PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed October 29, 2019

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	No. 16-C-10863
	)	
DAVID LEON SPECKMAN,	)	OPINION
	)	
State Bar No. 178180.	)	
	)	

In 2014, David Leon Speckman filed a fraudulent insurance claim for a commercial property he owned in Nevada, and he was prosecuted the following year by the Nevada Office of the Attorney General. He ultimately pleaded nolo contendere to a misdemeanor conviction for disorderly conduct. Later, Speckman made misleading statements to the State Bar of Nevada (Nevada Bar) in its attorney disciplinary investigation of the criminal matter. The hearing judge found that the facts and circumstances surrounding his conviction in Nevada involved moral turpitude, concluding that his "overall misconduct demonstrates a disregard for honesty." She recommended discipline that included an actual suspension of 30 days.

The Office of Chief Trial Counsel of the State Bar (OCTC) appeals, asserting that Speckman's misconduct warrants at least six months of actual suspension. It also asks that we find more acts of moral turpitude or, alternatively, aggravation for bad faith, lack of candor, or dishonesty, along with additional weight for aggravation and less weight for the mitigation found by the hearing judge. Speckman does not appeal. In his responsive brief on review, he states that he "accepts the hearing judge's factual findings and conclusions of law" that his conviction involved moral turpitude, and asserts that greater discipline is not warranted.

After independently reviewing the record (Cal. Rules of Court, rule 9.12), we reject OCTC's challenges and agree with the hearing judge's findings of fact and conclusions of law, while making minor modifications to her mitigation and aggravation factors. However, given the seriousness of the misconduct, we recommend an actual suspension of 90 days to protect the public, the courts, and the legal profession.

I. PROCEDURAL BACKGROUND

On November 25, 2015, a criminal complaint was filed against Speckman in Nevada charging him with felony insurance fraud and felony attempted theft. On October 11, 2016, the criminal complaint was amended, dismissing the felony charges and adding a misdemeanor violation of Clark County, Nevada Code of Ordinances, section 12.33.010 (disorderly conduct). Speckman entered a plea of nolo contendere to the misdemeanor charge. He was sentenced to a suspended jail term of six months, and he was ordered to complete 100 hours of community service and to pay fees and restitution to the Nevada Attorney General's Office.

OCTC transmitted evidence of the finality of Speckman's misdemeanor conviction to the Review Department on April 4, 2018. On May 17, we referred the matter to the Hearing Department to resolve factual issues as to whether Speckman's misconduct involved moral turpitude and to determine the recommended discipline to be imposed. A hearing was held September 11-14. On December 13, 2018, the hearing judge issued her decision.

II. UNCONTESTED FACTS AND CIRCUMSTANCES SURROUNDING SPECKMAN'S CONVICTION INVOLVED MORAL TURPITUDE[1]

A. Background

Speckman, who resides in California, owned a commercial building in Las Vegas, Nevada, which he leased to a baseball academy owned by Andrew Concepcion. The building

[1] The factual background is based on trial testimony, documentary evidence, and factual findings by the hearing judge, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).)

was equipped with three 20-ton HVAC (heating, ventilation, and air conditioning) units located on the roof. In March 2011, thieves vandalized two units by removing copper from them. Speckman submitted an insurance claim and paid for repair of the units. In May 2013, the same two units were again vandalized. Speckman submitted another insurance claim, but it was not approved until February 2014. Because that insurance claim had not been approved by the end of 2013, the two units remained unrepaired and only one 20-ton unit was functioning.

B. Speckman Committed Insurance Fraud

In December 2013, the commercial building was insured by Colony Insurance Company (Colony) under a policy obtained by Speckman through his insurance broker. On December 23, First Insurance Funding, Speckman's insurance premium financing company, notified Colony to cancel the policy effective on that date due to Speckman's non-payment of premiums. Speckman subsequently attempted to reinstate the policy by submitting a late payment, but Colony denied it. Therefore, as of December 23, 2013, the building had no insurance coverage.

On December 31, 2013, Concepcion notified Speckman of yet another break-in and theft of the copper in the units. Concepcion also notified the police, whose report stated that all three units had been "maliciously gutted" and all of the copper had been taken. Even though Concepcion texted Speckman about the incident, sent him photos of the damage, and informed him that the police had been called, Speckman testified that he did not believe Concepcion's account of the damage.

