hand-delivered to the Office of Probation, which are at the same address. The fact that both the letter and declaration were being emailed to the investigator in Los Angeles on December 6, 2015, rather than being hand-delivered to her at that time, tends to rule out any unintended inference that the document had already been hand-delivered to the court that same day. Instead, if there is any inference to be drawn from Respondent's communication that day, it is that he thought he was filing the document that day by emailing it to the Office of Probation.

The investigator receiving this letter appeared as a witness during the trial of this matter, and she did not testify that she had been misled by the letter or had ever understood it to be a representation by Respondent that he had previously filed the 9.20 compliance declaration forwarded with the letter.

For all of the above reasons, this count is dismissed with prejudice.

Case No. 15-O-13970 (Padilla Matter)

On July 27, 2015, Respondent went to the "lockup" facility at the court house in Alhambra, California, to meet there with inmate Fidel Padilla, whose matter was scheduled for a court conference that same day. Padilla's family had previously made arrangements for Respondent to act as counsel for Padilla. Access to inmates being held in the court's "lockup" facility is not available to members of the public but instead is largely limited to the attorneys of record for an inmate. Individuals seeking entry into the facility and access to an inmate are screened by deputies assigned to the facility before being allowed to meet with any inmate then being held in the facility.

When Respondent arrived at the locked door to the facility, he was recognized by Deputy Sheriff Ryan Douglass (Douglass), who was aware that Respondent had previously been suspended. After being "buzzed in" into the facility, Respondent informed Deputy Douglass that he needed to see inmate Padilla. When Douglass inquired of Respondent regarding the status of his suspension, Respondent stated that he was no longer suspended and that the suspension had been "cleared up." Douglass then indicated that he needed to check on the matter and asked Respondent for both his driver's license and his State Bar card, which Respondent then provided. Douglass then went to a computer, looked up Respondent's status on the State Bar website, and saw that Respondent remained suspended. When Douglass then returned to the area where he had left Respondent, Respondent was no longer there, having left the lock-up facility. Douglass, still having possession of Respondent's driver's license and State Bar card, then left the lockup facility and located Respondent in another portion of the court house – where Douglass was able to return to Respondent the two documents. During a follow-up discussion between the two individuals at that time, Respondent stated that he was no longer suspended, that he had "cleared up" his suspension with the State Bar, that he did not know why the State Bar website would

indicate otherwise, and that he was then able to represent inmate Padilla. Deputy Douglass informed Respondent that he would nonetheless not be allowed to come into the "lockup" facility to meet with Padilla.

On returning to the "lockup" facility, Deputy Douglass prepared a complaint to the State Bar that same day regarding Respondent's conduct.

Count 4 –Section 6068, subd. (a) [Unauthorized Practice of Law]

In this count the State Bar alleges that Respondent's actions in holding himself out to Deputy Douglass as being then entitled to practice law were violations of sections 6125 and 6126, and, in turn, constituted a willful violation by Respondent of section 6068, subdivision (a). For the same reasons discussed above with regard to Respondent's representations to Sergeant/Detective Velebil, this court agrees.

Case No. 16-O-12529 (Probation Violations)

The California Supreme Court on April 29, 2015, placed Respondent on probation for one year subject to various conditions. These conditions of probation, all set forth in the stipulation signed by Respondent, included the following:

> Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation.
>
> Respondent 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, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. 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 twenty (20) days before the last day of the period of probation and no later than the last day of probation.
>
> Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.

The Supreme Court's order was served on and received by Respondent; and it became effective on May 29, 2015, at which point Respondent's actual suspension began.

As previously noted, on May 8, 2015, even before the discipline set forth in the Supreme Court's order became effective, the Office of Probation mailed a letter to Respondent, notifying him of the effective date of his suspension, outlining the conditions of his probation, and providing him with forms and other materials for complying with those conditions. Respondent received this letter.

In this May 8, 2015 letter, the Office of Probation alerted Respondent to his need to schedule a meeting with his assigned probation deputy on or before June 28, 2015. He did not do so. Instead, he did not contact the Office of Probation to schedule a meeting until sending an email on July 6, 2015. This delay by Respondent in contacting the Office of Probation represented a willful violation by him of this condition of his probation.

