PUBLIC MATTER

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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos. 16-O-10299-MC
	)	(17-O-07047); 18-O-13178
JEFFREY L. HARRIS,	)	(Consolidated)
	)	
State Bar No. 281778.	)	DECISION
	)	

Introduction

Respondent Jeffrey L. Harris is charged with ten counts of misconduct in three client matters, including: 1) failure to perform with competence; 2) failure to render an appropriate accounting for services performed; and 3) failure to refund unearned fees. The court finds, by clear and convincing evidence, that Respondent is culpable of four of the charged counts of misconduct. The court recommends, among other things, that Respondent be suspended for one year, execution of that suspension is stayed, be placed on probation for two years, and be actually suspended for the first 30 days of probation.

Significant Procedural History

The Office of Chief Trial Counsel of the State Bar of California (OCTC) filed a notice of disciplinary charges (NDC) in case Nos. 16-O-10299 and 17-O-07047 on October 5, 2018. Respondent filed a response on November 16. Trial was set to commence on February 6, 2019.

OCTC initiated a separate matter against Respondent by filing a second NDC in case No. 18-O-13178 on December 21, 2018. On January 11, 2019, the parties filed a Joint Motion to Consolidate Cases and Continue Trial, which the court granted. On January 30, Respondent filed a response to the second NDC. Trial was held on April 9, and the parties filed closing argument briefs. The court took this matter under submission for decision on April 23.

Findings of Fact and Conclusions of Law

Jurisdiction

Respondent was admitted to the practice of law in California on January 6, 2012, and has since been licensed by the State Bar of California at all times. Respondent primarily practices family law.

Facts

In general, the court does not find Respondent to be a credible witness. For example, prior to trial, Respondent stipulated that he received a mailing containing signed, notarized documents in connection with the Martinez matter. However, at trial, he denied receiving the mailing. In the Acosta matter, Respondent stated that he paid a $435 filing fee, but the accounting he provided to Acosta did not reflect any costs incurred. In the Liu matter, Respondent claimed he was unsure whether Liu's requests for an accounting were authored by Liu or by her husband, who supposedly accessed Liu's email account without authorization. However, there was no corroborating testimony from Liu substantiating Respondent's claims.

Case Number 16-O-10299 - Martinez Matter

On April 19, 2013, Laura Martinez employed Respondent to pursue an uncontested dissolution of marriage between her and her husband, Paul Martinez (Paul). The parties had already agreed to keep their own assets and share custody of their child. Martinez paid $799.99

for Respondent's services. At the outset of the representation, Respondent told Martinez that concluding the divorce in "six months would be no problem." Respondent told Martinez that she would able to have an entry of judgement of divorce in six months and one day.

On June 12, 2013, Respondent filed the Petition for Dissolution of Marriage and related documents in Contra Costa County Superior Court. On August 28, Respondent filed the Proof of Service of Summons and a Declaration Regarding Service of Declaration of Disclosure on behalf Martinez. Thereafter, Respondent did not successfully file any further pleadings until three years later, July 27, 2016.

Between June 2013 to February 2015, Martinez contacted Respondent multiple times to inquire about the status of the case. Respondent told Martinez that he would call her, but he never contacted her. Martinez waited to hear from Respondent because she did not want to overburden him with repeated calls.

On February 4, 2015, Paul emailed Respondent a copy of his signed Stipulation and Waiver of Final Declaration of Disclosure and a signed copy of the Declaration for Default or Uncontested Dissolution or Legal Separation, which was notarized. The same day, Paul sent these documents bearing original signatures via UPS to Respondent. The documents were received at Respondent's office on February 5, 2015. An individual named "Courtney" signed for the delivery.

Prior to the trial, Respondent stipulated that he received Paul's February 4, 2015 email to which the documents were attached. Respondent also stipulated that the original, notarized documents were received by an individual named "Courtney" at his office on February 5, 2015. However, at trial, Respondent disavowed this fact and claimed he did not receive the original

notarized documents by mail.[1] According to Respondent, he attempted to file the documents attached to Paul's email, but he was unsuccessful because they did not contain the original signatures of Paul and Martinez. Respondent either never attempted to file these documents, or they were rejected by the court for deficiencies. In any event, Respondent never informed Martinez of any outstanding issues with the documents.

