PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

Filed December 2, 2015

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case Nos. 12-O-15773; 12-O-16741;
	)	12-O-17393; 13-O-11349;
JULIUS MICHAEL ENGEL,	)	13-O-11484
	)	
A Member of the State Bar, No. 137759.	)	OPINION

A hearing judge recommended that Julius Michael Engel be suspended for six months for misconduct that included trust account violations, failing to perform services of value, and failing to refund unearned fees. Engel appeals. He contends the judge made several procedural errors, the Office of the Chief Trial Counsel of the State Bar (OCTC) failed to clearly and convincingly prove[1] the charges against him, and the case should be dismissed due to prosecutorial misconduct and other civil rights violations. OCTC requests the six-month suspension at trial, and does not appeal.

Upon independent review of the record (Cal. Rules of Court, rule 9.12), we agree with the hearing judge's decision. Considering the standards,[2] the decisional law, and the presence of aggravation that outweighs the mitigation, a six-month actual suspension is the appropriate discipline for Engel's misconduct.

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

[2] Effective July 1, 2015, the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, were revised and renumbered. Because this appeal was submitted for ruling after the July 1, 2015 effective date, we apply the revised version. All further references to standards are to this source.

I. PROCEDURAL BACKGROUND

On November 8, 2013, OCTC filed a six-count Notice of Disciplinary Charges (NDC) that charged Engel with: (1) commingling personal funds in his client trust account (CTA); (2) failing to perform with competence; (3) failing to refund unearned fees; (4) failing to inform a client of significant developments; and (5) two counts of accepting attorney fees from a third party without his client's informed written consent. After a five-day trial, the hearing judge found Engel culpable on all counts.[3] We adopt and summarize the hearing judge's factual findings, and add relevant facts established in the record.

II. PROCEDURAL CHALLENGES

At the outset, we dispose of Engel's contention that his due process rights were violated because the hearing judge denied him the right to call deputy trial counsel Sherrie McLetchie as a witness. He claims McLetchie "brought up" his "protected activity ie [*sic*] running for office" during the investigation of this matter. He alleges her testimony would "open the door to further evidence of bad faith and selective prosecution." Although he characterizes his argument as a due process challenge, Engel's contention is based on the hearing judge's grant of OCTC's motion to quash the subpoena because McLetchie's testimony was irrelevant. We find the hearing judge did not abuse her discretion by granting the motion to quash because Engel failed to demonstrate the relevance of McLetchie's testimony. She was not a party, did not sign the NDC, and was not the designated OCTC trial counsel. Moreover, Engel failed to provide any evidence that "he has been deliberately singled out for prosecution on the basis of some invidious criterion." (*Murgia v. Municipal Court* (1975) 15 Cal.3d 286, 298; see also *In the*

[3] Count Three of the NDC alleged that Engel failed to communicate in three instances, but the hearing judge found he failed to communicate in only one instance. Count Five alleges Engel accepted attorney fees from two individuals without his client's informed consent. The hearing judge found Engel failed to obtain his client's informed written consent with respect to only one of those individuals. OCTC does not challenge these findings, and they are supported by the record.

Matter of Aulakh (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690, 695 [abuse of discretion standard applies to procedural rulings]; *H.D. Arnaiz v. County of San Joaquin* (2002) 96 Cal.App.4th 1357, 1368 ["appropriate test of abuse of discretion is whether or not the trial court exceeded the bounds of reason, all of the circumstances before it being considered"].)

We also reject Engel's contention that he was denied a fair trial because the judge excluded Engel's wife from the courtroom. Initially, she was excluded because Engel intended to call her as a witness. The hearing judge permitted Engel's wife to testify out of order during OCTC's case-in-chief so she could return to the courtroom. It was not until Engel's wife called deputy trial counsel "a liar" while sitting in the courtroom, and after twice being admonished, that the judge excluded her from the courtroom.

We further reject Engel's claim that deputy trial counsel Catherine Taylor "conspired with witnesses [Belinda] Calvin and [Iantha] Dunkley to frame Respondent using perjury with Forgery a felony [*sic*]." His claim is wholly unsupported by the record.