On February 28, 2014, Speckman's lender secured a new insurance policy for the building through Travelers Indemnity Company (Travelers). On May 15, Speckman reported a loss to Travelers regarding two HVAC units on the building's roof. He falsely claimed that the building was vandalized on or about April 1, 2014, and that the HVAC units were destroyed. While the claim was pending, Speckman texted Concepcion twice to advise him that the date of the claim

was April 1. During its investigation, Travelers interviewed the insurance broker who obtained the Colony policy and Concepcion, who informed the investigator that the date of loss was December 31, 2013. On June 23, 2014, Travelers denied the claim, finding that the loss occurred outside the policy period.

C. Speckman Convicted of Misdemeanor

Suspecting fraud, Travelers referred the matter to the Nevada Attorney General's Office through the National Insurance Crime Bureau. On November 25, 2015, the Nevada Attorney General's Insurance Fraud Control Unit filed a criminal complaint against Speckman, charging him with two felonies: insurance fraud and attempted theft. The Attorney General later amended the complaint, dismissing the felony charges and adding a misdemeanor disorderly conduct violation. On October 11, 2016, Speckman entered a plea of nolo contendere to that charge.

D. Speckman Made Misrepresentations to the Nevada Bar

The Nevada Bar contacted Speckman about his conviction.[2] He responded by letter on May 23, 2017, making several misrepresentations. First, he stated that he had discussed the April 2014 incident with his insurance agent who informed him that she would file a claim with Travelers. In fact, Speckman never spoke to his insurance agent about the alleged incident.

Second, Speckman stated that the Attorney General "mistakenly believed that I made the 2014 claim against an expired/cancelled insurance policy." However, the Attorney General made no such charge. Instead, the Attorney General alleged that Speckman filed an insurance claim regarding the HVAC units, falsely stating that the date of damage was April 1, 2014, when, in fact, the damage occurred prior to the insurance policy period.

[2] On July 11, 2018, Speckman entered a conditional guilty plea in the disciplinary case in exchange for a stated form of discipline with the Nevada Bar. He admitted that he violated rule 8.4(b) of the Nevada Rules of Professional Conduct (criminal act that reflects adversely on lawyer's honesty, trustworthiness, or fitness as lawyer in other respects). On July 13, 2018, the Nevada Bar issued a public reprimand.

Third, Speckman made misrepresentations regarding the amount and timing of Concepcion's rent payments. Speckman stated that Concepcion stopped paying rent after the May 2013 incident because the "lack of air conditioning rendered the space unusable." However, Concepcion made some payments after the incident.

Fourth, Speckman misrepresented the facts regarding the December 31, 2013 vandalism. He stated that Concepcion telephoned him in early January 2014 that someone had attempted to gain access to the roof, but he was not aware of any resulting damage. In fact, Concepcion had described the damages to Speckman via text, along with photos. Speckman went on to contend that Concepcion informed him on April 1 that there was another vandalism incident, causing damage to the HVAC units. This statement was false as no damage occurred in April 2014 and Concepcion made no such claim to Speckman.

Finally, Speckman misrepresented that he had maintained the same insurance policy with Travelers since 2009. This statement was false as his Travelers' policies had lapsed in the past for failure to pay premiums, most recently in January 2013. The policy he obtained after that was with Colony.

E. Parties Agree Speckman's Conviction Involved Moral Turpitude

In attorney disciplinary proceedings, "the record of [an attorney's] conviction [is] conclusive evidence of guilt of the crime of which he or she has been convicted." (Bus. & Prof. Code, § 6101, subd. (a); *In re Gross* (1983) 33 Cal.3d 561, 567.) However, Speckman's conviction for disorderly conduct, which was not committed in the practice of law or against a client, does not establish moral turpitude per se.[3] Any finding of moral turpitude must be made

[3] OCTC argues that Speckman's misconduct involved the practice of law because he used firm letterhead in communicating with the insurance company. We reject this argument and agree with the hearing judge that Speckman's misconduct was unrelated to the practice of law.

after considering the facts and circumstances of the criminal conviction. (Bus. & Prof. Code, § 6102, subd. (e).)