On July 6, 2015, Martinez emailed Respondent, stating that she had not heard from him in months. Martinez requested an update on the status of the case and the estimated date for completion of the dissolution. In that email, Martinez told Respondent if she did not receive a response by the end of the day, she would file a complaint with the State Bar. Respondent replied to Martinez's email the same day, stating: "Telling your attorney that you will file a complaint with the [State Bar] is not an effective way of communicating with us. We are working on getting this done and trying to work with the courts to get this done quickly." Martinez was surprised that Respondent had replied so quickly as he had not responded to previous emails and phone calls.

In continuing emails between Martinez and Respondent on July 6, 2015, Martinez expressed her dissatisfaction with Respondent's lack of communication. She asked Respondent whether the paperwork executed in February 2015 was submitted to the court. In response, Respondent emailed Martinez with a Substitution of Attorney form and told her that if she did not sign it, he would file a motion to be removed as counsel. Martinez replied that she was

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[1] At trial, Respondent emphatically denied that there was a Courtney employed at his office. But later in his testimony, when confronted with an email he had written referencing a secretary named "Kourtney," Respondent admitted that there is a "Kourtney" who works at his office. This testimony is significant because first, it proves that Paul sent the documents to Respondent via UPS and second, it demonstrates that Respondent was attempting to mislead the court at trial.

simply asking to be "kept in the loop" regarding the status of the case and that she wanted Respondent to finalize the divorce because she had already paid him in full.

Shortly after this email exchange, Martinez filed a complaint with the State Bar. After she filed the complaint, Respondent informed her that she and Paul needed to re-sign the paperwork they had previously signed and sent to Respondent in February 2015. On July 11, 2015, Martinez and Paul re-signed the paperwork and had it notarized again. Martinez sent the documents to Respondent soon after they were executed.

Seven months later, on February 11, 2016, Martinez emailed Respondent to check on the status of her case. Prior to sending this email, Martinez had not heard from Respondent since July 2015. Respondent received the email but did not reply.

On March 1, 2016, Respondent told the State Bar investigator that he recently received the original documents executed in July 2015 and he sent them to the superior court immediately upon receipt. Respondent told the investigator that he was concerned because the documents did not appear to be filed. Respondent surmised that either the mail was lost or the court lost the documents.

Because the paperwork executed in July 2015 was not successfully filed, Martinez and Paul had to re-sign the paperwork for a third time. On May 14, 2016, Martinez emailed Respondent to inquire how to send him her re-signed paperwork. On June 21, Martinez emailed Respondent to inquire if he had received a FedEx package with the re-signed paperwork. That same day, Respondent replied that he had received the FedEx package. He stated that they would get to the matter "in a timely fashion" and submit it to the court.

On July 6, 2016, Respondent informed Martinez and the State Bar that his office had completed the judgment and sent it to the court for filing. On September 6, the superior court

sent a correspondence memo regarding deficiencies in the filings. Respondent received the correspondence memo. On September 12, Martinez emailed Respondent because she had contacted the court herself and learned that two documents needed to be resubmitted. Respondent replied the same day, untruthfully stating that he was unaware of what documents needed to be filed because he had not received notice from the court.

On October 7, 2016, the superior court sent another correspondence memo regarding additional deficiencies in the filings in the dissolution. On December 21, a Notice of Entry of Judgment for Dissolution of Marriage was filed. Respondent admitted that "[he] should have been more diligent in prosecuting Ms. Martinez's matter and getting them to send him original documents."

Conclusions of Law

Count One — Former Rule 3-110(A) [Failure to Perform with Competence]

Former rule 3-110(A) of the Rules of Professional Conduct provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence.[2] OCTC charged that Respondent failed to competently perform legal services on behalf of Martinez by repeatedly failing to file the paperwork necessary to finalize her uncontested marital dissolution.