On July 8, 2015, Respondent did meet in person with his assigned probation deputy. During that session, the deputy discussed with Respondent his many other probation obligations under the Supreme Court's order, including the need for him to file quarterly reports and attend the State Bar's Ethics School. These obligations had also been laid out in the May 8, 2015, letter to Respondent from the Office of Probation.

Despite the efforts of the Office of Probation to educate and enable Respondent to comply with the conditions of his probation, Respondent did not timely file his quarterly reports due on October 10, 2015; January 10, 2016; and April 10, 2016.

When Respondent failed to file the report due on October 10, 2015, he was contacted by the Office of Probation about his failure to do so with a letter dated October 21, 2015. (Ex. 12.) This letter informed Respondent that the report had not been received and urged him to "submit the required report immediately." Despite this urging, he did not do so. Indeed, at the time of the trial of this matter, he had still not submitted the required October 10, 2015 quarterly report, despite the pendency of these proceedings.

With regard to the report due on January 10, 2016, Respondent sought to submit that report merely by copying the report he had submitted in July of 2015, modifying the report by whiting out various information on the original report and occasionally including new language. (Compare Exhibit 8, pp. 2-3, with Exhibit 9, pp. 2-3.) One of the items on the July report, deleted by Respondent on his January report, was the date of his signature. This omission undoubtedly resulted from the fact that the January report did not have a new signature but instead only included the copy of the signature provided with the earlier July 2015 report.[3] When the undated January 2016 report was received by the Office of Probation on January 9, 2016, it was rejected because its failure to include a date for the signature defeated the requirement that the statement be under penalty of perjury. (See Code Civ. Proc., § 2015.5 [statement under penalty of perjury must include the date of execution].) After being notified of this deficiency of the January 9, 2016, report, Respondent submitted a satisfactory, albeit untimely, report for the prior quarter on January 25, 2016.

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[3] Although Respondent denied that the report submitted by him on January 9, 2016, had utilized a copy of the report submitted by him in July of the previously year, any comparison of the two documents, including a comparison of the two signatures and the remnants of the materials that have been partially redacted in the January report, make clear that his denial was not credible and lacked candor.

Because Respondent's probation continued until May 29, 2016, he was obligated to submit a quarterly report for the first quarter of 2016 on April 10, 2016. He did not do so by that deadline; indeed, at the time of the trial of this matter, he had never done so.

Count 7 – Section 6068, subd. (k) [Failure to Comply with Conditions of Probation]

Business and Professions Code section 6068, subsection (k), provides that it is the duty of every member to "comply with all conditions attached to any disciplinary probation, including a probation imposed with the concurrence of the attorney."

In this count, the State Bar alleges: "Respondent failed to comply with conditions attached to Respondent's disciplinary probation in State Bar case no. 14-0-01277 as follows, in willful violation of Business and Professions Code section 6068(k):

A. Failing to schedule his required meeting with the Office of Probation by June 28, 2015;
B. Failing to file the quarterly report due by October 10, 2015;
C. Failing to timely file the quarterly report due by January 10, 2016; and
D. Failing to file the quarterly report due by April 10, 2016."

Respondent is culpable of all of the above alleged probation violations. He failed to timely schedule a meeting with his probation deputy, and he failed to timely provide the quarterly reports, properly executed under penalty of perjury, due on October 10, 2015; January 10, 2016; and April 10, 2016. His conduct in failing to comply with these conditions of probation constituted willful violations by him of section 6068, subsection (k).

Case No. 15-O-13970 (Misrepresentation to State Bar)

On November 23, 2015, a State Bar investigator sent Respondent a letter regarding Deputy Douglass' complaint that Respondent had held himself out in July 2015 to have then been entitled to practice law. In that letter, the investigator also asked whether Respondent had complied with all of the terms of his probation and requested him to provide copies of all of his quarterly reports since he had been on probation. (Ex. 14, p. 2.)