Since moral turpitude "cannot be defined with precision" (*Baker v. State Bar* (1989) 49 Cal.3d 804, 815, fn. 3), we look to the California Supreme Court for guidance. It has found that, "Criminal conduct not committed in the practice of law or against a client reveals moral turpitude if it shows a deficiency in any character trait necessary for the practice of law (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) or if it involves such a serious breach of a duty owed to another or to society, or such a flagrant disrespect for the law or for societal norms, that knowledge of the attorney's conduct would be likely to undermine public confidence in and respect for the legal profession." (*In re Lesansky* (2001) 25 Cal.4th 11, 16.) We have also determined that moral turpitude "is measured by the morals of the day [citation] and may vary according to the community or the times. [Citation.]" (*In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208, 214.)

Therefore, we must consider whether the facts and circumstances surrounding Speckman's criminal conduct meet the Supreme Court's definition of moral turpitude. (*In re Kelley* (1990) 52 Cal.3d 487, 494 [initial question is whether petitioner's criminal conduct, or circumstances surrounding it, involve moral turpitude].) The hearing judge found that the facts and circumstances surrounding his conviction involve moral turpitude, and OCTC and Speckman do not challenge that finding. We agree. The judge found that Speckman's overall misconduct demonstrated a disregard for honesty. Specifically, she found that the facts and circumstances surrounding Speckman's conviction involved moral turpitude because (1) he falsely stated in his insurance claim that the loss occurred in April 2014; (2) he denied the loss actually occurred in December 2013; (3) he made multiple misleading statements to the Nevada Bar, including

blaming Concepcion, the insurance company, and others;[4] and (4) he advised Concepcion to make misrepresentations on his behalf. Speckman's multiple acts of intentional deceit were "contrary to honesty and good morals," and therefore involved moral turpitude. (See *Stanford v. State Bar* (1940) 15 Cal.2d 721, 727–728 ["act of an attorney which is contrary to honesty and good morals is conduct involving moral turpitude"].)

III. OCTC'S REQUESTS FOR ADDITIONAL FINDINGS ARE DENIED

On review, OCTC asserts that the hearing judge should have found more acts of moral turpitude in the facts and circumstances surrounding the conviction. In the alternative, OCTC argues that the judge should have found that those same acts support additional aggravation for bad faith, lack of candor, and dishonesty.[5]

A. Additional Facts and Circumstances Involving Moral Turpitude Not Warranted

First, OCTC argues that Speckman's attempt to dissuade Concepcion from telling Travelers the true date of the vandalism should have been included in the facts and circumstances surrounding the conviction. However, this point was already included in the hearing judge's moral turpitude analysis and in ours as well; thus, OCTC's argument is without merit.

Second, OCTC contends that the hearing judge should have found, in the facts and circumstances surrounding the conviction, that Speckman made a misrepresentation to Concepcion in an April 2014 text message. Speckman messaged Concepcion that the insurance company had denied a claim based on the December 2013 incident as "suspicious activity." In

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[4] While Speckman made misrepresentations to the Nevada Bar, the hearing judge did not find that Speckman displayed a lack of candor in *these* proceedings. Making an intentional misrepresentation to the State Bar of California is a very serious offense and may constitute substantial aggravation for lack of candor. (See *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 282–283 [deliberate misrepresentation to State Bar investigator and deliberate false testimony in State Bar Court considered strong aggravating circumstance].)

[5] While we typically would discuss aggravation later in the opinion, OCTC chose to argue that certain facts could apply alternatively to moral turpitude or aggravation, so we discuss both in one section to follow OCTC's arguments.

actuality, no claim had been filed, which Speckman admitted at trial. We do not find that this fabrication to Concepcion is materially significant such that the hearing judge should have included it in the facts and circumstances surrounding the conviction because this statement is only minimally linked to the insurance fraud.

Third, OCTC argues that the hearing judge should have made the specific finding that Speckman falsely stated that he believed the date of the loss was in April 2014. Such a finding would be redundant. The judge's decision comprehensively examined the facts surrounding the conviction, and made appropriate findings. Therefore, we find no reason to alter the judge's analysis by finding additional facts and circumstances of moral turpitude surrounding Speckman's conviction.