Respondent argues, among other things, that OCTC failed to meet its burden of proof with respect to these performance allegations. Respondent argues that he attempted to file the dissolution paperwork multiple times, and the court rejected the filings due to various deficiencies. Respondent contends his failure to successfully file the dissolution the pleadings

[2] Unless otherwise indicated, all references to the Rules of Professional Conduct refer to the former rules which were operative through October 31, 2018 and all statutory references are to the Business and Professions Code.

was a result of mere negligence that does not give rise to disciplinable misconduct. Respondent also asserts that Martinez failed to send him original documents for two years.[3] Respondent's testimony on this point is not credible and there was no evidence presented in trial to support his claim.

Respondent failed to successfully file the necessary documents on multiple occasions and failed to communicate the deficiencies to his client. Ultimately, Respondent took three years to finalize an uncontested divorce that was estimated to take six months. Respondent recklessly and repeatedly failed to perform with competence, in willful violation of former rule 3-110(A). (See *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585, 588-589 [attorney violated former rule 3-110(A) when he filed complaint but failed to serve defendant or perform additional work]; *In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547, 554 [attorney who filed complaint but took no substantive action thereafter violated former rule 3-110(A)].)

Facts

Case Number 17-O-07047 – Acosta Matter

On July 16, 2015, Jorge Acosta hired Respondent to represent him in a dissolution of marriage.[4] Acosta paid Respondent $4,000 in advanced fees for his services. On July 17, 2015, Respondent filed a Petition for Dissolution of Marriage on behalf of Acosta in Los Angeles County Superior Court.

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[3] Respondent alleges that Martinez behaved inappropriately with his office and that she did not want to listen to him. There was no evidence presented to support this assertion and Respondent's counsel failed to question Martinez about this alleged inappropriate behavior. The court does not find Respondent's testimony believable on this point.

[4] Acosta is now deceased and did not testify at trial.

Thereafter, Acosta became dissatisfied with Respondent's services. On October 5, 2017, Acosta came to Respondent's office to get his file. At this meeting, Respondent prepared and signed a substitution of attorney. In his pretrial statement, Respondent states that Acosta asked Respondent for a refund at that meeting. However, at trial, Respondent renounced this statement and denied that Acosta ever requested a refund. The substitution of attorney was filed on October 10, 2017. Respondent provided the State Bar with a written response to Acosta's complaint on December 22, 2017.

On August 22, 2018, Respondent sent Acosta a refund check for $4,000 and an accounting of his fees, both of which Acosta received. The accounting stated a description of various services, the time spent on each task, and Respondent's hourly rate. The accounting indicated that Respondent's fees totaled $3,500. The accounting did not reflect any costs or expenses incurred. Yet, at trial, Respondent stated that he paid a $435 filing fee for Acosta's dissolution petition that should have been paid by Acosta pursuant to their fee agreement.

Conclusions

Count Three — Former Rule 4 -100(B)(3) [Failure to Render Accounts of Client Funds][5]

Former rule 4-100(B)(3) provides that an attorney must maintain records of all client funds, securities, and other properties coming into the attorney's possession and render appropriate accounts to the client regarding such property. OCTC charged that Respondent failed to render an appropriate accounting to Acosta by failing to provide an accounting of the $4,000 Acosta paid in advanced fees until approximately 10 months after Acosta terminated Respondent's services.

[5] Counts two and five were dismissed with prejudice pursuant to OCTC's request at trial.

Respondent contends that he was not required to provide an accounting of the $4,000 in advanced fees upon termination of services because former rule 4-100(B)(3) only concerns "client funds," and the advanced fees Respondent received were not "client funds" within the meaning of the rule. Respondent also argues that he was not required to provide an accounting to Acosta because Acosta did not request the accounting.

In contrast to former rule 4-100(A), which limits itself to funds received to be held in trust, the duty to account for client funds pursuant to former rule 4-100(B)(3) includes a duty to maintain adequate records of fees drawn against an advanced fee and to provide clients with an appropriate accounting. (*In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 758.) The obligation to render an appropriate accounting does not require that the client demand such an accounting. (*In the Matter of Brockway* (Review Dept. 2006) 4 Cal State Bar Ct. Rptr. 944, 952.) Respondent had a duty to provide Acosta with an accounting, regardless of whether Acosta specifically requested it.

