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APPENDIX A

ORDER, SUPREME COURT OF CALIFORNIA (MARCH 12, 2024)

State Bar Court - No. SBC-22-O-30033
S282783

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re ELANA THIBAULT on Discipline.
The petition for review is denied.

The court orders that Elana Thibault, State Bar Number 302572, is suspended from the practice of law in California for one year, execution of that period of suspension is stayed, and Elana Thibault is placed on probation for one year subject to the following conditions:

1. Elana Thibault is suspended from the practice of law for the first 30 days of probation;
2. Elana Thibault must also comply with the other conditions of probation recommended by the Review Department of the State Bar Court in its Opinion filed on October 17, 2023; and
3. At the expiration of the period of probation, if Elana Thibault has complied with all conditions of probation, the period of stayed

suspension will be satisfied and that suspension will be terminated.

Elana Thibault must provide to the State Bar's Office of Probation proof of taking and passing the Multistate Professional Responsibility Examination as recommended by the Review Department in its Opinion filed on October 17, 2023. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9. 10(b).) Elana Thibault must comply with California Rules of Court, rule 9.20, and perform the acts specified in (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the date this order is filed. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45 [the operative date for identification of clients being represented in pending matters and others to be notified is the filing date of this order].) Failure to do so may result in disbarment or suspension. Elana Thibault must also maintain the records of compliance as required by the conditions of probation.

Elana Thibault must pay monetary sanctions to the State Bar of California Client Security Fund in the amount of $2,500 in accordance with Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar. Monetary sanctions are enforceable as a money judgment and may be collected by the State Bar through any means permitted by law.

Costs are 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, and may be collected by the State Bar through any means permitted by law.

APPENDIX B

OPINION, STATE BAR COURT OF CALIFORNIA, REVIEW DEPARTMENT (OCTOBER 17, 2023)

PUBLIC MATTER-DESIGNATED
FOR PUBLICATION

STATE BAR COURT OF CALIFORNIA
REVIEW DEPARTMENT

IN THE MATTER OF ELANA THIBAULT,
State Bar No. 302572.

No. SBC-22-O-30033

OPINION

This case underscores the need for attorneys to understand the broad scope of our conflicts of interest rules, which require the avoidance of adverse interests, and it demonstrates the perils that can result when an attorney is not careful in following the requirements of these rules. In her first disciplinary matter, Elana Thibault is charged with four counts of misconduct stemming from her agreement to represent a client in a litigation matter whose interests were adverse to a prior client of Thibault' s former employer. The hearing judge found Thibault culpable on three of the four charges and recommended a 30-day actual suspension. Thibault appeals the judge's recommendation, maintaining that the evidence is not sufficient

to support the culpability findings made by the judge. The Office of Chief Trial Counsel of the State Bar (OCTC) does not appeal and requests that we uphold the judge's recommendation. Upon our independent review of the record (Cal. Rules of Court, rule 9.12), we affirm the judge's culpability findings, the aggravating and mitigating circumstances, and the discipline recommendation.

I. RELEVANT PROCEDURAL BACKGROUND

On February 2, 2022, OCTC filed a four-count Notice of Disciplinary Charges (NDC) charging Thibault with (1) failing to obey a court order under section 6103 of the Business and Profession Code;[1] (2) accepting employment adverse to another individual who was previously represented by respondent's employer without informed written consent under former rule 3-31 O(E) of the Rules of Professional Conduct;[2] (3) failing to maintain client confidences under section 6068, subdivision (e)(1); and (4) failing to timely report a judicial sanctions order to the State Bar under section 6068, subdivision (o)(3). Thibault filed a response on February 22.

On April 6, 2022, the hearing judge granted a motion for abatement filed by Thibault based on her having filed a writ of mandate regarding the judicial sanctions order. On May 23, the judge terminated the abatement as the writ had been summarily denied by

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[1] All further references to sections are to the Business and Professions Code unless otherwise noted.

[2] All further references to rules are to the former Rules of Professional Conduct that were in effect until November 1, 2018, unless otherwise noted.

the Court of Appeal. Thibault subsequently filed a second motion to abate and a motion to dismiss counts one, two, and three. Both motions were denied on June 27. Thibault filed a petition for interlocutory review regarding the second motion to abate, which was denied on July 14. Trial was held on July 21 and 22. The judge issued a decision on October 17, 2022, finding culpability on all counts except count three.

On October 31, 2022, Thibault filed a motion for reconsideration and a request to disqualify the hearing judge, which were denied on November 8 and November 16, respectively. On November 18, Thibault filed a second petition for interlocutory review regarding the denial of her motion to disqualify the judge, and it was denied on November 23. Thibault filed her request for review on December 13. Oral arguments were heard on July 20, 2023, and the matter was submitted that day.

II. FACTUAL BACKGROUND

Thibault was admitted to the practice of law on February 17, 2015, and has no prior discipline. She is currently a solo practitioner and focuses her practice on family and immigration law. Prior to starting her solo practice, Thibault was employed by Anu Peshawaria between August 2015 and March 2018. Peshawaria has never been licensed to practice law in California, but she operated a law office in Fremont where she advertised as specializing in a wide array of legal matters throughout the United States and India.[3]

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[3] The hearing judge's decision mistakenly states that Peshawaria became licensed to practice law in California in February 2015;

A. Peshawaria Consulted with Rattan and Obtained Client Confidences

In June 2008, well before the misconduct alleged in this matter, Komal Rattan consulted with Peshawaria regarding an on-going marital dissolution matter that involved domestic violence with her then-husband Abhijit Prasad. Rattan's divorce proceeding was filed on November 14, 2007, entitled *Rattan v. Prasad* (Alameda County Superior Court, No. VF0735 6209). The consultation between Rattan and Peshawaria occurred prior to Thibault's employment by Peshawaria.

During the disciplinary trial, Rattan testified she believed that Peshawaria was a licensed attorney in both India and California at the time of their initial consultation in June 2008. Rattan testified that their consultation occurred at Peshawaria's office in Fremont, California, and they discussed all aspects of the divorce proceeding, including child custody and marital property.

Rattan stated that, during their meeting, they discussed her pending martial dissolution petition filed by her prior attorney, and Peshawaria requested a copy of it. Rattan also testified that she signed a retainer agreement during the meeting and paid Peshawaria $5,000 to retain her for her services. The retainer check was dated June 25, 2008, and written

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however, she has never been licensed to practice law in California. As indicated *ante,* Thibault became licensed in California in February 2015. At some point, Peshawaria became licensed to practice law in India, and she obtained her law license in the state of Washington in November 2011.

out to "Anu Peshawaria/IBS."[4] Rattan stated she prepared a written narrative for Peshawaria, which discussed the issues related to her marriage and her domestic violence claims against Prasad. Rattan stated that she believed she was retaining Peshawaria to represent her in the *Rattan v. Prasad* divorce proceeding.

Rattan's prior attorney filed a substitution of attorney on June 24, 2008. On June 26, proceeding in pro per, Rattan filed a Domestic Violence Temporary Restraining Order based on domestic abuse allegations. Rattan ultimately severed her relationship with Peshawaria and hired new counsel who substituted into Rattan's case on September 26. Rattan had never spoken to or met Thibault until years later in May 2018.

B. Prasad Retained Peshawaria's Office and Thibault Was assigned His Case But Withdrew

In 2016, Prasad retained Peshawaria' s office to represent him in *Rattan v. Prasad.* Thibault was employed by Peshawaria at the time and Prasad's

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[4] During the disciplinary trial, Thibault testified Peshawaria was working as an immigration consultant under the business name "Immigration Business Services (IBS)" and Peshawaria informed her that Rattan's consultation in 2008 related only to a domestic violence case in India. The hearing judge rejected Thibault's assertions, finding that Thibault had no direct knowledge of the meeting between Rattan and Peshawaria. The judge concluded Rattan's testimony, that she was a naturalized U.S. citizen and had no property interest in India when she consulted with Peshawaria in 2008, was unrefuted and supported Rattan's claim that she contracted with Peshawaria concerning her marriage dissolution matter in California.

matter was assigned to her. The pending issues in the case were related to child custody, child and spousal support, and the division of marital property. On July 8, 2016, Rattan's attorney, Jason Elter, sent Thibault a letter notifying her that a conflict of interest existed since Peshawaria had previously represented Rattan in the same marital dissolution matter in 2008. Enclosed with the letter, Elter included a copy of the $5,000 retainer check that Rattan paid to Peshawaria. During the disciplinary trial, Thibault testified that Elter's claimed conflict "didn't sound right." She discussed the issue with Peshawaria, who instructed her to withdraw from the case. A few days later, Thibault reluctantly withdrew.

C. Thibault, as a Solo Practitioner, Agreed to Represent Prasad in May 2018

On March 9, 2018, Thibault ended her employment with Peshawaria and began her solo practice; however, she and Peshawaria continued to share office space.[5] In May 2018, Prasad approached Thibault seeking legal assistance in *Rattan v. Prasad,* the same marital dissolution matter from which Thibault had previously withdrawn in July 2016.

During the disciplinary trial, Thibault testified that Prasad specifically sought her services regarding a writ of possession related to the marital property, which was a house located in Tracy, California. She stated that, "because there was a previous conflict of

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[5] Thibault testified that, although she and Peshawaria ended their employer-employee relationship, a few matters remained assigned to Thibault and she continued to work on them until they concluded.

interest," she contacted the State Bar Ethics Hotline for guidance on whether she could proceed with the representation. Thibault testified that the State Bar Ethics hotline referred her to *Ochoa v. Fordel, Inc.* (2007) 146 Cal.App.4th 898, and she determined that she did not have a conflict of interest and could represent Prasad. Thibault did not seek Rattan's consent before accepting Prasad's representation.

On May 17, 2018, Thibault filed a substitution of attorney to proceed as Prasad's attorney in the marital dissolution matter. The superior court held a hearing on May 21, and Thibault appeared on behalf of Prasad. During the hearing, Elter objected to Thibault' s representation and asserted that she had a conflict of interest. The superior court did not accept Thibault' s substitution as Prasad's attorney and continued the matter to July 13, allowing time for Elter to file a formal motion for disqualification and for Thibault to respond to the motion. Three days later, Thibault filed an amended substitution of attorney, a declaration regarding Elter's claimed conflict of interest, and an ex parte motion seeking temporary emergency orders for Prasad' s possession of the marital residence. Elter moved to disqualify Thibault as counsel for Prasad and to strike her pleadings. He also requested $6,000 in sanctions.