In response to this inquiry, Respondent did not send copies of his quarterly reports. Instead, he responded, in pertinent part: "I have complied with the terms of my probation and have submitted two Quarterly Reports. However, I was advised that my October Quarterly report was not received by Probation so a copy was resubmitted after the due date." (Ex. 15.) At the time of this letter, Respondent had only submitted one quarterly report, the report due on July 2015. While he had been notified in October 2015 that the report due on October 10 of that month had not been received, he had never "resubmitted" a copy of any such report. At trial, he acknowledged not having a copy of any such report.

Count 5 – Section 6106 (Moral Turpitude – Misrepresentation)

In this count the State Bar alleges:

> On or about December 6, 2015, Respondent stated in writing to a State Bar Investigator, that he filed his October 10,2015 quarterly report in State Bar case no. 14-0-02177, when Respondent knew or was grossly negligent in not knowing the statements were false, and thereby committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

This court finds that Respondent's statement to the Office of Probation on December 6, 2015, that he had resubmitted a copy of his October 10, 2015, quarterly report, was erroneous; resulted from at least gross negligence on his part; and, therefore, was an act of moral turpitude. Having been specifically asked to provide copies of any quarterly reports he had submitted, it was grossly negligent of him to have represented that he had submitted two reports, when any review by him of his files would have revealed that he had submitted only a single report. At a minimum, since he had received a formal request to provide copies of all reports he was claiming to have submitted, the absence of a second report in his file should have at least caused him to investigate whether a second report had been submitted before claiming that it had. His decision to make an erroneous response to the State Bar in response to its specific inquiry without having conducted an adequate investigation constituted gross negligence, at a minimum, and makes his

misrepresentation a violation of the prohibition of section 6106. (See *In the Matter of Yee* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330, 334 [and cases cited therein].)[4]

Aggravating Circumstances

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, Stds. for Atty. Sanctions for Prof. Misconduct,[5] std. 1.5.) The court finds the following with respect to aggravating circumstances.

Prior Discipline

Respondent has been disciplined on one prior occasion.

As noted above, on April 29, 2015, the California Supreme Court filed an order suspending Respondent from the practice of law for one year, stayed, and placing him on probation for one year subject to various conditions, including that he be actually suspended from the practice of law for a minimum of the first 30 days and until he presents proof of his payment in full of the two $1,000 sanction orders previously ordered by the Los Angeles Superior Court in 2013 and 2014. (Case No. 14-O-01277.) Respondent's misconduct in that matter included four counts of violating a court order (section 6103) and two counts of failing to report imposition of judicial sanctions of $1,000 or more (section 6068, subd. (o)(3).)

Respondent's record of prior discipline is an aggravating factor. (Std. 1.5(a).)

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[4] The court does not find, but does not rule out, that Respondent's misrepresentation regarding having filed the October quarterly report was knowingly false. A major purpose of such quarterly reports is to require the probationer to report whether he or she has complied with all ethical obligations during the preceding quarter. Here, Respondent had violated his professional obligations (and the terms of his probation) by the two instances where he held himself out to police officers as being entitled to practice law and no longer suspended. Had Respondent executed and filed the quarterly report due on October 10, 2015, he would have needed to address the issue of whether to admit or wrongly deny those transgressions. Electing to ignore that quarter's reporting obligation would have provided at least a short-term vehicle to avoid, or at least delay, having to make that Hobbesian choice.

[5] All further references to standard(s) or std. are to this source.

Multiple Acts of Misconduct

Respondent has been found culpable of multiple counts of misconduct in the present proceeding, including two acts of moral turpitude, two violations of the prohibition against the unauthorized practice of the law, multiple violations of the conditions of his probation, and failure to comply with the Supreme Court's order regarding compliance with rule 9.20. The existence of such multiple acts of misconduct is an aggravating circumstance. (Std. 1.5(b); see *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 76 [violating three separate conditions of probation constituted multiple acts of wrongdoing].)

Lack of Candor

Respondent's testimony that he did not use a copy of his July 2015 Quarterly Report to seek to file his Quarterly Report in January 2016, and that he was not responsible for any of the white-outs and deletions on the submitted January report, lacked candor. This is also an aggravating circumstance. (Std. 1.5(l).)