In evaluating the promptness and adequacy of such an accounting, it is appropriate to look to the standards set forth in the statute governing attorneys' bills for fees and costs. (*In the Matter of Fonte, supra,* 2 Cal. State Bar. Ct. Rptr. at p. 758.) Business and Professions Code section 6148(b) requires that all bills rendered by an attorney clearly identify the costs and expenses incurred and the amount of those costs. In addition, section 6148(b) provides that, upon request by the client, an attorney must provide a bill to the client no later than 10 days following the request.

Although he testified that he covered a $435 filing fee on behalf of Acosta, Respondent's accounting did not identify any costs as required by section 6148(b). Further, while Respondent disputes that Acosta requested an accounting at their meeting on October 5, 2017, his delay in

providing an accounting reflecting all costs and expenses until approximately 10 months after that meeting constitutes a failure to promptly render an appropriate accounting, in willful violation of former rule 4-100(B)(3).

Count Four — Former Rule 3-700(D)(2) [Failure to Refund Unearned Fees]

Former rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned. OCTC charged that Respondent failed to promptly return any unearned portion of the $4,000 in advanced fees Acosta paid to Respondent upon the termination of his employment, arguing that Respondent failed to take any steps to complete Acosta's dissolution after filing the initial petition, and that Respondent did not refund any advanced fees to Acosta until 10 months after the termination of his employment.

Respondent contends that the advanced fee was fully earned. As discussed above, Respondent belatedly provided Acosta with an accounting indicating Respondent's fees totaled $3,500. Respondent testified he paid the $435 filing fee for the dissolution petition, which was Acosta's responsibility pursuant to their fee agreement. Respondent argues that his attorney's fees and costs therefore totaled $3,935, such that Respondent fully earned the $4,000 in advanced fees (minus a "deminimus" amount of $65). Respondent also argues that he refunded the entirety of the advanced fee to Acosta on August 22, 2018, and therefore returned any fees that were allegedly unearned.

Pursuant to the fee agreement, Respondent was hired to handle the entirety of Acosta's marital dissolution for a "fixed fee" of $4,000. Assuming, *arguendo*, Respondent's belated accounting of $3,500 is accurate, Respondent was required to return the remaining $500 promptly after Acosta terminated his employment. Further, assuming, *arguendo*, Respondent

indeed incurred costs of $435 in addition to the services worth $3,500, he was obligated to return the remaining $65 to Acosta promptly after termination of employment.[6] Respondent's return of the entire $4,000, along with an accounting stating he performed legal services of $3,500 many months after the termination of his services is inconsistent with Respondent's argument that he fully earned the advanced fee. The court notes that it was not until after the State Bar initiated its investigation that Respondent issued the refund to Acosta.

Therefore, by failing to return to Acosta the unearned portion of the $4,000 in advanced fees for approximately 10 months after the termination of his employment, Respondent failed to promptly refund unearned fees, in willful violation of former rule 3-700(D)(2). (See *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703, 708 [attorney's failure to return the unearned portion of an advanced legal fee for over a year and after State Bar intervention violated the rule of professional conduct requiring that unearned fees be promptly returned to the client].)

Case Number 18-O-13178 – Liu Matter

On November 17, 2016, Lauren Diaz Liu hired Respondent to defend her in a dissolution of marriage action for a flat fee of $4,000. Liu did not sign a retainer agreement.[7] Respondent asserts that, while he was charging Liu a flat fee, he informed her that he would seek attorney's fees from the opposing party at a rate of $400-$450 per hour.

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[6] The court has doubts concerning the accuracy of Respondent's accounting because it does not indicate the dates on which he purportedly performed each service, and it was provided several months after the termination of employment, during the pendency of the State Bar's investigation. The accounting is also silent as to costs incurred, and Respondent failed to provide any evidence demonstrating he paid the $435 filing fee on behalf of Acosta.

[7] Respondent asserted at trial that he did have a fee agreement with Liu but he failed to provide it to OCTC and it was not presented as evidence at trial.