D. Thibault Is Disqualified from Representing Prasad and the Superior Court Sanctioned Her $5,000

The superior court held its disqualification hearings on July 13 and 19, 2018. During the July 19 hearing, Thibault attempted to introduce two documents into evidence while cross examining Rattan,

which she had retrieved from Peshawaria's database: a written narrative that Rattan had prepared for Peshawaria in connection with the 2008 representation and the purported retainer agreement between Rattan and Peshawaria. At one point during the hearing, Superior Court Judge Gregory Syren asked, "I'm asking you a question very directly, Ms. Thibault. You're offering to show [Rattan] documentation regarding [her] consultation with Ms. Peshawaria ... back in 2008?" Thibault replied, "That's correct." Judge Syren then stated, "Alright. This examination is done. I'm not going to hear any further testimony at this point from Ms. Rattan." The judge further stated, "Ms. Thibault, the fact that you brought to court today a document ... from a database which purports to be the, quote, unquote, story which Ms. Rattan provided to Ms. Peshawaria in 2008[,] I don't think I need to hear anything else at this point."

Judge Syren made several findings at the end of the July 19, 2018 hearing, including that (1) in 2008, Rattan retained Peshawaria to assist her in the marital dissolution matter; (2) the retention was based on Rattan's belief that Peshawaria was an attorney licensed in California; (3) Rattan paid Peshawaria $5,000 for her services and met with her a couple of times providing personal information about her case; (4) in 2016, as Peshawaria's employee, Thibault substituted into the marital dissolution matter on Prasad's behalf but substituted out due to a conflict; (5) in 2018, Thibault substituted again into the case on behalf of Prasad and filed pleadings with the superior court, despite the court having told Thibault three days earlier that a substitution would not be allowed at that time; and (6) at no time did Thibault ask

Rattan to waive any conflicts. He concluded that the matter before him was the same marital dissolution case for which Rattan had retained Peshawaria in 2008 and that Thibault had access to Rattan's confidential information, which Thibault was prepared to present in court. Based on these findings, Judge Syren ordered Thibault disqualified from representing Prasad and sanctioned her $5,000[6] under California Code of Civil Procedure sections 128.5 and 128.7, finding that her ex parte motion and response to the disqualification motion were frivolous. Thibault was ordered to pay the sanctions to Elter within 60 days.

Thibault appealed the disqualification ruling and sanctions order. On September 24, 2020, the Court of Appeal affirmed Thibault's disqualification and dismissed her appeal of the sanctions order. The Court of Appeal found the sanctions order was not appealable pursuant to Code of Civil Procedure section 904.1, subdivision (a)(12), because the sanctions did not exceed $5,000. Thibault filed a petition for rehearing, which was denied. She appealed to the Supreme Court, which denied review on December 30, 2020.

Elter sent Thibault several email reminders inquiring about the sanctions payment following the July 2018 hearing. Thibault did not pay the sanctions until August 18, 2021, after an OCTC investigator inquired about the status of the payment in 2019. Subsequently, Thibault filed a writ of mandate regarding the sanctions order, which was summarily denied on April 12, 2022. She reported the sanctions order to

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[6] The superior court's minute order mistakenly listed the sanctions amount as $6,000; however, the correct amount was $5,000, as verbally ordered during the July 19, 2018 hearing.

the State Bar on June 22, but previously, on June 9, Thibault filed a motion in the superior court to set aside the sanctions order pursuant to Code of Civil Procedure section 473, subsection (d). In her opening brief on review, Thibault claims that the motion to set aside the sanctions order is still pending.

III. CULPABILITY[7]

A. Count Two: Former Rule 3-310(E) Representation Adverse to Former Client

The NDC charged Thibault with willfully violating former rule 3-310(E) by agreeing to represent Prasad in *Rattan v. Prasad,* without the informed written consent of Rattan, when Thibault's former employer Peshawaria had represented Rattan in the same matter and Thibault had obtained confidential information material to the case. Former rule 3-31 0(E) provides that an attorney shall not, without the informed written consent of a client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment. Thibault argues that OCTC did not sustain its burden

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[7] Count one is discussed after count two as it is similar to count four because the allegations in each relate to the superior court's sanctions order. OCTC does not challenge the hearing judge's dismissal of count three, a violation of section 6068, subdivision (e)(1) (failure to maintain client confidences). We find the record supports dismissal and thus we adopt and affirm the hearing judge's dismissal with prejudice of count three. *(In the Matter of Kroff)* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 843 [dismissal of charges for want of proof after trial on merits is with prejudice].)

in proving the elements on this charge. Specifically, she argues that (1) no attorney-client relationship existed between Peshawaria and Rattan;[8] (2) the information Thibault gained was not "'by reason' of her representation of Rattan;" and (3) the information was not material to her representation of Prasad. Upon our independent review, we reject Thibault's arguments and find the record supports Thibault's culpability under count two by clear and convincing evidence.[9]

Regarding Thibault' s first argument, the hearing judge relied on the findings of the superior court, discussed *ante,* to determine that Rattan believed she formed an attorney-client relationship with Peshawaria when she consulted with her regarding her marriage dissolution matter in 2008. We agree with the judge's reliance on the superior court's findings and the Court of Appeal's opinion on this point:"[10]

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[8] Thibault also states it is "undisputed" that she never represented Rattan and that Rattan met her for the first time in May 2018. Her statement misses the more relevant point, which is she learned Rattan's confidential information from her employment with Peshawaria, who had an attorney-client relationship with Rattan, discussed *post.*

[9] 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.)

[10] We generally give a strong presumption of validity to the superior court's findings if supported by substantial evidence. *(Maltaman* v. *State Bar* (1987) 43 Cal.3d 924, 947.) Similarly, the Court of Appeal's findings are also entitled to a strong presumption of validity. *(In the Matter of Burke, supra,* 5 Cal. State Bar Ct. Rptr. at p. 459.)

> Thibault's more substantive argument that no vicarious conflict of interest could arise from Peshawaria's representation of Rattan because Peshawaria was not an attorney in 2018 is also meritless. Whether or not she was duly licensed to practice law, Peshawaria held herself out as an attorney and Rattan reasonably believed her to be so.[11]

Additionally, the record clearly establishes that Peshawaria and Rattan had an implied attorney-client relationship in 2008. (*See Lister v. State Bar* (1990) 51 Cal.3d 1117, 1126 [attorney-client relationship can arise by inference from conduct of parties].) After their initial consultation, Rattan testified that Peshawaria presented her with a retainer agreement, and she paid the retainer fee.[12] Also, both the documentary evidence and Rattan's testimony reveal Peshawaria held herself out as a California attorney by advertising herself as "Founder and Attorney" of "Anu Attorney Law Group" in Fremont, California, and stating that her firm specialized in immigration, family, and business law. The hearing judge determined Rattan testified credibly that she relied on

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[11] The Court of Appeal's opinion is in accord with Evidence Code section 950, which defines a "lawyer" as "a person authorized, or *reasonably believed* by the client to be authorized, to practice law in any state or nation." (Italics added.)

[12] In her brief of review, Thibault argues payment of an attorney fee does not necessarily establish an attorney-client relationship, in reliance on *Zenith Ins. Co. v. O'Connor* (2007) 148 Cal.App.4th 998, 1010. We agree, and our analysis is not limited to the fee payment but, instead, based on the totality of the circumstances surrounding Rattan's belief that she was hiring Peshawaria as her attorney when she retained her services.

Peshawaria's advertisement when seeking to secure her attorney services to represent her in the marriage dissolution matter. We affirm the judge's conclusions regarding Rattan's credibility. (*See* 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 [that judge] alone is able to observe the witnesses' demeanor and evaluate their veracity firsthand"].)

The record demonstrates Peshawaria held herself out as entitled to practice law through her various actions, as discussed in detail ante. As a result of Peshawaria's actions, Rattan sought her legal services. In fact, Rattan testified that Peshawaria advertised herself as an attorney in magazines such as "India Currents" and stated that she believed Peshawaria was "licensed in India as well as in America." After retaining Peshawaria, Rattan reasonably believed Peshawaria was her attorney and she acted on that belief by providing a confidential written narrative to Peshawaria, which contained specific details concerning her marriage with Prasad. Rattan even stated that Peshawaria requested a copy of the court filings in the pending marital dissolution matter in addition to all paperwork related to the divorce, custody, and marital property. As we have demonstrated, California law clearly extends the definition of "lawyer" to encompass those who another person reasonably believes to be authorized to practice law.[13]

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[13] Furthermore, courts in other jurisdictions have recognized that when a client reasonably believes his or her confidential communication and information is being shared with a licensed attorney, this meets the "lawyer" definition and attorney-client

Thibault's main argument against Peshawaria having had an attorney-client relationship with Rattan is that Peshawaria was not licensed as an attorney in California, which she argues is a necessary precondition to finding culpability under rule 3-31 0(E). She argues two cases support her assertion: *0'Gara Coach Company, LLC v. Joseph Ra* (2019) 30 Cal.App.5th 1115 and *Allen v. Academic Games Leagues of America, Inc.* (C.D. Cal. 1993) 831 F. Supp. 785. We reject Thibault' s argument that these cases apply here and note that, although O *'Gara* and *Allen* discussed former rule 3-31 O(E), neither is an attorney discipline case, and the central point of both cases pertained to a motion for disqualification due to conflicts of interests. A motion for disqualification was at issue for Thibault in the superior court; however, our analysis under former rule 3-310(E) is broader in scope. Also, *0'Gara* and *Allen* are factually different-both involved individuals who eventually became licensed attorneys in California prior to the litigation of the underlying disqualification motions in those cases. Accordingly, we do not find either O *'Gara* or *Allen* as limiting our analysis and therefore, we find that an attorney-client relationship existed between Peshawaria and Rattan.

Therefore, we reject any contention that Peshawaria did not have an implied attorney-client relationship with Rattan.[14]

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privilege applies. (See, e.g., *United States v. Boffa* (D. Del. 1981) 513 F.Supp. 517,523; *United States v. Mullen Co.* (D. Mass. 1991) 776 F.Supp. 620, 621.)