III. FACTUAL BACKGROUND AND CULPABILITY[4]

A. The Commingling Matter (12-O-17393)

Engel maintained a CTA at Bank of America. From January through October 2011, he deposited advance fees into his account but did not maintain records to distinguish one client's money from another's. His earned fees remained in his account until he wrote checks from the account for his personal and business expenses, and he was unable to attribute the funds to a specific client. In total, he wrote 126 checks and made eight automatic payments from his CTA

[4] Engel was admitted to the practice of law in December 1988, and he has no prior disciplinary record. During the period relevant to this disciplinary proceeding, he practiced bankruptcy and criminal law.

for personal and business expenses.[5] In addition, fees earned for making special appearances and fees paid to him by bankruptcy trustees were deposited into his CTA.

Count One: Engel Violated Rule 4-100(A)[6]

The hearing judge correctly determined Engel commingled his personal funds with his clients' funds in his CTA. "[C]ommingling is committed when a client's money is intermingled with that of his attorney and its separate identity lost so that it may be used for the attorney's personal expenses or subjected to the claims of his creditors. [Citations.]" (*Clark v. State Bar* (1952) 39 Cal.2d 161, 167-168.) Engel failed to promptly remove earned fees, deposited personal funds, and paid personal and business operating expenses from his CTA, in violation of rule 4-100(A).

We reject Engel's argument that no evidence shows he "put non-client money into the account." The record revealed that numerous deposits were comprised of special appearance fees and previously earned fees from bankruptcy trustees. We also reject his contention that he should not be disciplined for violating rule 4-100(A) because he was unaware that the rule prohibits paying personal expenses from a CTA. Ignorance of the rules governing client trust accounts is no defense to a commingling charge. (*Silver v. State Ba*r (1974) 13 Cal.3d 134, 145.)

B. The Calvin Matter (12-O-16741)

In 2012, the bank foreclosed on Belinda Calvin's home and sold it at auction. On March 16, 2012, she received a notice to vacate the property, but she wanted to remain in the home until her son finished school in May.

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[5] These included health insurance premiums, dental bills, veterinary fees, rent, utilities, his son's college fees, employee payroll, car insurance, Department of Motor Vehicle fees, advertising fees, and payments to family members.

[6] All further references to rules are to the Rules of Professional Conduct of the State Bar unless otherwise noted. Rule 4-100(A) requires that "[a]ll funds received or held for the benefit of clients by [an attorney] . . . be deposited in one or more identifiable bank accounts labeled 'Trust Account,' 'Client's Funds Account' or words of similar import," and that "[no] funds belonging to the [attorney] . . . be deposited therein or otherwise commingled therewith . . . ."

On March 19, 2012, Calvin met with Engel and explained her situation. Engel agreed to file a Chapter 13 bankruptcy petition to delay the eviction process. Calvin signed an agreement for legal services and paid Engel $1,500. The agreement provided that "all fees received by Attorney . . . are earned by Attorney upon receipt." After the meeting with Engel, Calvin met with Dawn Cook, Engel's office administrator. A skeletal Chapter 13 bankruptcy petition was prepared by Engel's office, and Calvin signed it. Cook instructed Calvin to contact Engel's office once she received the unlawful detainer complaint from the bank. She also informed Calvin that the bankruptcy petition would be filed at that time.

The bank served Calvin with an unlawful detainer complaint on April 4, 2012. Her answer was due within five calendar days. On April 5, 2012, Calvin emailed Cook,[7] who advised Calvin she no longer worked for Engel and told her to email Engel's office directly. When Calvin called Engel's office, she was told her file could not be located. She then spoke to Engel, who told her to provide him with the complaint. Calvin's son delivered it to his office. The next day, Calvin emailed Engel, asking him to confirm receipt of the complaint and inquiring about her bankruptcy petition. She received no response.

Calvin reached Engel's wife, Mary Engel, on April 9, 2012, the date her answer was due. Mary emailed her a partially completed form unlawful detainer answer with a blank proof of service form. She advised Calvin to file the answer herself in Sacramento County Superior Court. She then told Calvin: "If you have any problems, there's an office . . . from McGeorge Law School, and they'll help you for free."