B. Speckman's Testimony at Trial Not Aggravating

OCTC alternatively asserts that the hearing judge should have found that Speckman's testimony as discussed above lacked candor, was dishonest, or was in bad faith, as set forth in the Standards for Attorney Sanctions for Professional Misconduct.[6] The judge gave a detailed and reasoned explanation as to why she found Speckman's testimony about the date of the loss lacking credibility.[7] The judge also noted that the damage may have occurred when the building was

[6] All further references to standards are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct. Bad faith and dishonesty are aggravating circumstances under standard 1.5(d) and lack of candor is an aggravating circumstance under standard 1.5(l).

[7] A hearing judge's factual and credibility findings are accorded great weight because the judge presided over the trial and heard the testimony. (Rules of Procedure of State Bar, rule 5.155(A) [great weight given to hearing judge's factual findings]; see *McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [hearing judge best suited to resolve credibility questions "because [the judge] alone is able to observe the witnesses' demeanor and evaluate their veracity firsthand"].) The judge based this adverse credibility determination on inconsistencies in Speckman's testimony and contradictions between his testimony and the text messages with Concepcion and other documents. She noted that Speckman's claim that a repairman found the units to be working in January 2014 was not supported by evidence other than Speckman's testimony. He submitted the repairman's declaration in the Nevada disciplinary proceeding, and it did not mention a January 2014 visit. The judge also found Speckman's claim that the loss occurred in April 2014 not

earlier insured by Speckman, but she did not go so far as to find that his testimony lacked candor. We agree, as analyzed below.

Speckman testified at trial that he believed that one unit was working in January 2014 because his repairman tested it and said that it was "kind of blowing cold." Due to his acrimonious relationship with Concepcion, Speckman believed, and maintained at trial, that Concepcion purposely damaged the units in April 2014. The hearing judge stated that Speckman provided no evidence to back up this claim and therefore she did not find him credible. However, she did not find that he falsely testified at trial. (See *Edmonson v. State Bar* (1981) 29 Cal.3d 339, 343 [law is well-settled that rejection of testimony does not create affirmative evidence to contrary].) Further, the judge also found that Speckman was not credible when he testified that he visited Concepcion in 2016 to confirm that Concepcion had taken equipment from the building. The judge determined that the actual reason for the visit was to "remind" Concepcion that the date of the loss was April 1, 2014.

The hearing judge believed Concepcion's testimony over Speckman's, but did not find that Speckman's testimony lacked candor. We agree, as no clear and convincing evidence exists to support a finding of lack of candor.[8] We decline to find error in the judge's credibility decision and we do not make any additional findings for lack of candor, bad faith, or dishonesty. (See *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 638 [deference given to hearing judge's credibility-based findings unless specific showing that such were made in error].)

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credible based on Concepcion's actions and the texts, photographs, and police report from the December 31, 2013 incident. Further, the judge considered Speckman's misleading statements to the Nevada Bar and his effort to have Concepcion misrepresent the date of the loss in her adverse credibility assessment.

[8] 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.)

IV. AGGRAVATION AND MITIGATION

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

A. Aggravation

1. Intentional Misconduct, Bad Faith, and Dishonesty (Std. 1.5(d))

OCTC requests that Speckman's misstatements to the Nevada Bar be considered an aggravating circumstance. The hearing judge found that the misstatements were not an aggravating circumstance because she considered this conduct in assessing Speckman's moral turpitude culpability. (*In the Matter of Guillory* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 402, 409, fn. 13 [improper to consider in aggravation factual findings already used to determine culpability]; *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 132–133 [inappropriate to use same misconduct supporting moral turpitude charge as additional aggravation].) We agree.

OCTC also argues that Speckman engaged in bad faith by trying to make Concepcion and the insurance broker "look bad" in an attempt to distract the Nevada Bar and the hearing judge from his own misconduct. OCTC cites *In the Matter of Regan* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844 as support for its position, but does not specify where in the record such statements exist. Our review of the record fails to show any statements by Speckman concerning Concepcion or the insurance broker that could compare to the disparaging remarks made in disciplinary proceedings by the attorney in *Regan* that his clients were "mentally ill and senile." (*Id.* at p. 860.)