[14] Also, through implication, our case law involving misconduct for the unauthorized practice of law (UPL) supports the conclusion that Peshawaria's false impression regarding her professional status led to Rattan's reasonable belief that Peshawaria

The hearing judge determined Thibault accessed confidential information that was given by Rattan to Peshawaria when Rattan consulted with Peshawaria in 2008. The judge also concluded that the confidential information included issues of child custody and property division and that Thibault obtained this information from Peshawaria's database. Thibault does not appear to dispute these findings and we agree with them. However, she attempts to avoid the judge's findings by arguing that her actions did not fall under the requirements of former rule 3-31 0(E), because she did not learn any information "by reason' of her representation of Rattan," and that the information was not material. We disagree with her arguments, as explained below.

While Thibault never represented Rattan, case law extends former rule 3-310(E) beyond a limited class of attorneys who may have represented a former client to all attorneys who are in a law firm. OCTC persuasively cites *National Grange of the Order of Patrons of Husbandry v. California Guild* (2019) 38 Cal.App.5th 706 to argue that, when Thibault had access to Rattan's confidential information because of

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was her attorney. UPL case law suggests that an individual improperly creates the false impression that he or she is entitled to practice law by acting with the general intent to present himself or herself as a currently licensed attorney in the State Bar of California. (*See Crawford v. State Bar* (1960) 54 Cal.2d 659, 666 [UPL includes merely holding out as entitled to practice].) Further, our UPL cases have found culpability when an attorney, not entitled to practice law in California, represents clients. (*See In the Matter of Thomson* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966, 975 [communications by attorney while suspended from practice of law attempting to settle two client matters constituted UPL].)

her employment relationship with Peshawaria, the obligation to protect that information and to not use it adversely against Rattan was extended from Peshawaria to Thibault. (*See id.,* at pp. 714-715 [where attorney is disqualified because attorney formerly represented client and, therefore, possesses confidential information regarding adverse party in current litigation, vicarious disqualification automatically applies to entire *furn* in same litigation.].)[15]

While it is true that an attorney in National Grange learned confidential information while representing a client at one law firm and subsequently caused the vicarious disqualification of all attorneys at that attorney's next law firm that was representing an adverse party in the same litigation, we see no reason to not extend the case's holding to the circumstances here. At the July 2018 hearing, Thibault attempted to cross-examine Rattan with confidential information provided to Peshawaria in 2008, information that Thibault only gained because Peshawaria had later employed her. As previously discussed, Thibault withdrew from representing Prasad once in

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[15] Also, it is well established that, even when information is not proprietary, an attorney may not "use against [her] former client knowledge or information acquired by virtue of the previous relationship." *(Wutchumna Water Co. v. Bailey* (1932) 216 Cal. 564, 573-574.) *This* rule is broadly applied to bar the use of a former client's information for an attorney's personal benefit as Thibault attempted to do when preparing for the hearing on the disqualification motion. (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 822-823 ["[The duties of loyalty and confidentiality bar an attorney not only from using a former client's confidential information in the course of 'making decisions when representing another client/ but also from 'taking the information significantly into account in framing a course of action"].)

2016 while she was still working for Peshawaria. In 2016, Prasad attempted to hire Peshawaria's firm, but opposing counsel for Rattan notified Thibault of an existing conflict given Peshawaria and Rattan's prior attorney-client relationship. As the attorney assigned to Prasad's matter, Thibault accessed Rattan's case file to determine if she believed a conflict existed.

Thibault also discussed the potential conflict with Peshawaria, who informed Thibault to withdraw from the case. Given these circumstances, it was unreasonable for Thibault to agree to represent Prasad in 2018, even as a solo practitioner. Although no longer working for Peshawaria but sharing office space with her, she accessed Rattan's case file and attempted to use Rattan's written narrative and an unsigned retainer agreement adversely to oppose Elter's motion to disqualify her from the matter.

Thibault's final argument states that OCTC failed to establish that the information she obtained from Rattan's file was material to her representation of Prasad in 2018, which she categorizes as "post judgment" related since the marriage was terminated by that point. Nothing in the record suggests that the *Rattan v. Prasad* matter was compartmentalized as Thibault asserts.

The docket reflects the same case number, and the record reveals the same marital dissolution proceeding was at issue in 2018, specifically the martial home located in Tracy. Thibault cites to *Farris v. Fireman's Fund Ins. Co.* (2004) 119 Cal.App.4th 671, stating that information is material for purposes of former rule 3-31 0(E) when it is "directly in issue or of critical importance" to the second representation." *(Id.,* at p. 680.) Using *Farris,* the documents obtained

from Peshawaria's database were clearly material, as Thibault intended to use them to Prasad's advantage when she attempted to cross-examine Rattan.

The final element that OCTC needs to prove is that Thibault did not obtain the informed written consent from Rattan. As the hearing judge noted, Thibault admits this. Therefore, we conclude that all of Thibault's arguments on this issue lack merit, and OCTC has proven by clear and convincing evidence that the necessary elements of former rule 3-310(E) have been proven. We affirm the hearing judge's finding of culpability on this count.

B. Count One: Section 6103-Failure to Obey a Court Order

In count one, the NDC alleged that Thibault willfully violated section 6103 by failing to comply with the sanctions order in *Rattan v. Prasad,* which ordered Thibault to pay Elter $5,000 within 60 days of July 19, 2018. The hearing judge rejected Thibault's good faith arguments and found her culpable as charged since Thibault waited over eight months after the sanctions order became final before paying Elter.

Section 6103 prohibits an attorney from willful disobedience or violation of a court order that requires the attorney to do or forbear an act. An attorney willfully violates section 6103 when she is aware of a final, binding court order and intends her acts or omissions in violating that order. *(In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 787.) To prove Thibault violated section 6103, OCTC must establish that Thibault (1) willfully disobeyed a court's order and (2) the order required her to do or forbear an act in connection with

or in the course of her profession that she ought in good faith to have done or not done. *(In the Matter of Khakshooy* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681, 692.)

On review, Thibault argues that she did not violate the court's order because it is not final and binding for the purposes of discipline. She further claims she held a good faith belief that the sanctions order was invalid and therefore she was not required to pay the imposed sanctions. Finally, Thibault argues she was denied due process and her payment of the sanctions order was reasonable under the circumstances. As explained below, Thibault's arguments are without merit, and we find her culpable of willfully violating section 6103.

The record establishes that Thibault had actual notice of the sanctions order and the requirement that she was to pay the sanctions within 60 days of the judge ordering them. She was aware on July 19, 2018, that the superior court intended to impose sanctions on her as she was present in court for the hearing when Judge Syren ordered her to pay $5,000 to Elter within 60 days of July 19. Shortly after the sanctions were ordered, Thibault challenged the order by appealing it. On September 24, 2020, the Court of Appeal dismissed her appeal and held that the sanctions order was not appealable under Code of Civil Procedure section 904.1, subdivision (a)(12), and subsequently denied her request to rehear the matter.[16]

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[16] Code of Civil Procedure section 904.1, subdivision (a)12), provides that an order directing payment of monetary sanctions that exceeds $5,000 is appealable; however, as the Court of Appeal

The California Supreme Court denied her request for review on December 30.

We also reject Thibault's assertion that she should not be held culpable for violating section 6103 because she acted in good faith. Thibault knew about the sanctions, ignored reminders from Elter, refused to pay the sanctions even after being contacted by an OCTC investigator in 2019, and unsuccessfully challenged the sanctions order in the California appellate courts. Her actions were not reasonable, and Thibault's failure to take any action for eight months after the order became final and binding does not demonstrate good faith. (*See In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 47 [good faith belief under§ 6103 is not established where attorney has affirmative duty to respond to court's order but does not].)

Thibault argues that she was denied due process because the superior court acted in contravention of certain procedural requirements such that the sanctions order is "legally and factually deficient." This claim is meritless because any due process issues must be raised in the superior court and not here. (*See In the Matter of Collins, supra,* 5 Thibault delayed payment to Elter for an additional eight months and only after OCTC began its investigation. Contrary to Thibault's argument stating otherwise, the sanctions order became final no later than December 30, 2020, and is thus binding for the purposes of discipline. (*See In the Matter of Collins* (Review Dept. 2018) 5 Cal. State Bar Ct.

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explained, the superior court sanctioned Thibault to pay $5,000, which was therefore not appealable.

Rptr. 551, 559-560 [court orders are final for disciplinary purposes once review is waived or exhausted].[17]

Cal. State Bar Ct. Rptr. at p.560 ["remedy lies in the 'courts of record, '" when attorney seeks to challenge superior court's sanctions order].) Considering the Court of Appeal's opinion from September 2020, which explained that the sanctions order was not appealable, and the fact that Thibault has exhausted the appellate review process, her actions are not objectively reasonable. Further, the timing of her current motion in superior court to set aside the sanctions order as void-after the NOC was filed and shortly before the disciplinary trial started-does not support her claim of good faith. To the contrary, it appears she filed the motion in an attempt to delay and frustrate these disciplinary proceedings, which was unsuccessful. Thibault did not have a good faith reason for failing to comply with the superior court's sanctions order, which is final and binding. (*See Maltaman v. State Bar, supra,* 43 Cal.3d 924, 951-952 [technical arguments regarding validity of civil court orders waived when orders became final; "no plausible belief in the right to ignore final, unchallengeable orders one personally considers invalid"].)

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[17] As noted *ante,* Thibault has again attempted to challenge the sanctions order by filing a motion to set aside the sanctions order as void under Code of Civil Procedure section 473, subdivision (d), which she states is still pending in the superior court. Her argument, that the filing of her June 2022 motion means that the sanctions order is not final based on *Collins,* ignores the basic fact that she completed her appeals of the sanctions order when the Supreme Court denied her request for review. The June 2022 motion does not alter our view that *Collins* applies here.

Thibault did not pay the sanctions until over three years after she knew about the obligation and eight months after her appeals were exhausted. Contrary to her claim, her actions were not reasonable and constituted a violation of the superior court's order. (*See In the Matter of Burke* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448, 458 [failure to pay sanctions for nearly 11 months was not reasonable and established culpability for§ 6103]; *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 867-868 [failure to pay sanctions was § 6103 violation when attorney had over year to pay].) Accordingly, we affirm the hearing judge's culpability finding under count one.