Calvin drove 108 miles from her job in Oakland to Sacramento to timely file the unlawful detainer answer in "pro per." She filled out the proof of service and paid a stranger $10 to sign it and file it with the court. After she filed her answer, Calvin emailed Engel to express her

[7] Cook used one email address for both business and personal communications.

dissatisfaction with his services. Engel responded "we will get your bk 13 filed and this answer will delay the eviction process, please continue to keep us advised."

On April 17, 2012, Calvin terminated Engel's services in writing because he still had not filed her bankruptcy petition. Engel did not respond. Calvin emailed him again on April 18 and April 19, requesting a refund of the fees she had paid. In her April 19 email, she demanded the refund of $1,200, informing him he could retain $300 for the limited work he performed on her unlawful retainer answer. In a later email, she asked him to provide an itemized list of the work he performed if he disagreed with the amount of her refund request.

Engel responded to Calvin's requests on April 19, 2012. He stated, "This office is still ready to represent you, your chapter 13 was being typed – I will send you a billing as you request . . . ." Calvin responded on the same date, advising Engel that she no longer wanted him to file her bankruptcy petition.

On May 31, 2012, Calvin sued Engel in small claims court for $1,500. Before the small claims court hearing occurred, Engel sent Calvin a billing statement. His June 23, 2012 statement cited the provision in their agreement that all attorney fees were earned upon receipt. He then outlined his hourly fees and administrative costs, resulting in fees totaling $2,605, with the balance of $1,105 owed by Calvin. However, he indicated he would not pursue that amount.

The small claims court hearing was held on July 19, 2012. Calvin obtained a judgment in her favor for $1,010 plus $40 in costs. Engel appealed. The superior court held a trial de novo on June 28, 2013. In deciding in Engel's favor, the court found he "did initiate preparation of a Chapter 13 bankruptcy petition" and the "engagement agreement plainly set forth that the initial payment of $1,500 was non-refundable and earned upon receipt." Thus, the court found no basis for a refund.

In March 2013, Engel filed a complaint with Calvin's employer, the Oakland Police Department. He alleged Calvin committed perjury during the small claims court hearing. An internal affairs investigation was performed, but the allegations were "not sustained." The investigation and findings became part of Calvin's personnel file.

Count Two: Engel Violated Rule 3-110(A)[8]
Count Three: Engel Violated Rule 3-700(D)(2)[9]

We agree with the hearing judge that Engel recklessly failed to perform legal services with competence. Engel knew that Calvin's matter was urgent and that she wanted him to file her bankruptcy petition to delay her eviction. Yet he never filed even the skeletal petition that he prepared. Engel's "meager and incomplete effort" to file Calvin's bankruptcy petition constituted a reckless failure to perform with competence. (*In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 950; see also *In the Matter of Boyne* (Review Dept.1993) 2 Cal. State Bar Ct. Rptr. 389, 399 [attorney failed to perform competently when he agreed to prosecute case but failed to do so]; *In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547, 554 [attorney had "obligation to take timely, substantive action on the client's behalf" and failure to do so violates rule].)

The hearing judge correctly found Engel violated rule 3-700(D)(2) by failing to refund the unearned fees to Calvin. Engel was hired to file a Chapter 13 bankruptcy petition, but he "failed to achieve or take concrete steps toward this goal. To justify retention of legal fees, [he] was required to perform more than minimal preliminary services of no value to the client. [Citation.]" (*In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315, 324.)

[8] Rule 3-110(A) provides: "A member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence."

[9] Rule 3-700(D)(2) requires attorneys to refund promptly any part of a fee paid in advance that has not been earned.

Engel renews his trial argument that the doctrines of collateral estoppel and res judicata preclude the hearing judge's culpability finding since the superior court determined he did not owe Calvin a refund. The hearing judge rejected this argument, and we agree, but on somewhat different grounds.[10] First, collateral estoppel and res judicata are inapplicable because the State Bar was not a party to the small claims action. (See *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341 [party against whom preclusion is sought must be same as, or in privity with, party to former proceeding]; see also *Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896 [res judicata requires final judgment on merits and involvement of same parties].)