2. Significant Harm to Client, Public, or Administration of Justice (Std. 1.5(j))

The hearing judge found that Speckman's misleading statements to the Nevada Bar caused "some harm" to the administration of justice, without explaining her reasoning. OCTC argues that "significant harm" resulted because Speckman's misrepresentations were taken into account in the Nevada Bar's decision to publicly reprimand him. We disagree with that reasoning. Because the hearing judge found that Speckman's misleading statements were facts and circumstances surrounding his conviction that involved moral turpitude, it would be improper to use the same facts again for aggravation. (*In the Matter of Guillory*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 409, fn. 13; *In the Matter of Sampson*, *supra*, 3 Cal. State Bar Ct. Rptr. at pp. 132–133.)

OCTC also argues on review that the insurance company was harmed because it had to expend time and resources investigating a fraudulent claim. The record does not establish significant harm to the insurance company and, moreover, OCTC did not make this assertion at trial, therefore waiving this argument on review. (*In the Matter of Yee* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330, 335 [OCTC waived arguing significant harm on review because it failed to claim harm as an aggravating circumstance at trial].)

B. Mitigation

1. No Prior Record of Discipline (Std. 1.6(a))

Absence of a prior record of discipline over many years, coupled with present misconduct that is not likely to recur, is a mitigating circumstance. (*Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [discipline-free record most relevant where misconduct is aberrational and unlikely to recur].) The hearing judge gave significant weight in mitigation for Speckman's 18 years of discipline-free practice. OCTC disagrees with the judge, arguing that Speckman should receive less mitigation credit because his conduct was not aberrational, due to his multiple acts of dishonesty, including trying to avoid culpability.

OCTC compares Speckman's misconduct to the attorney's misconduct in *Kaplan v. State Bar* (1991) 52 Cal.3d 1067, asserting that, like Kaplan, Speckman engaged in multiple significant acts of dishonesty. The Supreme Court determined that Kaplan's misconduct was not aberrational because it was part of a "purposeful design" to defraud his law firm partners. (*Id.* at p. 1071.) Over a six-month period, Kaplan deposited 24 checks payable to his law firm, totaling approximately $29,000, into his personal bank account. The Supreme Court found no indication that Kaplan would have ceased his misconduct absent the action of his law partners. The court held that Kaplan's case was not similar to cases in which they had found aberrational conduct for a few isolated incidents, generally involving client neglect. While Speckman did engage in fraud, the misconduct revolved around a single claim to the insurance company, not an entire scheme to continuously misappropriate money, and it did not involve the practice of law. The *Kaplan* facts are too dissimilar to support a finding that Speckman's misconduct would likely recur.

Speckman cites *Friedman v. State Bar* (1990) 50 Cal.3d 235 to support his argument that his lack of a prior record of discipline merits mitigation. In *Friedman*, over a six-year period and in two client matters, the attorney failed to cooperate or participate in disciplinary investigations and proceedings, made misrepresentations to the State Bar, failed to keep his client reasonably informed of significant developments and to promptly respond to reasonable status inquiries, disobeyed a court order, engaged in acts involving moral turpitude, failed to render appropriate accounts to his client, and failed to promptly pay client funds. The Supreme Court found the attorney's conduct to be serious, but aberrational. It attributed his misconduct to marital problems, but found it "[m]ore important it occurred after he had practiced law for more than 20 years with an unblemished record." (*Id.* at p. 245.) The court considered that fact to be "highly significant" and warranting mitigation. Speckman asserts that Friedman cited only the length of time he practiced without discipline to support mitigation, while he offered not only the length of time, but

additional evidence to demonstrate the relevance of the length of time. Speckman presented strong character evidence substantiating his devotion to serving others and argues that his misconduct should therefore be considered aberrational.

We agree with Speckman's reasoning and find his misconduct to be an aberrational event in a lengthy legal career. As discussed below, Speckman's character references and community service corroborate his assertion that his misconduct is unlikely to recur. (See *McKnight v. State Bar*, *supra*, 53 Cal.3d at pp. 1037-1038 [character references substantiated attorney's claim that his misconduct was aberrational].) Accordingly, we agree with the hearing judge's decision and give substantial mitigation to Speckman's 18 years of discipline-free practice. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [substantial mitigation where attorney practiced over 10 years before first act of misconduct and misconduct not likely to recur].)