On December 19, 2017, Liu emailed Respondent stating she would be missing a court appearance that morning because she was "incredibly sick and running behind." Respondent emailed Liu immediately, asking her if she intended to move forward with the divorce. Respondent asked Liu come to his office to discuss the matter.

On December 21, 2017, Liu emailed Respondent, requesting a statement of charges to date prior to meeting with him. Liu requested the accounting because she wanted to know what work Respondent had performed on her case. Respondent received the email and replied the next day, stating that they would discuss the statement at the meeting scheduled for that morning. Liu did not attend the meeting.

On February 20, 2018, Liu emailed Respondent again, requesting a statement of services and fees to date. Respondent received the email and replied that same day, stating: "We are a flat fee firm. We do not provide statements. There are no charges…" Liu was aware that there was a flat fee, but she was concerned that Respondent would try to collect attorney's fees from the opposing party. Liu wanted to pay for the legal services herself rather than seek attorney's fees from her husband, and she wanted an accounting from Respondent in the event his fees exceeded $4,000.

On March 5, 2018, Liu emailed Respondent again expressing that she wanted a statement of services. She also stated that she and her husband wanted to move forward with a settlement and asked Respondent to retract her discovery requests. On March 15, Liu sent Respondent a lengthy email again asking for a statement of services to date. Liu expressed frustration with Respondent's non-responsiveness with respect to the accounting.

On March 19, 2018, Respondent emailed that he would provide Liu with a statement of services and also asked her to select a day to come to his office to discuss the case. On March

20, Liu emailed Respondent, stating that email communication worked best for her and asked him to email the statement of services. On March 22, Respondent emailed Liu requesting an in-person meeting to review her judgement and her invoice. Respondent stated that this was his third request to meet in person with Liu. Liu responded the same day, stating that she did not wish to meet in person and again requested statement of services as well as other documents.

On March 22, 2018, Respondent emailed Liu an accounting of services, which Liu received. The invoice indicated that the balance due was $6,350. Liu never went to Respondent's office to discuss the invoice. In an email to Liu dated March 29, Respondent indicated he would be filing a motion for his attorney's fees to be paid by her husband.

Conclusions

Count One — Former Rule 4-100(B)(3) [Failure to Rending Accounting of Client Funds][8]

OCTC charged that Respondent failed to provide Liu with an accounting of the $4,000 she paid in advanced fees following five requests between December 21, 2017, and March 15, 2018. Respondent argues that he continued to request that Liu meet with him to discuss the billing because he was unsure if the requests for the accounting had, in fact, been authored by Liu. According to Respondent, Liu was concerned her husband was tracking her emails, texts, and her car.[9] Respondent eventually provided the requested accounting on March 22, 2018.

While Respondent may have preferred to meet with Liu in person, Liu insisted that Respondent provide the accounting via email. It was not until after Liu's fifth request that Respondent provided an accounting. Liu thought that Respondent was "pushing" her into a "contentious divorce" and she did not feel the need to talk to him. Respondent asserts that Liu

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[8] Counts two, three, four and five were dismissed with prejudice pursuant to OCTC's request at trial.

[9] Respondent's counsel did not examine Liu on this point and Liu provided no corroboration regarding her husband's alleged tracking of her.

engaged in "actions so abhorrent," such as informing him that she would not attend a court appearance at the last minute and failing to attend meetings, that he was at the end of his rope. By failing to provide Liu with an accounting after repeated requests over the course of four months, Respondent failed to render an appropriate accounting, in willful violation of former rule 4-100(B)(3).

Aggravation

It is the State Bar's burden to establish aggravating circumstances by clear and convincing evidence. (Std. 1.5.)[10]

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

Respondent's misconduct evidences multiple acts of wrongdoing in three client matters, including failing to perform with competence, failing to render an accounting of client funds, and failing to refund unearned fees. Respondent's commission of multiple acts of misconduct is a moderate aggravating factor.