C. Count Four: Section 6068(0)(3) Failure to Report Sanctions to the State Bar

Section 6068, subdivision (o)(3), provides that, within 30 days of knowledge, an attorney has a duty to report, in writing, to the State Bar the imposition of judicial sanctions against the attorney of $1,000 or more that were not imposed for failure to make discovery. OCTC charged Thibault with willfully violating section 6068, subdivision (o)(3), because she failed to timely report to the State Bar the sanctions order issued on July 19, 2018, that directed her to pay $5,000 to Elter. The hearing judge found Thibault culpable under count four because she did not report the sanctions until nearly four years after the court imposed them.

On review, Thibault expresses some acknowledgment of her culpability by stating her failure to report the sanctions order within 30 days "wasn't the right thing to do." Nonetheless, she asserts count four

should be dismissed based on her lack of knowledge that the sanctions order is final and binding, relying on *In the Matter of Maloney and Virsik, supra,* 4 Cal. State Bar Ct. Rptr. 774. OCTC points out that Thibault's reliance on *In the Matter of Maloney and Virsik* is misplaced because, unlike the attorneys in that case, Thibault had actual knowledge of the court order. We agree. Thibault also claims that her untimely reporting of the sanctions order to the State Bar was an "honest mistake." We reject her defense on this point as irrelevant to avoiding culpability under section 6103. (*See In the Matter of Respondent Y, supra,* 3 Cal. State Bar Ct. Rptr. at pp. 867-868 [when attorney clearly has knowledge of relevant court order, only issue regarding charged violation of section 6103 was whether attorney had reasonable time to comply with the order].) We conclude that Thibault is culpable under count four as charged because she knew about the $5,000 sanctions order when the superior court imposed it on July 19, 2018, and she did not notify the State Bar in writing until June 22, 2022. (*See id.,* atp. 867 [failure to report sanctions three months after attorney learned of order is violation of §6068, subd. (o)(3), and bad faith is not required].)

IV. AGGRAVATION AND MITIGATION

Standard 1.5[18] requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Thibault to meet the same burden to prove mitigation.

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[18] Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct. All further references to standards are to this source.

A. Aggravation

1. Multiple Acts (Std. 1.S(b))

The hearing judge assigned limited weight in aggravation for Thibault's three acts of misconduct: failing to timely pay sanctions in violation of the superior court order, failing to timely report sanctions to the State Bar, and engaging in a representation adverse to a former client. OCTC does not contest this determination. Thibault argues that the acts themselves were not established. We agree with the judge and affirm limited weight for this circumstance. *(In the Matter of Bach* (Review *Dept.* 1991) 1 Cal. State Bar Ct. Rptr. 631, 646-647 [three instances of misconduct considered multiple acts].)

2. Indifference (Std. 1.S(k))

Indifference toward rectification or atonement for the consequences of misconduct is an aggravating circumstance. The hearing judge found that Thibault's attitude during the disciplinary proceeding revealed a lack of insight and understanding of her ethical responsibilities, and the judge assigned moderate weight.

Thibault has displayed an attitude that demonstrates she lacks "a full understanding of the seriousness of [her] misconduct." *(In the Matter of Duxbury* (Review Dept.1999) 4 Cal. State Bar Ct. Rptr. 61, 68.) While the law does not require false penitence, it does require that an attorney accept responsibility for wrongful acts and come to grips with culpability. *(In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) On review, Thibault expressed some remorse by conceding that she should

have reported the judicial sanctions sooner than she did, but then maintained that her purported good faith belief that the order was invalid justified her failure to timely pay Elter even after the sanctions order became final and binding. Particularly troubling is her continued insistence that her representation of Prasad in the *Rattan v. Prasad* matter was justified, even amidst substantial contrary evidence. *(In the Matter of Bach, supra,* 1 Cal. State Bar Ct. Rptr. at p. 647 [use of unsupported arguments to evade culpability revealed lack of appreciation for misconduct and obligations as attorney].)[19]

An attorney has a right to defend herself vigorously. (*See In re Morse* (1995) 11 Cal.4th 184, 209.) However, we find Thibault's conduct more akin to a continuing failure to recognize her misdeeds. Accordingly, we affirm the indifference finding and the moderate weight assigned by the hearing judge. (In the Matter of Layton (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366, 380 [ongoing failure to acknowledge wrongdoing instills concern that attorney may commit future misconduct].)

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[19] In finding indifference, the hearing judge emphasized Thibault's misconduct in the superior court when opposing the disqualification motion. However, since we are considering those facts to support culpability under count two, we do not consider the same facts again as an aggravating circumstance. *(In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 133 [inappropriate to use same misconduct used to support culpability as additional aggravation].)

B. Mitigation

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

Thibault 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 declined to assign mitigation for good character, finding that Thibault's four declarants did not demonstrate awareness of the disciplinary charges and did not constitute a wide range of references. Thibault argues on review that the hearing judge improperly disregarded her good character evidence. OCTC supports the judge's findings and asserts if any mitigation is afforded, it should be no more than limited in weight.

We find that Thibault's good character evidence, four declarations from former clients, merits mitigating credit, but only nominal weight. Because Thibault's four witnesses do not constitute a "wide range of references in the legal and general communities" and were not aware of the charges alleged in this disciplinary matter, more than nominal weight is not supported. (*See In the Matter of Riordan, supra,* 5 Cal. State Bar Ct. Rptr. at p. 50 [testimony of four character witnesses afforded diminished weight in mitigation due to absence of wide range of references].)

2. Pro Bono and Community Service

Pro bono work and community service are mitigating circumstances. *(Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) The hearing judge assigned nominal weight under this circumstance since

Thibault's evidence of pro bono work was limited to her own testimony and lacked corroboration and specificity. On review, Thibault asserts that she represented a pro bono client in an immigration removal proceeding that lasted from 2010 through 2021. She testified that this immigration case was her first case while working as a licensed attorney in California, and she was able to assist her client in getting a visa and a green card.[20] While we acknowledge that 11 years is a substantial amount of time, her pro bono work only extended to one client. (*See Amante v. State Bar* (1990) 50 Cal.3d 247,256 [representing only one pro bono client not considered in mitigation].) Further, Thibault has offered no corroborating evidence of her pro bono work. (*See In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 840 [limited weight in mitigation where community service evidence based solely on respondent's testimony]; *see also In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280, 287 [little mitigation for minimal testimony regarding pro bono activities].) We affirm nominal weight in mitigation.

3. No Mitigation for Good Faith (Std. 1.6(b))

Thibault seeks mitigation credit based on her good faith belief that a conflict of interest did not exist. The hearing judge declined to afford mitigation for good faith, and OCTC asks us to affirm this finding.

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[20] In As noted *ante,* Thibault obtained her license to practice law in California in 2015; however, she testified that she has been a licensed attorney in Florida since 2010.

To establish good faith in mitigation, "an attorney must prove that his or her beliefs were both honestly held and reasonable." *(In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646,653; std. 1.6(b).) We find that Thibault does not deserve mitigating credit for good faith. Even if Thibault honestly believed she acted in good faith in accepting Prasad's case where Peshawaria was not a California licensed attorney when she represented Rattan, it was not objectively reasonable for Thibault to withdraw from representing Prasad in 2016 given the known conflict and then agree to represent him in 2018 without Rattan's written consent. Also, Thibault's decision to not obey the court's sanctions order for over eight months after it became final does not evidence good faith. Lastly, Thibault's good faith argument is belied by her indifference, as discussed above. These circumstances preclude any finding of good faith.

V. A 30-DAY ACTUAL SUSPENSION IS APPROPRIATE 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.)

In analyzing the applicable standards, we first determine which standard specifies the most severe sanction for the misconduct at-issue. (Std. 1.7(a) [most severe sanction must be imposed where multiple sanctions apply].) Here, standard 2.12(a) is most applicable because it directly addresses disobedience of a court order and contains the most severe discipline disbarment or actual suspension.[21] The hearing judge applied standard 2.12(a) and relied on *In the Matter of Collins* to support her 30-day actual suspension recommendation. In *Collins,* the attorney violated five orders that sanctioned him, and he had not paid any sanctions by the time of his disciplinary trial. This court assigned moderate aggravation for multiple acts and determined that Collins established significant mitigation for 22 years of discipline-free practice and cooperation with OCTC by stipulating to facts and culpability. Despite the mitigation Collins established, we determined it did not justify a downward departure from the actual suspension required under standard 2. 1 2(a).

OCTC requests that we affirm the hearing judge's 30-day actual suspension recommendation. Thibault, without articulating any justifiable reason, argues that the discipline imposed in *Collins* is not appliable to her case. We note that the judge's discipline recommendation is at the low end of the range of discipline under standard 2.12(a). (Std. 1.2(c)(l) ["Actual suspension is generally for a period of

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[21] Standard 2.12(b), which is applicable to a violation of section 6068, subdivision (0)(3) (failure to report judicial sanctions), calls for only a reproval. Standard 2.5(b), which applies to conflicts of interests not covered in other provisions of the standards, states that suspension or reproval is the presumed sanction.

thirty days, sixty days, ninety days, six months, one year, eighteen months, two years, or three years"].) Moreover, section 6103 itself calls for the minim um level of discipline to be a suspension, as the statute provides that violations of court orders "constitute causes for disbarment or suspension." We also consider the Supreme Court's admonition that violations of court orders are serious misconduct. *(Barnum v. State Bar* (1990) 52 Cal.3d 104, 112 [Other than outright deceit, it is difficult to imagine conduct in the course of legal representation more unbefitting an attorney" than violation of court order].)

Here, Thibault's misconduct includes her violation of the superior court's sanctions order, her failure to timely report the sanctions to the State Bar, and her decision to maintain an adverse representation. She also still fails to fully understand the wrongfulness of actions and her ethical obligations as an attorney in avoiding conflicts of interest. We are mindful that Thibault conferred with the State Bar's Ethics Hotline for guidance before deciding to accept Prasad's representation, which we commend. Nevertheless, while it is one thing to explore the parameters of an ethical obligation before deciding to represent a potential client, we view Thibault's misconduct as unreasonable and without careful consideration or regard to what should have been an obvious conflict of interest. When considering her serious misconduct, along with her aggravating circumstances that outweigh her mitigating ones, we find that the net effect does not justify a departure from standard 2.12(a). In light of the guidance from the case law and the standards, we cannot articulate a legitimate reason to deviate from the 30-day actual suspension based upon the record

before us. (*See* standard 1.1 ["Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure"].)