2. Extraordinary Good Character (Std. 1.6(f))

Speckman may obtain mitigation for "extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct." (Std. 1.6(f).) The hearing judge determined that Speckman was entitled to significant mitigation for his good character. We agree.

Six witnesses, including three attorneys, testified at trial regarding Speckman's good character. (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [serious consideration given to attorneys' testimony due to their "strong interest in maintaining the honest administration of justice"].) The other three witnesses included a real estate investor who has been Speckman's business partner, a friend who is a retired Marine, and a former employee. Each of the witnesses had a basic understanding of the charges against Speckman.[9]

[9] The hearing judge found that some of the character witnesses "did not fully comprehend the seriousness of filing a false insurance claim or the extent of [Speckman's] acts of moral turpitude." We disagree with this characterization. Our review indicates that all of the testifying

(*In re Brown* (1995) 12 Cal.4th 205, 223 [mitigation considered for attorney's good character when witnesses aware of misconduct].) Speckman also presented 10 declaratory witnesses. The live and declaratory witnesses all attested to Speckman's honesty and his high moral character. They have known Speckman for lengthy periods of time and one attended law school with him in 1992. The 16 witnesses represent a wide range of references, and they detailed their differing interactions with Speckman in his daily life and their observations of his good character, generosity, integrity, and willingness to help. Accordingly, substantial mitigating weight is deserved. (See *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 591–592 [significant mitigation for testimony on issue of good character where witness observed attorney's "daily conduct and mode of living"].)

3. Pro Bono Work and Community Service

Pro bono work and community service are mitigating circumstances. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) Speckman testified that he provides 15 to 20 hours of pro bono work per year, primarily helping veterans with their benefits. He began doing this while in law school when he volunteered for the San Diego Mediation Center. Speckman's character witnesses substantiated that he often does work without charging a fee, particularly in immigration matters. Speckman also gives back to the community by contributing considerable time to a church-affiliated orphanage in Tijuana, which was corroborated by a character witness at trial. He also helps his daughter organize beach cleanups. Speckman's proven dedication to

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witnesses appreciated the Nevada charges, including the criminal charges, the criminal conviction, and the public reprimand by the Nevada Bar. Even with this finding, the judge determined that Speckman was entitled to significant mitigation for his good character. OCTC argues that the witnesses did not comprehend that Speckman's misconduct involved dishonesty and insurance fraud. On the contrary, Speckman proved by clear and convincing evidence that his witnesses were aware of the extent of his misconduct. (Cf. *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221, 235 [modest mitigation for good character where several witnesses stated that they had "little understanding about the discipline charges"].)

pro bono work and community service deserves substantial mitigation credit. (*Rose v. State Bar* (1989) 49 Cal.3d 646, 667 [mitigation for legal abilities, dedication, and zeal in pro bono work].)

V. DISCIPLINE

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys. (Std. 1.1.) Our disciplinary analysis begins with the standards. While they are guidelines for discipline and are not mandatory, we give them great weight to promote consistency. (*In re Silverton* (2005) 36 Cal.4th 81, 91–92.) The Supreme Court has instructed us to follow the standards "whenever possible." (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) We also look to comparable case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310–1311.)

Standard 2.15(b) applies here, as Speckman has been found culpable of moral turpitude stemming from a misdemeanor criminal conviction.[10] This standard provides that disbarment or actual suspension is the presumed sanction for such misconduct. The hearing judge recommended the lowest discipline under the standard, 30 days' actual suspension.[11] The judge also noted that Speckman's "dishonesty is a serious ethical violation," but found his mitigation evidence "compelling."

In their briefs, the parties addressed the cases that the hearing judge used in her discipline analysis: *In re Chira* (1986) 42 Cal.3d 904, *Bach v. State Bar* (1987) 43 Cal.3d 848, and *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502. In *Chira*, the attorney was

[10] This standard was formerly numbered 2.15(c) at the time of the hearing judge's decision.