Lack of Insight and Remorse or Indifference Toward Rectification or Atonement

Respondent has demonstrated lack of insight and indifference toward rectification of or atonement for the consequences of his misconduct. In his communications with the State Bar during its investigations and in his testimony during the instant trial, Respondent has acknowledged telling the two police officers, Douglass and Velebil, that he was an attorney, without disclosing his suspended status. Indeed, even when confronted by those officers with the fact that the State Bar website showed that he was suspended, Respondent failed to acknowledge his suspension, but instead continued to deny it by indicating to them that he had been suspended for 30 days and that the 30 days had expired. (See, e.g., Ex. 15 and 16.) Nonetheless, despite the pendency of these disciplinary charges against him, he continues to assert – and apparently continues to believe – that his conduct was appropriate. Such continued insistence that his

conduct was appropriate is "particularly troubling" because it suggests his conduct may recur. (*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 595; see also *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221, 235; *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 68; *In the Matter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430, 438.)

Uncharged Violations

In addition to the violations of conditions of probation set forth in the NDC, Respondent has also failed to file the Final Report due on or before May 29, 2016, and failed to present proof of any attendance of the State Bar's Ethics School. These additional violations, especially Respondent's failure to attend the State Bar's Ethics School, are additional and significant aggravating factor. (Std. 1.5(h).)

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6.) The court finds the following with regard to possible mitigating factors.

Community Service

Respondent testified that he performed significant pro bono work in numerous criminal matters. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785 [pro bono and community service as mitigating factor].) However, Respondent offered only his own testimony to establish those efforts. The court therefore assigns only modest weight to this mitigation evidence. (*In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 840 [limited mitigation weight for community service established only by respondent's testimony].)

Emotional/Physical Difficulties

Extreme emotional and/or physical difficulties may be considered mitigating where it is established by expert testimony that they were responsible for the attorney's misconduct. Further, the evidence must be clear and convincing that the difficulties "no longer pose a risk that the member will commit misconduct." (Std. 1.6(d); *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 701-702.)

At trial, Respondent offered into evidence medical records dating back to April 2013, recording that Respondent has been diagnosed with stage 4 chronic kidney disease since before that date. A portion of these records also relate to transient complaints made by Respondent in November 2015 after being hit by a car while bicycling on November 20, 2015. His chief complaint, chest pain and shortness of breath, had apparently resolved prior to being seen for his ongoing kidney disease on December 9, 2015. (See Ex. 1003, p. 2 [Patient denies chest pain ... shortness of breath].] A number of these medical records comment on Respondent's failures to appear for scheduled or needed medical appointments.

The court fails to find that Respondent's kidney disease represents a mitigating factor. There is no evidence, expert or otherwise, that Respondent's condition was the cause of any of his misconduct in this matter. Moreover, in the event that it was a cause of any of Respondent's ethical violations, there is no evidence that the illness has been resolved and no longer presents a risk of future misconduct.

Late Performance of Obligations

We assign some credit to Respondent for belatedly completing some of the terms of his probation and filing his rule 9.20 compliance declaration. (*In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567, 572 ["some" mitigation for sincere "steps to make restitution and comply with probation"]; *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State

Bar Ct. Rptr. 192, 652 ["belated compliance with a probation condition may be considered as a mitigating factor in determining discipline"].) The weight of such compliance as a mitigating circumstance, however, is offset and reduced by the facts that: (1) such compliance came only after Respondent's non-compliance was raised with him by the Office of Probation; and (2) in several other matters Respondent continues to be non-compliant with his long-standing obligations.

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession, and maintain the highest possible professional standards for attorneys. (Std. 1.1; *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 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Although the standards are not binding, they are to be afforded great weight because "they promote the consistent and uniform application of disciplinary measures." (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.) Nevertheless, the court is not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, the court is permitted to temper the letter of the law with considerations peculiar to the offense and the offender. (*In the Matter of Van Sickle* (2006) 4 Cal. State Bar Ct. Rptr. 980, 994; *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) In addition, the court considers relevant decisional law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor*

v. State Bar (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

Standard 1.7(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions. In the present proceeding, the most severe sanctions for Respondent's misconduct are found in standards 2.10(a) [unauthorized practice of law while on disciplinary suspension], 2.11 [moral turpitude], and the standard actually contained in rule 9.20 of the California Rules of Court.