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

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

Respondent's repeated indifference and lack of insight into the nature and seriousness of his misconduct was demonstrated in his testimony at trial. Rather than recognizing his misconduct, Respondent blamed others in each of the three client matters. In the Martinez

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

matter, Respondent claimed that his client contacted his office inappropriately and failed to provide the necessary paperwork to complete the divorce. He also blamed the court clerk for rejecting deficient filings and/or losing the mail. Respondent claimed Acosta displayed drunken, belligerent behavior at their final meeting at Respondent's office. In the Liu matter, Respondent characterized Liu's refusal to meet with him in person has "abhorrent." The court finds that Respondent's testimony on these points was neither consistent nor credible.

Respondent displayed minimal remorse for his misconduct. The court acknowledges that Respondent testified that he made changes in his practices to avoid misconduct in the future, including better record-keeping and providing clients with quarterly invoices. Respondent also attended State Bar Ethics School in December 2018. However, Respondent's took these remedial measures after the filing of the first NDC, such that these actions appear to be self-serving for purposes of the disciplinary trial.

"[A]n attorney's lack of insight into the wrongfulness of his actions" may be an aggravating factor. (*Rodgers v. State Bar* (1989) 48 Cal.3d 300, 317.) Respondent's lack of insight is a significant aggravating factor which raises concerns as to whether Respondent is likely to engage in similar misconduct in the future. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 781-782.) Therefore, Respondent's failure to accept responsibility for actions which are wrong or to understand that wrongfulness is considered an aggravating factor. (*Carter v. State Bar* (1988) 44 Cal.3d 1091, 1100-1101.)

Mitigation

It is Respondent's burden to prove mitigating circumstances by clear and convincing evidence. (Std. 1.6.)

Cooperation to Victims/State Bar (Std. l.6(e).)

Respondent entered into a stipulation of facts and agreed to the admission of certain documents, therefore entitling him to mitigation credit. The stipulation was relevant and assisted the State Bar's prosecution of the case. However, the stipulated facts were not difficult to prove and Respondent did not admit culpability. Accordingly, the court assigns limited weight in mitigation for cooperation. (*In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308 [where stipulation was not extensive, involved easily provable facts, and did not admit culpability, respondent's cooperation with the State Bar was assigned limited weight as a mitigating factor].)

Good Character (Std. 1.6(f).)

Respondent presented nine good character declarations: four from attorneys and five from members of the community, including neighbors and former clients. Respondent's character references acknowledged that they were aware of the allegations of misconduct against Respondent. The references commented favorably on his honesty, work ethic, and ability to handle sensitive family law matters.

Respondent presented character testimony from one witness, James Greaves, who also submitted a declaration. Greaves is an attorney licensed in California since 2012. Greaves and Respondent attended law school together, and Greaves worked for Respondent from 2015-17. They refer cases to each other and Greaves spoke highly of Respondent's integrity and legal skills, stating that he "routinely goes above and beyond." The court assigns moderate weight in mitigation for good character.

Discussion

The primary purposes of attorney discipline are to protect the public, the courts, and the legal profession, to maintain the highest possible professional standards for attorneys, and to preserve public confidence in the legal profession. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; std. 1.1.)

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

Standard 1.7(b) states: "If aggravating circumstances are found, they should be considered alone and in balance with any mitigating circumstances, and if the net effect demonstrates that a greater sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a greater sanction than what is otherwise specified in a given Standard. On balance, a greater sanction is appropriate in cases where there is serious harm to the client, the public, the legal system, or the profession and where the record demonstrates that the member is unwilling or unable to conform to ethical responsibilities."

In this case, Standard 2.7(c) applies to Respondent's conduct in the Martinez matter, and former Standard 2.2(b) applies to Respondent's conduct in the Acosta and Liu matters. Standard 2.7(c) provides that reproval or suspension is the presumed sanction for communication,

performance, or withdrawal violations, which are limited in time or scope. Former Standard 2.2(b) provides that suspension or reproval is the presumed sanction for any violation of former Rule 4-100, outside of commingling and failure to promptly pay out entrusted funds. The degree of sanction depends on the degree of harm to the clients and the extent of the misconduct.