Also, "[t]he purpose of civil proceedings and State Bar proceedings is clearly not the same." (*In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318, 324, citing *Most v. State Bar* (1967) 67 Cal.2d 589, 595, fn. 5 [disciplinary proceeding].) The outcome of the small claims proceedings did not "affect the ethical conclusion that respondent failed to earn any part of the [$1,500] fee." (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 189].) "Because this is a disciplinary proceeding to protect the public, the . . . resulting judgment [has] little relevance." (*Cannon v. State Bar* (1990) 51 Cal.3d 1103, 1109.)

Further, Engel's obligation to refund Calvin's fees was triggered long before the superior court settled the small claims dispute. Calvin terminated his services and requested a refund on April 17, 2012. His failure to promptly return her fees before she filed the small claims

[10] The hearing judge determined collateral estoppel has no preclusive effect on these proceedings because the superior court's ruling was made under the preponderance of the evidence burden of proof rather than the clear and convincing standard of proof applicable here. (See *In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195, 205 [providing requirements to apply collateral estoppel that include civil finding be made under same burden of proof applicable to substantially identical issue in State Bar Court].) While a correct statement of the law, it is inapplicable to these facts since Calvin had the burden of proof in the small claims court proceeding and did not prevail on the de novo review at the superior court. Because she did not prevail at the lower level of proof (preponderance of evidence), we have no reason to believe that the result would have been different at a higher level of proof (clear and convincing).

complaint on May 31, 2012 violated rule 3-700(D)(2). (*In the Matter of Lais* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907, 923 [two and one-half month delay in returning unearned fee violated rule].)

Finally, although Engel's fee agreement states that fees were earned upon receipt, this fee was not a "true" retainer, and therefore any unearned portion must be returned to the client upon termination of the attorney's services. (*In the Matter of Lais*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 923; *In the Matter of Brockway, supra,* 4 Cal. State Bar Ct. Rptr. at pp. 950-951.)[11]

C. The Fountaine Matter (12-O-15773)

In 2011, Carmen Fountaine began having financial difficulties. In November 2011, she hired Engel to file a Chapter 7 bankruptcy petition to "save her house." She agreed to pay him $1,700 as attorney fees. Fountaine made three payments to Engel totaling $1,750.[12] Upon receiving her last payment in March 2012, Engel advised Fountaine that filing a Chapter 13 bankruptcy petition was the better option if she wanted to keep her home.

On March 27, 2012, Engel filed a skeletal Chapter 13 bankruptcy petition on Fountaine's behalf. He also submitted an application to pay the filing fee in two installments of $140.50 each on April 20 and May 18, 2012. The court approved the application on March 28, 2012, but Engel failed to notify Fountaine that she needed to make the two payments.

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[11] "[A] 'true' . . . retainer is a sum of money paid up front by a client to an attorney to secure *his or her availability* for a given period of time." (Vapnek, et al., Cal. Practice Guide: Professional Responsibility (The Rutter Group 2015) ¶ 5:255, p. 5-39, citing *Baranowski v. State Bar* (1979) 24 Cal.3d 153, 164, fn. 4 and *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 757, fn. 4.) Where an advance fee is collected as a prepayment for actual services to be rendered in the future, it is not a true retainer, despite being so labeled or characterized as a "nonrefundable" retainer. (*Id.* at ¶ 5:260.2-5:260.4, pp. 5-41 to 5-42, citing *In the Matter of Lais, supra*, 3 Cal. State Bar Ct. Rptr. at p. 923 and *In the Matter of Brockway, supra,* 4 Cal. State Bar Ct. Rptr. at pp. 950-951.)

[12] Engel testified the $50 overpayment was an error.