The hearing judge's recommendation is within the range provided in standard 2.12(a) and section 6103, and OCTC does not seek increased discipline. For these reasons, and because a 30-day actual suspension serves to protect the public, the courts, and the legal profession, we affirm the judge's recommended discipline.

VI. RECOMMENDATIONS

We recommend that Elana Thibault, State Bar Number 302572, be suspended from the practice of law for one year, that execution of that suspension be stayed, and that she be placed on probation for one year with the following conditions:

1. Actual Suspension. Thibault must be suspended from the practice of law for the first 30 days of the period of her probation.

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

Thibault must comply with the provisions of the State Bar Act, the Rules of Professional

Conduct, and all conditions of probation.

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

4. Complete E-Learning Course Reviewing Rules and Statutes on Professional Conduct.

> Within 90 days after the effective date of the Supreme Court order imposing discipline in this matter, Thibault must complete the e-learning course entitled "California Rules of Professional Conduct and State Bar Act Overview." Thibault must provide a declaration, under penalty of perjury, attesting to Thibault's compliance with this requirement, to the Office of Probation no later than the deadline for Thibault's next quarterly report due immediately after course completion.

5. 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, Thibault must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has her current office address, email address, and telephone number. If she does not maintain an office, she must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Thibault 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.

6. Meet and Cooperate with Office of Probation. Within 15 days after the effective date of

the Supreme Court order imposing discipline in this matter, Thibault must schedule a meeting with her assigned Probation Case Coordinator to discuss the terms and conditions of her 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, Thibault may meet with the Probation Case Coordinator in person or by telephone. During the probation period, Thibault 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.

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

8. Quarterly and Final Reports.

a. **Deadlines for Reports.** Thibault 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, Thibault 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.** Thibault must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether she has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (I) 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.** Thibault is directed to maintain proof of 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 actual suspension has ended, whichever is longer. Thibault is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

9. State Bar Ethics School. Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Thibault 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 she will not receive MCLE credit for attending this session. If she 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, Thibault will nonetheless receive credit for such evidence toward her duty to comply with this condition.

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

11. Proof of Compliance with Rule 9.20 Obligation. Thibault is directed to maintain, for a minimum of one year after commencement of probation, proof of compliance with the Supreme Court's order that she comply with the requirements of California Rules of Court, rule 9.20, subdivisions (a) and (c), as recommended below. Such proof must include: the names and addresses of all individuals and entities to whom Thibault sent notification pursuant to rule 9.20; a copy of each notification letter sent to each recipient; the original receipt or postal authority tracking document for each notification sent; the originals of all returned receipts and notifications of non-delivery; and a copy of the completed compliance affidavit filed by her with the State Bar Court. She is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

VII. MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Elana Thibault be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9 .1 0(b).) If Thibault provides satisfactory evidence of the taking and passage of the above examination after the date of this opinion but before the effective date of the Supreme Court's order in this matter, she will nonetheless receive credit for such evidence toward her duty to comply with this requirement.

VIII. California Rules Of Court, Rule 9.20

We further recommend that Elana Thibault be ordered to comply with California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the date the Supreme Court order imposing discipline in this matter is filed.[22] *(Athearn v. State Bar* (1982) 32 Cal.3d 38, 45 [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 imposing discipline].) Failure to do so may result in disbarment or suspension.

IX. Monetary Sanctions

The hearing judge recommended that Thibault pay $2,500 in monetary sanctions. OCTC asks that we affirm the judge's recommendation. On review, Thibault argues that monetary sanctions should not be imposed. Rule 5.137(E)(l) provides, in part, that this court shall make recommendations to the Supreme Court regarding monetary sanctions in any disciplinary proceeding resulting in an actual suspension. The guidelines recommend a sanction of up to $2,500 for discipline including an actual suspension, depending upon the facts and circumstances of the particular

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[22] Thibault is required to file a rule 9.20(c) affidavit even if she has no clients to notify on the date the Supreme Court files 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).)

case. (Rules Proc. of State Bar, rule 5.137(E)(2).) The nature of Thibault's misconduct-which involves violating a court order by failing to timely pay sanctions, failing to report sanctions to the State Bar, and engaging in a representation adverse to a former client-along with her indifference-does not demonstrate that a downward departure from the guidelines is appropriate in this case. We also note that Thibault has not proffered any evidence to suggest financial hardship or an inability to pay sanctions.

Accordingly, we recommend that Elana Thibault be ordered to pay monetary sanctions to the State Bar of California Client Security Fund in the amount of $2,500 in accordance with Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar. Monetary sanctions are enforceable as a money judgment and may be collected by the State Bar through any means permitted by law. Monetary sanctions must be paid in full as a condition of reinstatement or return to active status, unless time for payment is extended pursuant to rule 5.137 of the Rules of Procedure of the State Bar.

X. Costs

We further recommend 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, and may be collected by the State Bar through any means permitted by law. Unless the 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 applying for reinstatement or return to active status.

McGILL, J.

WE CONCUR:

HONN, P. J.
RIBAS, J.

No. SBC-22-0-30033

In the Matter of
ELANA THIBAULT

Hearing Judge
Hon. Phong Wang

Counsel for the Parties

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APPENDIX C

DECISION, STATE BAR COURT OF CALIFORNIA HEARING DEPARTMENT, SAN FRANCISCO (OCTOBER 17, 2022)

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO

IN THE MATTER OF ELANA THIBAULT,
State Bar No. 302572.

No. SBC-22-O-30033-PW

DECISION

Respondent Elana Thibault is before the court in her first disciplinary matter, stemming from a sanctions order issued by the superior court for filing frivolous motions in a matter in which she was found to be conflicted.

On review of the evidence, the court finds Thibault culpable of most of the allegations, including knowingly and willingly accepting employment of a

client of whom she had a conflict of interest (Rules Prof. Conduct, former rule 3-110(E)), failure to timely pay sanctions (Bus. & Prof., § 6103), and failing to timely report said sanction to the State Bar (Bus. & Prof. Code, § 6068, subd. (o)(3)). But the court dismisses with prejudice the remaining count of violating client confidences (Bus. & Prof. Code, § 6068, subd. (e)(1)).

In view of the misconduct, the applicable law, and the evidence in aggravation and mitigation, the court recommends that Thibault be suspended from the practice of law for one year, that the execution of that period of suspension be stayed, and that she be placed on probation for one year subject to an actual suspension of 30 days.

Procedural History

On February 2, 2022, the Office of Chief Trial Counsel of the State Bar filed a four-count Notice of Disciplinary Charges (NDC) for Thibault's alleged misconduct related to her conflicted representation of a client in a marriage dissolution matter in superior court, leading to a $5,000 sanctions order for filing frivolous motions, which was not timely reported to the State Bar by Thibault and was belatedly paid three years later.

Thibault timely filed her response on February 22, 2022, challenging that she had violated client confidences or that she was conflicted in accepting representation; and claiming that she did not "willfully" disobey a court order in her late payment of the sanctions, or in "willfully" failing to report the sanctions order to the State Bar.

Trial was held remotely on July 21 and 22, 2022,[1] on the Zoom platform by stipulation of the parties and agreement by the court. (*See generally*, Rules Proc. of State Bar, rule 5.18.) The matter was submitted for decision on July 22, 2022, following the parties' oral closing arguments. (Rules Proc. of State Bar, Rule 5.111(A).) OCTC seeks a finding of culpability on all counts and argues for discipline to include a 60-day period of actual suspension, and an order of $3,500 in monetary sanctions. Thibault moves for dismissal of all counts.

Jurisdiction

Thibault has been a licensed attorney in the State of California since her admission to practice on February 17, 2015.

Burden of Proof, Witness Credibility, and Hearsay

OCTC bears the burden of proof by clear and convincing evidence. It must present facts that leave no substantial doubt and are sufficiently strong to command the unhesitating assent of every reasonable mind. (In the Matter of Jensen (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283, 288, citing Conservatorship of Wendland (2001) 26 Cal.4th 519, 552.) This standard requires evidence that makes the existence of a fact "highly probable" and falls between the preponderance of the evidence standard and the more rigorous standard of beyond a reasonable doubt. (Conservatorship of O.B. (2020) 9 Cal.5th 989, 995.)

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[1] There was a brief period of abatement from April 6, 2022, through May 23, 2022.

In determining credibility and weight of the evidence, the court is guided by the rules of evidence in reaching a fair determination of the facts. (*See In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128, 141.) If there are two reasonable interpretations, the court adopts the inference of lack of misconduct because OCTC has the burden of proof. (*In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737, 749.) Nonetheless, any fact may be established by a single credible witness. (*In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1, 6. *See also* Evid. Code, §§411, 780.)

Within this framework and guiding principles, the court summarizes the proven factual findings below.

Findings of Fact

The gravamen of this matter involves allegations of a conflict arising from information Thibault had access to, through her employment by Anu Peshawaria (Peshawaria), while working as an attorney for Peshawaria's office from August 2015 through March 2018.

Though Anu Peshawaria was not a licensed attorney in California, she owned a law office called "Anu Attorney Professional Law Firm PLLC" in Fremont, California. The hyperlink for the law firm's website was "http://www.anuattorney.com" and Anu Pershawaria's contact email address was "anu@ anuattorney.com." In magazines distributed in the Indian American community, Peshawaria advertised that her firm provided legal services in Fremont, California. In social media available in June of 2018, Peshawaria claimed that her firm handled "a wide range of legal concerns, including US immigration

Law, Family Law, Business Law Indian Law, Human Rights & Domestic Violence throughout the United States and India." (*See* Exh. 5-20, Facebook page.[2])

In year 2011, Peshawaria became licensed to practice in the State of Washington. Thereafter, she became licensed to practice in California in February 2015.

1. Rattan shares confidences with Peshawaria in 2008.

Sometime in 2008—before Thibault began her employment with Peshawaria—Rattan, who believed Peshawaria to be a licensed California attorney, consulted with Peshawaria regarding her marriage dissolution from her then-husband, Abhijit Prasad (Prasad). Her case was titled Rattan v. Prasad (case No. VF07356209) and filed in Alameda County Superior Court. During her meetings with Peshawaria, Rattan brought the pleadings filed by her then-lawyer, Richard Friedling (Friedling). Rattan testified credibly[3] here

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2 For ease of readership, all preceding zeros appearing before the exhibit number and page number are dropped. So, exhibit 005-020, is referred to as exhibit 5-20.