OCTC urges that Respondent should be actually suspended for 30 days, given that Respondent committed multiple acts of misconduct by failing to perform competently, failing to promptly account, and failing to promptly return unearned fees. In support of its positon, OCTC cites to *Bach v. State Bar* (1991) 52 Cal.3d 1201. In *Bach*, the attorney committed misconduct in a single client matter involving an uncontested marital dissolution. He was found culpable of failing to perform competently and failing to return unearned fees, in addition to withdrawing from representation without client consent or court approval and failing to respond to two letters from the State Bar. The attorney failed to conclude the uncontested dissolution in two and a half years and failed to communicate with his client for months at a time despite repeated telephone calls and office visits from the client. The attorney was given credit for his many years of practice without any disciplinary record, and the discipline imposed was one year suspension, stayed, and one year of probation with conditions, including that he be actually suspended for 30 days.

Respondent committed similar misconduct, although his misconduct involved three client matters rather than one. Here, as in *Bach*, Respondent failed to timely conclude an uncontested marital dissolution and failed to adequately communicate with his client. Also like the attorney in *Bach*, Respondent failed to return unearned fees and failed to render an accounting. The attorney in *Bach* committed additional misconduct of improperly withdrawing from representation and failing to cooperate with the State Bar, but he received mitigation credit for

his lack of prior disciplinary history. While Respondent will receive no credit for lack of disciplinary history, the court has assigned some weight in mitigation for good character.

Respondent seeks dismissal of all charges. He argues, among other things, that OCTC failed to prove the allegations pursued at trial by clear and convincing evidence. On the contrary, the court finds Respondent culpable of multiple acts of misconduct in three client matters. Significant is Respondent's demonstration of lack of insight into the severity of his misconduct. Respondent blamed other people for his misconduct. When comparing all of the relevant factors, the court finds that Respondent's discipline should be consistent with the discipline imposed in *Bach*, to protect the public, maintain of the highest professional standards, and preserve public confidence in the legal profession.

Recommendations

It is recommended that Jeffrey L. Harris, State Bar Number 281778, be suspended from the practice of law for one year, that execution of that suspension be stayed, and that Respondent be placed on probation for two years with the following conditions:

Conditions of Probation

1. Actual Suspension

Respondent must be suspended from the practice of law the first 30 days of Respondent's probation.

2. Review Rules of Professional Conduct

Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to Respondent's

compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.

3. Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions

Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's probation.

4. Maintain Valid Official Membership Address and Other Required Contact Information

Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR, within ten (10) days after such change, in the manner required by that office.

5. Meet and Cooperate with Office of Probation

Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in person or by telephone. During the probation period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.

6. State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court

During Respondent's probation period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with probation conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official membership address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

7. Quarterly and Final Reports

a. Deadlines for Reports. Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten (10) days before the last day of the probation period and no later than the last day of the probation period.

b. Contents of Reports. Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and

signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.

c. Submission of Reports. All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).

d. Proof of Compliance. Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of Respondent's actual suspension has ended, whichever is longer. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

8. State Bar Ethics School Not Recommended

It is not recommended that Respondent be ordered to attend the State Bar Ethics School because Respondent provided satisfactory evidence of completion of the State Bar Ethics School on December 4, 2018, and passage of the test given at the end of that session.

Commencement of Probation/Compliance with Probation Conditions

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 probation period, if Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

Multistate Professional Responsibility Examination

It is recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) 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 suspension (Cal. Rules of Court, rule 9.10(b).) If Respondent provides satisfactory evidence of taking and passage of the above examination after the date of this decision but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward his duty to comply with this condition.

Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to section 6086.10, subdivision (c), costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

Dated: July 8, 2019

MANJARI CHAWLA
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on July 8, 2019, I deposited a true copy of the following document(s):

DECISION

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

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

EDWARD O. LEAR
CENTURY LAW GROUP LLP
5200 W CENTURY BLVD #345
LOS ANGELES, CA 90045

☐ by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

☐ by overnight mail at , California, addressed as follows:

☐ by fax transmission, at fax number . No error was reported by the fax machine that I used.

☐ By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Christina R. Mitchell, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 8, 2019.

George Hue
Court Specialist
State Bar Court