On March 28, 2012, the bankruptcy court notified Engel that Fountaine's bankruptcy filing was incomplete, and that she had until April 10, 2012 to file the requested documents. Engel obtained an extension of time to file the necessary documents. Later that month, the bankruptcy court issued an order to show cause regarding Fountaine's failure to pay the required filing fee installment. The hearing was set for May 22. Engel did not appear or file a response. The bankruptcy court closed Fountaine's case without discharge on May 4 for failure to file the requested documents.[13] The court dismissed Fountaine's petition on May 24, 2012 for failure to pay the filing fee.

Count Four: Engel Violated Section 6068, Subdivision (m)[14]

Clear and convincing evidence supports the hearing judge's conclusion that Engel violated section 6068, subdivision (m), by failing to notify Fountaine that she was required to pay her filing fee installments. The judge found Engel's testimony was not credible that he informed Fountaine about the installment fee payments. This credibility finding is entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A); (*In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266, 280.) Moreover, there is no evidence in the record demonstrating that Engel notified Fountaine in writing.

We reject Engel's argument that he is not culpable because the bankruptcy court notified Fountaine about the filing fee installment payments. The court's order indicated "a copy of the order was returned to the filing party." In addition, even if the bankruptcy court notified

[13] The order closing Fountaine's case indicated she could file a motion to reopen her matter to allow her to file the missing documents.

[14] All further references to sections are to the Business and Professions Code unless otherwise noted. Section 6068, subdivision (m), provides that it is the duty of an attorney "[t]o respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services."

Fountaine, Engel was not relieved of his ethical obligation to communicate this significant development to his client.

D. The Allen/Dunkley Matter (13-O-11349)

In January 2012, Anthony Allen hired Engel to represent him in a criminal matter for a $15,000 fee. Allen's mother, Iantha Dunkley, met with Engel on January 31, 2012, paid him $3,000, and signed the attorney-client fee agreement. Later, Allen signed the agreement when Engel visited him in jail.

Between January and October 2012, Dunkley paid Engel $5,650 in attorney fees. On April 18, 2012, Rosie Shabazz, Allen's aunt, paid Engel $100 toward Allen's fees. Engel never obtained Allen's informed written consent to receive payment from Shabazz.

Count Five: Engel Violated Rule 3-310(F)[15]

Clear and convincing evidence supports the hearing judge's finding that Engel violated rule 3-310(F) by accepting $100 from Shabazz for Allen's attorney fees without Allen's informed written consent. However, this rule violation is not significant misconduct because there was no evidence of a conflict or significant client harm. (See *In the Matter of Klein (Review* Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, 7 [violation of rule requiring written consent to attorney accepting employment adverse to client considered "relatively minor" where no actual conflict, potential conflict remote, and no harm to client].)

Engel argues that because Allen authorized his mother to pay his legal fees, his consent extended to all others. Engel failed to provide any authority for this proposition, and we reject it.

[15] Rule 3-310(F) provides that an attorney must not accept compensation for representing a client from someone other than the client unless: (1) there is no interference with the attorney's independence of professional judgment or with the client-lawyer relationship; (2) information relating to the client's representation is protected under section 6068, subdivision (e); and (3) the attorney obtains the client's informed written consent.

E. The Reid Matter (13-O-11484)

In 2012, Engel was representing Carlton Reid in a criminal matter. On January 25, 2013, Engel accepted $700 from Reid's aunt, Ealnor Grey, for representing Reid but without obtaining Reid's informed written consent to do so.

Count Six: Engel Violated Rule 3-310(F)

Engel violated rule 3-310(F) by accepting $700 from Grey for Reid's legal fees without Reid's informed written consent, but we do not find this rule violation significant because it did not cause either a conflict or client harm. (*In the Matter of Klein, supra,* 3 Cal. State Bar Ct. Rptr. at p. 7.)

IV. SIGNIFICANT AGGRAVATION OUTWEIGHS MITIGATION[16]

A. Aggravation

The hearing judge correctly found three aggravating factors. First, Engel committed multiple acts of misconduct in five matters. (Std. 1.5(b).) Second, he caused significant harm to Fountaine by failing to communicate with her, resulting in the dismissal of her bankruptcy petition. (Std. 1.5(j).)