3 The court had the opportunity to observe Rattan's demeanor and clarity of responses to questioning and is unpersuaded by Thibault's argument that Rattan's testimony was inconsistent. Rattan credibly testified that she consulted with Peshawaria regarding her dissolution of marriage in California and related matters, all within the jurisdiction of Alameda County. Rattan's testimony was corroborated by the social media posting for the firm's areas of service, described above, as well as the $5,000 retainer check she provided to Peshawaria.

In finding this testimony credible, the court rejects as unpersuasive Thibault's speculation that Rattan consulted Peshawaria solely

that she consulted with Peshawaria concerning "all issues" relating to her divorce, including her goals with respect to child custody and division of marital property. Rattan also prepared for Peshawaria, a written narrative[4] regarding her marriage, how they met and married, and her claims of domestic violence and abuse.

Rattan signed a retainer agreement[5] and provided a $5,000 check dated June 25, 2008, as a retainer for Peshawaria's legal services. Friedling substituted out as counsel for Rattan on June 24, 2008, after which Rattan proceeded in *pro per* status. Despite being

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for a "domestic violence" matter against Prasad in India. Because Thibault was not employed by Peshawaria in 2008, she had no direct knowledge of the meetings between Peshawaria and Rattan. And Rattan provided unrefuted testimony that she was a U.S. Citizen and that she had no property interests abroad. Further, Peshawaria's conduct in year 2016, directing Thibault to withdraw as Prasad's counsel (discussed, *post*), corroborates that Rattan consulted with the firm concerning her marriage dissolution.

[4] OCTC did not offer a copy of the full narrative in its case-in-chief. Thibault offered sealed exhibit 1004 during the cross-examination of Rattan, who recognized it to be an incomplete version of the narrative she presented to Peshawaria in 2008. Over OCTC's objection, the court allowed exhibit 1004 into evidence under Evidence Code section 1250 for the limited purpose of explaining Thibault's defense of good faith and reasonable belief. (*See* Evid. Code, § 1250, subd. (b) [non-hearsay purpose].)

[5] The signed retainer agreement was not presented as evidence here in OCTC's case-in- chief. Rather, sealed exhibit 1005, an unsigned retainer agreement, was offered into evidence by Thibault in her defense to the allegations. The court admitted this document into evidence under Evidence Code section 1250 for the limited purpose of explaining Thibault's state of mind and conduct.

retained by Rattan, Peshawaria never filed a formal substitution of counsel in her firm's representation of Rattan's dissolution matter. After a few months, Rattan became dissatisfied with Peshawaria and retained new counsel.

2. In 2016, Prasad retains Peshawaria's firm to represent him in *Rattan v. Prasad*—Thibault assigned.

In mid-2016, with Thibault now employed by Peshawaria, Prasad retained Peshawaria's firm to represent him in the *same* marriage dissolution matter, *Rattan v. Prasad* (case No. VF07356209.) Thibault was aware of the purpose of the retainer. (Evid. Code, § 1220 [party admission]; *see* Exh. 3-1, para. 6.) Peshawaria thereafter assigned Thibault to work on the case.

But, on July 8, 2016, counsel for Rattan, Jason Elter (Elter),[6] sent a letter to Thibault, noting that a conflict of interest existed because Peshawaria had previously represented Rattan in this same matter in 2008. In his correspondence, Elter included a copy of the retainer check that Rattan had paid to Peshawaria in June 2008.

Thibault discussed the conflicts issue with Peshawaria, who instructed her to withdraw from the case. A few days later, on July 13, 2016, Thibault withdrew as counsel for Prasad.

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6 Elter began representation of Rattan sometime in year 2015 and remained counsel of record for Rattan, as of his July 21, 2022, testimony in this matter.

3. In 2018, Thibault accepts employment by Prasad, the opposing party in Rattan's dissolution matter.

In March 2018, Thibault left her employment with Peshawaria's firm. Sometime thereafter, around May 2018, Thibault agreed to represent Prasad in the same marriage dissolution matter (*Rattan v. Prasad*, case No. VF07356209) that she had previously withdrawn from in 2016. In this endeavor, Thibault did not secure the consent of Rattan.

Without Rattan's consent, on May 17, 2018, Thibault filed a notice of substitution of attorney, proposing to enter her general appearance as replacement counsel for Prasad in *Rattan v. Prasad*. At a hearing held on May 21, Thibault appeared on behalf of Prasad. Rattan's counsel, Elter, objected to Thibault's representation of Prasad based on a conflict of interest. The superior court did not permit Thibault to substitute in as Prasad's counsel and instead, continued the matter to July 13, 2018, so that Rattan may file a formal motion for disqualification, to which Thibault would have the opportunity to respond.

Though she was not substituted-in as counsel for Prasad, on May 24, 2018, Thibault filed an "amended" notice of substitution. She also filed an ex parte motion seeking temporary emergency orders for Prasad's possession of the former marital home. Rattan opposed the ex parte motion, moved to strike Thibault's pleadings, sought an order disqualifying Thibault from representation due to a conflict, and requested sanctions under the California Code of Civil Procedure.

The disqualification hearing was held on July 13 and 19, 2018. During the July 19 session, Thibault

attempted to examine Rattan using a purported written narrative Rattan had provided to Peshawaria in 2008 (sealed exhibit 1004), as well as "another document . . . a retainer agreement" (sealed exhibit 1005). (Exh. 9-11, line 12 through 9-13, line 21.) Although she no longer worked for Peshawaria, Thibault still shared the same office with Peshawaria and, therefore, was able to access such documents from Peshawaria's computer database. According to Thibault, the written narrative was the result of Rattan's consultation with Peshawaria in 2008. The court sustained Elter's objection that the documents were protected under the attorney–client privilege and ordered Thibault to end her cross-examination of Rattan.

4. Superior court orders Thibault disqualified and issues sanctions.

At the conclusion of the July 2018 hearing, the superior court found that: (1) in 2008, Rattan retained the services of Peshawaria to assist her in her dissolution matter, the same action that was before the superior court; (2) Rattan retained Peshawaria based on her belief that Peshawaria was an attorney licensed to practice law in California; (3) Rattan paid Peshawaria $5,000 for such legal services and met with Peshawaria a couple of times, during which Rattan provided personal information about her case; (4) sometime after 2008, Thibault joined Peshawaria's firm and worked there for approximately three years; (5) in 2016, Thibault substituted into this matter as counsel for Prasad but, thereafter, substituted out due to a conflict; (6) on May 21, 2018, Thibault appeared in the superior court for Prasad, wherein Elter raised

the alleged conflict to the court; and (7) Thibault never obtained any waiver of conflict from Rattan.

On these findings, the superior court issued an order that disqualified Thibault from representing Prasad and sanctioned her $5,000 under sections 128.7 and 128.5 of the California Code of Civil Procedure, to be paid in 60 days.[7]

The court explained that (1) this was the same marriage dissolution case as the one Rattan had retained Peshawaria for in 2008 and that (2) Thibault had access to Rattan's confidential information—that is, the result of the consultation between Peshawaria and Rattan in 2008—which Thibault was prepared to present in open court. The court also agreed with Rattan's counsel, that the ex parte motion and response to the motion for disqualification were frivolous.

Thibault appealed the disqualification ruling and sanctions order. On September 24, 2020, the appellate court affirmed Thibault's disqualification and dismissed her appeal of the sanctions order, finding it was not appealable under the Code of Civil Procedure (*In re the Marriage of Komal Rattan and Abhijit Prasad*, A157880). Thibault subsequently filed a petition for rehearing, which was denied. Her petition for review was also denied by the California Supreme Court on December 30, 2020.

Despite Elter's repeated requests for payment of the sanctions following the July 2018 hearing and

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[7] Elter moved for sanctions in the amount of $6,000, but the court set it at $5,000. The minute order erroneously reported it as a $6,000 sanction. (*See* Exh. 9-21, lines 4-17 [transcript]; Exh. 10-1 [minute order]; Exh. 15-1 [Court of Appeal Decision].)

superior court order, Thibault neither responded nor paid her sanctions until August 18, 2021, which is about three years after she was ordered to do so—and after she had been contacted by an OCTC investigator in 2019 and asked about the sanctions order. Thibault did not report the July 2018 sanctions order to the State Bar until June 22, 2022.

Having now summarized the factual findings, they are applied below to the law, arriving at the court's conclusion of culpability in three of the four counts.

Conclusions of Law

Counts One and Four, respectively, relate to the $5,000 sanctions order, in Thibault's failure to timely comply with the court order by paying Elter within 60 days (Count One) and to timely report the sanction to the State Bar within 30 days (Count Four). Explained further below, this court finds culpability and rejects Thibault's defenses that the sanctions order was not yet final and on the lack of intent.

The allegations of Counts Two and Three involve Thibault's conduct in the underlying proceeding—accepting Prasad's representation without securing consent from Rattan (Count Two) and for Thibault's examination of Rattan during the July 19, 2018 hearing in presenting privileged materials of Peshawaria's database (Count Three). As reasoned below, the court finds lack of clear and convincing evidence to support Count Three but does find culpability for Count Two, failure to secure Rattan's consent in taking on representation of Prasad in *Rattan v. Prasad.*

Count ONE: Business & Professions Code, section 6103 [Failure to Obey a Court Order]

Count One alleges that Thibault willfully violated section 6103 by failing to comply with the court's July 19, 2018, order to pay $5,000 in sanctions within 60 days to Elter in connection with the marriage dissolution matter, satisfying payment around August 18, 2021.

To prove culpability, OCTC must show clear and convincing evidence: (1) that the attorney willfully disobeyed or violated a court order and (2) that the order required the attorney to do or forbear an act in connection with, or in the course of the profession, which one ought in good faith to have done or not done. (*In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592, 603. *See also* Bus. & Prof. Code, § 6103.) Stated differently, an attorney willfully violates section 6103 when, despite being aware of a final, binding court order, one knowingly takes no action in response to the order or chooses to violate it. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 787.) And a willful act is shown where "the person knows what [one] is doing, intends to do what [one] is doing and is a free agent." (*Morales v. State Bar* (1983) 35 Cal.3d 1, 6 [internal citation omitted].)