[11] Standard 1.1 provides, in pertinent part, "If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached." Standard 1.2(c)(1) provides, in pertinent part, "Actual suspension is generally for a period of thirty days, sixty days, ninety days, six months, one year, eighteen months, two years, three years, or until specific conditions are met."

convicted of conspiring with another attorney to impede the Internal Revenue Service by backdating his personal vehicle lease as part of a tax shelter, which involved moral turpitude. The Supreme Court found that his conduct involved deceit and moral turpitude. However, the court determined that no period of actual suspension would be imposed because this was his only misconduct in his 24 years of practice, the misconduct was in connection with his personal affairs and he did not stand to gain any tax benefit, and he was "clearly a follower" in the transaction and overly trusting of his co-conspirator. (*Id.* at p. 909.)

Chira's misconduct is similar to Speckman's in that they both used deceit in their personal affairs. They both were convicted of crimes for their misconduct and both had a lengthy period of discipline-free practice.[12] However, Speckman orchestrated insurance fraud by himself, he personally stood to gain a financial benefit, and he made misrepresentations to the Nevada Bar. Thus, his actions are more serious than Chira's.

In *Bach*, the attorney willfully and intentionally sought to mislead a judge when he was advised to produce his client at a family law mediation, which involved moral turpitude. No mitigation was established and aggravation was assigned for one prior record of discipline. Bach received a 60-day actual suspension. Like Bach, Speckman's misconduct similarly involves misrepresentation, but his actions were more consequential as he was dishonest with both the insurance company and the Nevada Bar. Unlike Bach, Speckman has strong mitigating circumstances and none in aggravation. However, while *Bach* is helpful in our discipline analysis involving misrepresentation, it does not address the crux of Speckman's serious misconduct for insurance fraud.[13]

[12] While *Chira* was decided just after the standards went into effect, the Supreme Court did not address the standards in determining discipline.

[13] The Supreme Court also did not discuss the standards that were in effect at the time of the decision in *Bach*.

In *Katz*, the attorney was convicted of felony perjury for a personal tax avoidance scheme. Katz lied about ownership of two vehicles with respect to a company that he had formed to avoid paying California motor vehicle fees and taxes. During the disciplinary proceedings, Katz claimed he respected the perjury conviction, but repeatedly testified that he was nonetheless innocent of perjury. He never conceded that he had lied under oath or expressed regret for doing so. Katz acknowledged fault only for failing to communicate clearly. Here, while Speckman was convicted of disorderly conduct, he does not challenge the hearing judge's finding and accepts that the facts and circumstances surrounding his conviction involved moral turpitude. Katz did not receive full mitigating weight for his character witnesses because they did not know the details of his conviction. In contrast, Speckman's character witnesses were aware of the full extent of his misconduct. Additionally, Speckman has no factors in aggravation while Katz's acts involved bad faith, dishonesty, concealment, and overreaching.

The court in *Katz* determined that a six-month prospective actual suspension was the appropriate discipline, with the court noting that Katz had been on suspension for seven years. Like Katz, Speckman was dishonest. However, considering the facts and circumstances surrounding Speckman's conviction, we find a lesser discipline than the one recommended in *Katz* is more appropriate here.

In addition to the cases discussed by the hearing judge, OCTC asserts that *In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245 is relevant. Moriarty, a former deputy district attorney in Contra Costa County, filed three annual federal tax returns claiming fraudulent deductions for charitable contributions. Moriarty claimed personal expenses were church-related. For example, he claimed his home swimming pool to be a baptismal font and payments for his children's education to be religious educational expenses. He was convicted of a federal felony for filing a false tax return. Moriarty's misconduct is similar to Speckman's in

that it involved deceit. However, Moriarty did not commit fraud once, but three times, with a year between each tax return filing. He received aggravation for these multiple acts. Nonetheless, Moriarty had substantial mitigating factors including extreme emotional difficulties, cooperation and candor in the disciplinary investigation, community service, and good character evidence. He was suspended from the practice of law for seven months. We view Moriarty's misconduct as significantly more serious than Speckman's.