Third, Engel's misconduct is aggravated by his lack of insight and failure to accept any responsibility for his actions. (Std. 1.5(k); *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511 [while law does not require false penitence, it "does require that respondent accept responsibility for his acts and come to grips with his culpability [Citation.]"].) During his closing argument, Engel claimed he was "wronged" because OCTC filed disciplinary charges against him. He also asserted it was not his lack of communication with Fountaine that resulted in the dismissal of her bankruptcy petition, but her inability to make any plan payments.

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

He accused her of using him "as the fall guy for her financial problems." Finally, his opening brief on appeal contains repeated inappropriate and disrespectful aspersions aimed at deputy trial counsel Catherine Taylor and the hearing judge:

- "This was also State bar counsel Taylor's felonious suborning perjury and conspiracy to frame Respondent with Forgery . . . ."
- "Taylor's propensity to readily and unashamedly to subborn [*sic*] and present perjured testimony . . . is consistent with the trial counsel's illicit presentation and inequality of the case as a whole."
- "State bar counsel Taylor conspired with witnesses Calvin and Dunkley to frame Respondent using perjury with Forgery[,] a felony. By this act the said actors committed two felonies themselves and a referral for prosecution . . . should be done. Judge Almendariz refuses to do so. This means she approves and facilitate[s] [*sic*] this felonious behavior."

Nothing in the record indicates that any of these accusations is factually correct. Considering all of the above, the aggregate weight of Engel's aggravation is significant.[17]

B. Mitigation

The hearing judge found two mitigating factors. While we agree, we assign minimal weight to Engel's 23 years of discipline-free practice. He lacks insight and fails to accept responsibility for his misconduct, demonstrating that future misconduct is likely to recur. (Std. 1.6(a); *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [discipline-free record is most relevant when misconduct is aberrational and unlikely to recur].) We also assign some weight to Engel's good character evidence. He presented four witnesses who generally testified to his honesty and good reputation in the Sacramento bankruptcy legal community. He was described

[17] We reject the hearing judge's finding that Engel harmed Calvin by making a retaliatory complaint against her to her employer and that he retaliated against former employees and Reid's aunt. Upon our review of the record, the evidence is not clear and convincing that Engel's actions were retaliatory because (1) the hearing judge found that Calvin did sign the petition, and so there was no clear and convincing evidence that his complaint to the employer was false; and (2) there was insufficient evidence before the Ohio Disciplinary Board, which closed the complaint, or the police that received the stolen property reports, which they did not pursue, to establish a retaliation claim.

as having a "good heart" and being an attorney who genuinely cared about his clients. Two witnesses knew little or nothing about the charges against Engel, and his two attorney witnesses indicated their opinions of him would be affected if he was culpable of the alleged misconduct. One attorney who was a bankruptcy trustee said he would closely scrutinize Engel's files. The other attorney indicated he would no longer consider Engel honest if he commingled his fees with client funds. Thus, the aggregate weight of these two mitigating factors is not significant, and is greatly outweighed by the aggravation evidence.

V. A SIX-MONTH ACTUAL SUSPENSION IS WARRANTED

Our disciplinary analysis begins with the standards. (*In re Silverton* (2005) 36 Cal.4th 81, 91.) Standard 2.2(a) is the most apt.[18] It provides that "[a]ctual suspension of three months is the presumed sanction for commingling . . . ."[19] For almost a year, Engel repeatedly commingled his funds with those of his clients, and paid his personal expenses from his CTA. Accordingly, the presumed discipline for this misconduct alone is a three-month actual suspension.

In determining the appropriate discipline level, we also consider standard 1.7(b), which provides: "If aggravating factors 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

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[18] Since Engel committed various acts of professional misconduct, we impose the most severe sanction of the applicable standards. (Std. 1.7(a) [if attorney "commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed"].) We also keep in mind standard 2.7(c), which provides: "Suspension or reproval is the presumed sanction for performance [or] communication . . . violations, which are limited to scope or time. The degree of sanction depends on the extent of the misconduct and the degree of harm to the client or clients." Finally, we also consider standard 2.19, which provides for a suspension not to exceed three years or reproval as the appropriate discipline for other violations of the Rules of Professional Conduct not specified in the standards.