Here, the court finds culpability and rejects Thibault's argument of good faith. First, Thibault concedes that she was aware of her obligation to pay Elter $5,000 in sanctions within 60 days of the July 19, 2018 order. Indeed, she was present in court when the oral ruling was issued, and Elter repeatedly reminded Thibault to make the payment as ordered by the superior court following that hearing. And the

order of sanctions was a final order. Though Thibault filed an appeal, it was dismissed as non-appealable by the Court of Appeal on September 24, 2020, and her petition for review was denied by the California Supreme Court on December 30, 2020, rendering the July 19, 2018, sanctions order final and binding for disciplinary purposes.

Finally, Thibault willfully waited over eight months after finality to pay Elter the sanctions—despite the superior court's order to pay the $5,000 within 60 days of July 19, 2018, and repeated reminders by Elter, and notably, over a year after she was contacted by an OCTC investigator in 2019 and asked about the sanctions order. Under these circumstances, the substantial delay was unreasonable and, thus, violative of section 6103. (See, e.g., *In the Matter of Burke* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448, 457 [considering context, 10-and-a- half-month delay found to be unreasonable and violative of section 6103, despite there being no deadline provided to satisfy the sanction order where opposing counsel sent multiple communications and after counsel filed liens].)

In finding culpability, the court separately rejects Thibault's argument that she proceeded in good faith. Regardless of her subjective belief as to the validity of the sanctions order on procedural defects, the order was nonetheless binding. (*See In the Matter of Rubin* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 797, 807 [good faith defense rejected on belief of improper service]; *Maltaman v. State Bar* (1987) 43 Cal.3d 924, 952 [no plausible belief in the right to ignore final, unchallengeable orders one personally considers invalid]; *In the Matter of Respondent X, supra,* 3 Cal.

State Bar Ct. Rptr. at p. 604 [rejecting defense that attorney not required in good faith to obey order viewed as constitutionally infirm].) And Thibault's continued attempt to challenge the order by way of a motion to set aside,[8] does not alter the finality of the sanctions order for disciplinary purposes. (*In the Matter of* Collins (Review Dept.2018) 5 Cal. State Bar Ct. Rptr. 551, 559 [superior court orders are final and binding for disciplinary purposes once review is waived or exhausted in the courts of record].)

So, on this record, Count One has been shown by clear and convincing evidence.

Count FOUR: Business & Professions Code, Section 6068, subdivision (o)(3) [Failure to Report Sanctions to the State Bar]

Count Four relates to Thibault's failure to timely report the sanctions order, which is the subject of Count One, to the State Bar. Section 6068, subdivision (o)(3), provides that within 30 days of knowledge, an attorney has a duty to report, in writing, to the State Bar the imposition of judicial sanctions against the attorney of $1,000 or more which were not imposed for failure to make discovery.

Here, Thibault did not report the imposition of sanctions until June 22, 2022, which is over four

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[8] On June 9, 2022, after the filing of the NDC here, Thibault filed the motion under section 473, subdivision (d) of the Code of Civil Procedure, which provides *discretion* to the court to "correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed, and may, on motion of either party after notice to the other party, set aside any void judgment or order." That motion was pending at the time of this disciplinary trial.

months after the NDC was filed on February 2, 2022, and nearly four years after sanctions were imposed on July 19, 2018. While there is no dispute that Thibault learned of the sanctions on July 19, 2018, Thibault argues that her failure to timely report was not willful because she did not understand her obligations at the time and, therefore, that it was simply an honest mistake.

Though this court appreciates that Thibault made the belated effort to report the sanctions order, her explanations do not rise to a valid, legal defense. Bad faith is not required. (*See In the Matter of Respondent* Y (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 867.) Nor is ignorance of the law a defense to violating section 6068, subdivision (o)(3). (*In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170, 176.) And the duty to report sanctions timely is not excused solely by the pendency of any appeal. (*In the Matter of Wyshak* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70, 81.) Hence, culpability under Count Four has been shown on this record.

Count TWO: former rule 3-310(E)[9]
[Representation Adverse to Former Client]

Turning next to Counts Two and Three, these involve the underlying conduct in *Rattan v. Prasad.* Count Two alleges a violation of former rule 3-310(E), which provides that an attorney shall not, without the informed written consent of the client or former client,

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9 All references to former rules are to the former State Bar Rules of Professional Conduct, which were in effect through October 31, 2018

accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment.

Specifically, OCTC alleges that Thibault accepted employment from Prasad in the marriage dissolution matter, *Rattan v. Prasad* (case No. VF07356209), (1) without obtaining informed written consent from Rattan; and (2) that Thibault obtained Rattan's confidential information material to the employment as a result of Thibault's previous employment with Peshawaria, who had formerly represented Rattan in the same matter.

On consideration of the evidence, this court concludes that not only is there substantial support for the superior court's findings, but through an independent evaluation of the evidence—admissions by Thibault that she made no effort to secure Rattan's consent in accepting representation of Prasad and the credible testimony of Rattan, as well as a review of the admitted exhibits—the court finds a violation by clear and convincing evidence. (*See In the Matter of Lais* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112, 117 [civil findings given a strong presumption of validity by this court when supported by substantial evidence]; *Maltaman v. State Bar, supra*, 43 Cal.3d at 947 [State Bar Court to independently assess civil findings under the more stringent clear and convincing standard].) Discussed further below, an attorney- client relationship formed between Peshawaria's firm and Rattan in 2008 when Rattan sought representation for the dissolution of marriage in *Rattan v. Prasad*; Rattan shared material, confidential information with Peshawaria; and Thibault accepted representation of

Prasad in the same action in year 2018, without securing consent from Rattan.

Attorney-client relationship was formed in 2008 between Peshawaria's firm and Rattan.

Rattan credibly testified that she sought out Peshawaria's legal services to represent her in her divorce matter, *Rattan v. Prasad*, that is the subject of this disciplinary proceeding. She described with specificity the reasons she chose Peshawaria as her attorney in 2008, such as Peshawaria's connection to the Indian American community (i.e., both Peshawaria and Rattan were of Asian Indian descent), and Peshawaria's advertisement that she was an attorney at law. On June 25, 2008, Rattan wrote a retainer check in the amount of $5,000 that was paid to Peshawaria for her legal services. She provided Peshawaria with the pleadings filed by her then- attorney, Friedling, and discussed all issues in her matter, including the division of property, child custody and support, and her goals in reaching a resolution of all issues.

Though OCTC did not present a signed retainer agreement between Rattan and Peshawaria's firm, this is not fatal to the prosecution here. No formal contract or arrangement is necessary to create the fiduciary relationship of attorney and client. Rather, where a party seeks out legal advice and secures counsel on the issue, the relationship of attorney and client is established. (*Perkins v. West Coast Lumber Co.* (1900) 129 Cal. 427, 428-429; *see also Bernstein v. State Bar* (1990) 50 Cal.3d 221, 230 [fiduciary relationship formed when attorney takes on representation,

rejecting defense that attorney was merely employed by the firm retained].) In this regard, a formal substitution of counsel filed in a court of record, is not required to establish the attorney-client relationship. (*See* Evid. Code, §§ 950-952 [definitions of lawyer, client, protected communications].)

The court also rejects Thibault's speculation that any consultation between Peshawaria and Rattan in 2008 must have been limited to a domestic violence matter to be filed against Prasad in India because Peshawaria was not licensed to practice in California. As noted above, Thibault was not employed by Peshawaria in 2008, so she was not percipient to the conversations that occurred between Rattan and Peshawaria. Thibault's speculation is further undermined by Peshawaria's direction to Thibault to withdraw in 2016, from representing Prasad in *Rattan v. Prasad.* And finally, regardless of Peshawaria's licensure, the record shows that Peshawaria held herself out as a California attorney. Apart from Rattan's description of Peshawaria's active advertisement in magazines in 2008, in social media posts in year 2018, Peshawaria represented herself as the "Founder and Attorney, Anu Attorney Law Group, Jan 1999-Present * *19 years 6 mos, Fremont CA.*" (Exh. 5-22 [italics added].) That firm providing attorney services in immigration, family law, and business law. (Exh. 5-21.) So, the court finds that Rattan (reasonably) relied on Peshawaria's advertisement and representation, in retaining Peshawaria's firm for legal services for the divorce proceedings.

In sum, the superior court's finding that there was an attorney-client relationship between Peshawaria and Rattan is supported by substantial evidence, and

this court's independent review leads to that same conclusion.

Rattan shared confidential information with Peshawaria of which Thibault accessed.

It is unrefuted that during Rattan's consultations with Peshawaria, Rattan at a minimum, shared information relating to the inception of Rattan's marriage to Prasad. Rattan elaborated at the July 19, 2018 hearing, that this included the number and ages of their children, and a listing of properties. And during her testimony at this disciplinary trial, Rattan credibly testified that the shared information included issues of child and spousal support and property division.[10]

Thibault admitted during her testimony here, that she had gained access to client information belonging to Rattan from Peshawaria's database. The issue of disqualification first raised in 2016, Thibault looked into Peshawaria's computer and noticed a 2-page document (sealed exhibit 1004) and an unsigned retainer agreement (sealed exhibit 1005), to confirm whether Elter's claim of a conflict existed. Thibault thereafter spoke with Peshawaria, who advised Thibault to withdraw from Prasad's matter.

Then in year 2018, Thibault—though no longer working for Peshawara and while sharing office space—again, accessed Rattan's file. Because Thibault was still working on a few matters for Peshawaria,

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[10] The appellate court's decision issued on September 24, 2020, also found that Rattan shared with Peshawaria information about issues relating to custody, property division, and child and spousal support.

Thibault had access to Peshawaria's computer and database. Without seeking Rattan's permission, Thibault again accessed the database and printed out these two documents, in preparation for responding to the disqualification motion in superior court.

Thibault did not secure Rattan's consent.

In taking on Prasad's employment in 2018, Thibault admittedly did not secure Rattan's consent—arguing here, that consent was not required because she did not possess material and confidential information. Thibault claims that exhibit 1004 is corroboration that no conflict existed because she claims Peshawaria was consulted for the purpose of issues arising out of India, not for the purposes of the marriage dissolution in California. Alternatively, Thibault argues that she sought to represent Prasad in "post-divorce" proceedings, so even if Peshawaria was retained in the dissolution matter, a waiver was not required.

Thibault's claims are unpersuasive. As found above, Rattan retained Peshawaria's firm for the purposes of marriage dissolution and related proceedings in California based on her reasonable belief that Peshawaria was an attorney licensed to practice in California. Thibault also cannot rely on exhibit 1004 to establish that Rattan's consultations with Peshawaria in 2008 was limited to issues arising out of India because as previously noted in this decision, the document is not the complete narrative that Rattan had provided to Peshawaria at that time.