Standard 2.10(a) provides: "Disbarment or actual suspension is the presumed sanction when a member engages in the practice of law or holds himself or herself out as entitled to practice law when he or she is on actual suspension for disciplinary reasons or involuntary inactive enrollment under Business and Professions Code section 6007(b)-(e). The degree of sanction depends on whether the member knowingly engaged in the unauthorized practice of law."

Standard 2.11 provides: "Disbarment or actual suspension is the presumed sanction for an act of moral turpitude, dishonesty, fraud, corruption, intentional or grossly negligent misrepresentation, or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the member's practice of law."

Rule 9.20(d) of the California Rules of Court states, in pertinent part: "A suspended member's willful failure to comply with the provisions of this rule is a cause for disbarment or suspension and for revocation of any pending probation."

Application of any and all of these three guidelines to the facts of this case, coupled with a review of the applicable case law, makes clear that disbarment is both appropriate and required to protect the public, the profession, and the courts from further misconduct.

In the first instance, Respondent's willful failure to comply with rule 9.20 is extremely serious misconduct for which disbarment is "the generally imposed sanction." (*In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527, 532-533, citing *Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131; *Powers v. State Bar* (1988) 44 Cal.3d 337, 342; *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322, 332; *In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439; and *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382, 385; more recently, see *In the Matter of Esau, supra*, 5 Cal. State Bar Ct. Rptr. at pp. 138-140, and cases discussed therein.)

The conclusion that disbarment is required to protect the public is buttressed by the many other examples of Respondent's general disregard of the demands of the State Bar disciplinary process. Although Respondent was suspended in 2015 for only a minimum of 30 days, he has remained under suspension now for more than a year because of his continuing failure to pay the sanctions previously ordered by the Los Angeles Superior Court. During that suspension, in addition to disobeying the Supreme Court's order regarding compliance with rule 9.20, Respondent has held himself out as entitled to practice law on at least two occasions, including affirmatively representing to law enforcement officers on two separate occasions that his suspension ended after only 30 days; he has made other misrepresentations to both the Office of Probation and this court; and he has repeatedly failed to comply with the requirements of his probation, including failing to attend the important State Bar Ethics School. Such indifference by Respondent to the disciplinary process and to his professional obligations presents an intolerable risk of harm to the public, the profession, and the courts. In such situations,

disbarment becomes essential to protect others from such harm. That is clearly the situation here.

RECOMMENDED DISCIPLINE

Disbarment

The court recommends that Respondent **Stephen Edward Galindo,** Member No. 76481, be disbarred from the practice of law in the State of California and that his name be stricken from the Roll of Attorneys of all persons admitted to practice in this state.

California Rules of Court, Rule 9.20

The court further recommends that Respondent be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that such costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Respondent must also reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds, and such payment is enforceable as provided under Business and Professions Code section 6140.5.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that **Stephen Edward Galindo,** Member No. 76481, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after service of this

decision and order by mail. (Rules Proc. of State Bar, rule 5.111(D)(1).)[6]

Dated: October 26, 2016.

DONALD F. MILES
Judge of the State Bar Court

[6] An inactive member of the State Bar of California cannot lawfully practice law in this state. (Bus. & Prof. Code, § 6126, subd. (b); see also Bus. & Prof. Code, § 6125.) It is a crime for an attorney who has been enrolled inactive (or disbarred) to practice law, to attempt to practice law, or to even hold himself or herself out as entitled to practice law. (*Ibid.*) Moreover, an attorney who has been enrolled inactive (or disbarred) may not lawfully represent others before any state agency or in any state administrative hearing even if laypersons are otherwise authorized to do so. (*Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 66-73.)

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 October 26, 2016, I deposited a true copy of the following document(s):

DECISION AND ORDER

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:

STEPHEN EDWARD GALINDO
1025 GARFIELD AVE
SOUTH PASADENA, CA 91030

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

SHATAKA SHORES-BROOKS, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 26, 2016.

Rose M. Luthi
Case Administrator
State Bar Court