None of the aforementioned cases provides a clear disciplinary evaluation of the facts in this case. However, we find that these cases provide some broad guidance in making our recommendation on discipline. Next, we agree with the hearing judge's finding that Speckman's false claim to the insurance company and his dishonesty to the Nevada Bar exhibit serious misconduct. In the practice of law, honesty is absolutely fundamental. Without it, "the profession is worse than valueless in the place it holds in the administration of justice." (*Tatlow v. State Bar* (1936) 5 Cal.2d 520, 524; see *Kim v. Westmoore Partners, Inc.* (2011) 201 Cal.App.4th 267, 292 ["It is critical to both the bench and the bar that we be able to rely on the honesty of counsel"].) Because of the seriousness of Speckman's misconduct, however, we cannot agree with the judge that a 30-day actual suspension is fitting discipline here. His misconduct approaches that found in *Katz* and *Moriarty* and, given the serious nature of insurance fraud, calls for a recommendation above the minimum of the discipline range called for by standard 2.15(b). (See *In re Petty* (1981) 29 Cal.3d 356, 361 [attorneys' scheme to defraud insurance companies is serious misconduct]; Bus. & Prof. Code § 6106.5 [fraudulent insurance claim independent ground for suspension or disbarment].)

Our disagreement with the hearing judge's disciplinary recommendation is also based on her finding that the mitigating evidence was "compelling." While Speckman's mitigation for his many years of discipline-free practice, good character, and pro bono work and community

service are considerable, we do not find it compelling, especially in light of his serious misconduct, to justify recommending an actual suspension at the lowest end of the spectrum provided under standard 2.15(b).[14]

Given the facts and circumstances surrounding Speckman's misconduct, the case law as discussed, and his mitigation evidence, we recommend a 90-day actual suspension as the most appropriate discipline to impose under standard 2.15(b). This should convey to Speckman the seriousness of his misconduct while protecting the public, the courts, and the legal profession.

VI. RECOMMENDATION

For the foregoing reasons, we recommend that David Leon Speckman, State Bar No. 178180, be suspended from the practice of law for one year, that execution of that suspension be stayed, and that he be placed on probation for two years with the following conditions:

1. **Actual Suspension.** Speckman must be suspended from the practice of law for the first 90 days of his probation.

2. **Review Rules of Professional Conduct.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Speckman 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 his compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with his first quarterly report.

3. **Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions.** Speckman must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of his probation.

4. **Maintain Valid Official State Bar Record Address and Other Required Contact Information.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Speckman must make certain that the State Bar Attorney

[14] Cf. *In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171, 185 [compelling mitigation existed where respondent provided an "extraordinary demonstration of good character," consisting of 36 character witnesses, including judges, attorneys, public officials, law enforcement personnel, community leaders, and friends, and an "impressive record of participation in pro bono and community service activities," where respondent devoted much of his free time to charitable work and multiple community organizations, along with cooperation evidence].

Regulation and Consumer Resources Office (ARCR) has his current office address, email address, and telephone number. If he does not maintain an office, he must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Speckman must report, in writing, any change in the above information to ARCR, within 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, Speckman must schedule a meeting with his assigned probation case specialist to discuss the terms and conditions of his 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, he may meet with the probation case specialist in person or by telephone. During the probation period, Speckman 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 Speckman's probation period, the State Bar Court retains jurisdiction over him to address issues concerning compliance with probation conditions. During this period, he must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to his official membership address, as provided above. Subject to the assertion of applicable privileges, Speckman 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. Speckman 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, Speckman must submit a final report no earlier than 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. Speckman must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether he 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. Speckman is directed to maintain proof of his 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 his actual suspension has ended, whichever is longer. He 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.** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Speckman must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and he will not receive MCLE credit for attending this session. If he provides satisfactory evidence of completion of the Ethics School after the date of this opinion but before the effective date of the Supreme Court's order in this matter, Speckman will nonetheless receive credit for such evidence toward his duty to comply with this condition.

9. **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 Speckman has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

VII. MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that David Leon Speckman be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) 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).) If he provides satisfactory evidence of taking and passage of the MPRE after the date of this opinion but before the effective date of the Supreme Court's order in this matter, he will nonetheless receive credit for such evidence toward his duty to comply with this condition.

VIII. CALIFORNIA RULES OF COURT, RULE 9.20

We further recommend that Speckman be ordered to comply with the requirements of 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 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter.[15] 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. Unless time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against an attorney who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

McGILL, J.

WE CONCUR:

PURCELL, P. J.

HONN, J.

[15] For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Speckman is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)