[19] The standards define the "presumed sanction" as a "starting point for the imposition of discipline, but can be adjusted up or down depending on the application of mitigating and aggravating circumstances."

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." The net effect of Engel's aggravation and mitigation demonstrates that an actual suspension of more than three months is warranted. He engaged in multiple acts of misconduct in five matters. His failure to communicate with his client resulted in the dismissal of her bankruptcy petition. And Engel has displayed a lack of insight into his wrongdoing by blaming others for his misconduct, refusing to accept responsibility for his actions, and making unsubstantiated disparaging allegations against the deputy trial counsel and the hearing judge.

In addition to the aggravating factors, Engel's dereliction of his duty to his clients constitutes a serious violation of his oath and duties as an attorney. "An attorney must use his best efforts to accomplish with reasonable speed the purpose for which he was employed." (*Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 931.) "Failure to communicate with and inattention to the needs of a client . . . is a breach of the good faith and fiduciary duty owed by an attorney to his clients. [Citations.]" (*Id*. at pp. 931-932.)

The scope of misconduct in similar cases has resulted in an actual suspension ranging from 45 days to six months.[20] Engel contends he should not be disciplined for his wrongdoing. He maintains this is a "dirty case" that requires dismissal because culpability is based on "[a] bogus interpretation of the law." His lack of insight, failure to accept responsibility, and breach

[20] See, e.g., *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354 (45-day suspension for commingling, failure to perform services competently, failure to communicate, and failure to cooperate; misconduct aggravated by prior record deemed "minimal in severity," and multiple acts, but tempered by good faith, no client harm, marital problems and suicidal wife, alcoholism brought under control, and good character); *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615 (six-month suspension for repeated misuse of CTA as personal account, twice failing to promptly refund unearned advanced costs; and failing to perform legal services competently; aggravating factors included prior private reproval, multiple acts, and uncharged act of moral turpitude by concealing funds from California Franchise Tax Board; mitigating credit given for good faith for payment of taxes, candor and cooperation, pro bono and community service work, and favorable, but limited, character evidence).

of his fiduciary duty to his clients mandate a greater sanction than the three-month suspension outlined in standard 2.2(a). To protect the public and the courts and to maintain the integrity of the legal profession, we affirm the hearing judge's six-month actual suspension recommendation.

VI. RECOMMENDATION

For the foregoing reasons, we recommend that Julius Michael Engel be suspended from the practice of law for two years, that execution of that suspension be stayed, and that he be placed on probation for two years on the following conditions:

1. He must be suspended from the practice of law for the first six months of the period of his probation.

2. During the period of his probation, he must make restitution to Belinda Calvin in the amount of $1,500 plus 10 percent interest per annum from April 17, 2012 (or reimburse the Client Security Fund to the extent of any payment from the Fund to Belinda Calvin, in accordance with Business and Professions Code section 6140.5) and furnish satisfactory proof to the State Bar Office of Probation in Los Angeles.

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

4. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, he must report such change in writing to the Membership Records Office and the State Bar Office of Probation.

5. Within 30 days after the effective date of discipline, he must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, he must meet with the probation deputy either in person or by telephone. During the period of probation, he must promptly meet with the probation deputy as directed and upon request.

6. He must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, he must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.

7. Subject to the assertion of applicable privileges, he must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to him personally or in

writing, relating to whether he is complying or has complied with the conditions contained herein.

8. Within one year after the effective date of the discipline herein, he must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and of the State Bar's Client Trust Accounting School and passage of the tests given at the end of those sessions. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and he shall not receive MCLE credit for attending Ethics School or Client Trust Accounting School. (Rules Proc. of State Bar, rule 3201.)

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

VII. PROFESSIONAL RESPONSIBILITY EXAMINATION

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

VIII. RULE 9.20

We further recommend that Engel be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

IX. COSTS

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment.

HONN, J.

WE CONCUR:

PURCELL, P. J.

EPSTEIN, J.