Separately, nothing about the description of Rattan's inception of the marriage contradicts her

credible testimony[11] that she retained Peshawaria for the purposes of representing her in her marriage dissolution matter in California.

Finally, Thibault's conclusory claim that Rattan's consent was not required because she was handling the "post-divorce" phase of the same divorce matter is also meritless. On review of the register of action and as established through the testimony of Elter and Rattan, respectively, the dissolution matter was complex and ongoing, involving issues of domestic violence, custody, support, and property. Regardless of whether Thibault chooses to characterize her work as "post- judgment," the care and assets of the marital property involved the *same subject matter* in which Rattan sought out Peshawaria in year 2008. (See, e.g., *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 762-753 [written consent required because second employment involved same assets as the first].) So, the court rejects Thibault's argument that filing a "post-judgment" request for writ of possession insulated her from her ethical obligations.

In sum, the record fully supports a violation of former rule, 3-310(E), in Thibault's 2018 employment by Prasad without securing the written consent of Rattan.

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11 This court finds unpersuasive, Thibault's argument that Rattan should be disbelieved, pointing to purported inconsistencies where Rattan at one point described the narrative as "background" regarding the marriage, while at other times referring to the narrative as a "story." As the fact-finder, the alternative choice of phrasing does not impeach Rattan's testimony in any substantial way, i.e., that she met with Peshawaria to consult in the marriage dissolution matter and all attendant issues. (*See also* fn. 3.)

Count THREE: Business and Professions Code, section 6068, subdivision (e)(1) [Failure to Maintain Client Confidence]

But as to the remaining count—Count Three—the court does not find culpability. This count alleges that by accessing Rattan's narrative and retainer agreement, through Peshawaria's representation of Rattan in 2008, and then proffering confidential client documents during the July 19, 2018 superior court hearing—Thibault violated section 6068, subdivision (e)(1), which provides that an attorney has a duty to maintain inviolate the confidence, and at the attorney's every peril to preserve the secrets, of the attorney's client.

Given the context and purpose of the July 2018 hearing, the court finds a lack of clear and convincing evidence supporting this charge. (*See DeMassa, supra,* 1 Cal. State Bar Ct. Rptr. at p. 749.) The purpose of the hearing was to hold an evidentiary hearing on the disqualification motion brought by Elter, Rattan's counsel. In framing his motion, Elter invoked under Adams v. Aerojet-General Corp. (2001) 86 Cal.App.4th 1324, 1340, the presumption that Thibault possessed confidential information. Thibault was attempting to refute that presumption by presenting Rattan's documents pulled from Peshawaria's database. There, during the hearing, Thibault attempted to articulate the legal grounds from which she believed the questioning and introduction were permitted, including that no attorney-client relationship had formed between Peshawaria and Rattan in 2008.

And in the disciplinary proceedings here, Thibault raised Evidence Code section 958, which is an exception to the attorney-client privilege—that there is "no

privilege [. . .] as to a communication relevant to an issue of breach, by the lawyer or by the client, of a duty arising out of the lawyer-client relationship." This is an exception (not waiver) that is narrowly applied to communication directly related to the issue of breach being alleged. (*Glade v. Superior Court* (1978) 76 Cal.App.3d 738, 746 [discussion, applies when either the attorney or client charges the other with a breach of duty arising from their professional relationship]; *O&C Creditors Group, LLC v. Stephens & Stephens XII, LLC* (2019) 42 Cal.App.5th 546, 562, as modified (Dec. 17, 2019).) The purpose, to "avoid the injustice of permitting a client [. . .] to accuse [one's] attorney of a breach of duty and to invoke the privilege to prevent the attorney from bringing forth evidence in defense of the charge[.]" (*People v. Ledesma* (2006) 39 Cal.4th 641, 694 [internal citations omitted].)

So, because Thibault was raising a defense potentially allowable under the Evidence Code, in response to the issues raised by Elter, there lacks clear and convincing evidence to support Count Three. This count is dismissed with prejudice.[12]

Aggravation and Mitigation

OCTC has the burden of proving aggravating circumstances by clear and convincing evidence. (Std.

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12 This is not to say that Thibault properly handled her examination of Rattan. Nor does the court condone Thibault's lack of care in her failing to seek an *in camera* hearing on the issue under section 958 of the Evidence Code. This court also does not speculate that the documents would have been admitted by the superior court, nor on this court's review, do those materials affect the culpability finding under Count Two, as explained above.

1.5). Thibault carries that burden to prove mitigation. (Std. 1.6).[13]

Aggravation

Lack of Insight (Std. 1.5(k))—moderate weight

The court agrees with OCTC that Thibault fails to see the wrongfulness of her misconduct. Notably, two years before her attempt to substitute in as counsel for Prasad, Thibault was aware of the issue of a conflict of interests, given Peshawaria's directive for Thibault to substitute out of *Rattan v. Prasad*, in July of 2016. After speaking with Peshawaria, Thibault confirmed through her own research, that Peshawaria's database contained information from Rattan. Despite this forewarning, two years later in 2018, Thibault accepted employment to represent Prasad in the same matter, *Rattan v. Prasad*.

What is more, even after the superior court refused to allow her substitution into the case on May 17, 2018, Thibault filed an "amended" notice of substitution, and then proceeded to file and serve pleadings on Prasad's behalf on May 24, 2018—despite the pending July 19, 2018 disqualification hearing. Finally, during this disciplinary matter, Thibault continued to insist that she was in the right to take on Prasad's representation.

Though an attorney has the right to vigorously defend oneself, the lack of understanding of one's

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

ethical obligations reflects a concern of an ongoing threat to the public. (*In re Morse* (1995) 11 Cal.4th 184, 209-210; *see also In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511 [law does not require false penitence, but does require attorney to accept responsibility for acts and come to grips with culpability].) Here, a primary feature of Thibault's defense was that there was no merit in the disqualification motion and that her ex parte request for order was meritorious. Stated differently, Thibault argued that her actions were justified because the superior court was wrong.

Overall, Thibault's attitude during this disciplinary proceeding reveals a lack of insight and understanding of her ethical responsibilities as an attorney. Moderate weight is accorded in aggravation. (*In the Matter of Layton* (Review Dept.1993) 2 Cal. State Bar Ct. Rptr. 366, 380 [lack of insight causes concern attorney will repeat misconduct].)

Multiple Acts of Wrongdoing (Std. 1.5(b))—limited weight

The court also finds in aggravation, multiple acts, based on the three counts here: failing to timely pay sanctions; failing to timely report sanctions to the State Bar; and engaging in adverse representation to a former client. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 646-647 [three instances of misconduct considered multiple acts].) And gives this factor limited weight. (See, e.g., *Matter of Amponsah* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 646, 653 [finding modest aggravating weight is appropriate for attorney's three acts of wrongdoing].)

Mitigation

Pro Bono Work—nominal weight

An attorney's pro bono work may be considered a mitigating factor. (*In the Matter of DeMassa, supra*, 1 Cal. State Bar Ct. Rptr. at pp. 751-752 [pro bono work as mitigation]; (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785 [pro bono work and community service may be mitigating].) Here, Thibault testified that she engaged in pro bono immigration work by clerking for the Lawyers Committee for Civil Rights in San Francisco. Thibault claimed she worked on two different immigration matters, one of which spanned from year 2010 to 2021, and involved difficult work that resulted in the client achieving legal status in the United States.

This mitigation is assigned nominal weight given the lack of corroboration and lack of specificity. (See, e.g., *In the Matter of Dyson* (Review Dept. 1990) l Cal. State Bar Ct. Rptr. 280, 287 [little weight given to pro bono activities where attorney testified but evidence fails to demonstrate level of involvement]; contra, *Rose v. State Bar* (1989) 49 Cal.3d 646, 667 [mitigation for legal abilities, dedication, and zeal in pro bono work].)

Extraordinary Good Character (Std. 1.5(f))—not found

To receive mitigation under standard 1.6(f), Thibault must establish that she possesses "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[.]" Here, she offered written declarations from four character

witnesses, all of whom are either former or current clients. Three have known Thibault for approximately three years or less.

Though the witnesses attested that Thibault is skilled, knowledgeable, diligent, fair and caring, none of them expressed any awareness of the charges alleged in this disciplinary matter. (*In re Brown* (1995) 12 Cal.4th 205, 223 [mitigation considered for attorney's good character when witnesses are aware of misconduct; *In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469, 476-477 [limited mitigation where declarants not fully aware of misconduct].)

Separately, the four witnesses do not represent a wide range of references in the legal and general communities. (Std. 1.6(f); *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 387 [testimony of three clients and three attorneys did not constitute broad range of references and warranted only limited mitigation]; *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50 [assigning diminished mitigation for character evidence from four witnesses who did not constitute wide range of references in legal and general communities]; *In the Matter of Kreitenberg, supra,* 4 Cal. State Bar Ct. Rptr. at pp. 476-477 [character evidence entitled to limited weight where it was not from wide range of references].)

> On this record, extraordinary good character has not been established.

Good Faith Belief Honestly Held and Objectively Reasonable (Std. 1.6(b))—not found

The court does not find that Thibault established good faith by clear and convincing evidence. Good faith requires a showing that the belief was honestly held *and* objectively reasonable. (*In the Matter of Riordan, supra*, 5 Cal. State Bar Ct. Rptr. at pp. 50-51.) As discussed in the culpability findings above, Thibault's conduct was not excused by any reasonable, good faith belief that there lacked a conflict of interest—or that she was excused from timely paying the sanctions to Elter, or self-reporting the superior court order to the State Bar. Hence, no mitigation is accorded for good faith.

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney but 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. (Std. 1.1; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, the court looks 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 arising from the application of 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.) The court

also looks to comparable case law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

1. Recommendation of actual suspension is appropriate.

Standard 1.7(a) provides that if a lawyer is culpable of two or more acts of misconduct and the standards specify different sanctions for each act, the most severe sanction is to be imposed. Here, the most severe sanction is found in standard 2.12(a), which provides that actual suspension or disbarment is the appropriate level of discipline for a violation of a court order under section 6103. While OCTC urges that a 60-day actual suspension be recommended, Thibault argues no discipline is warranted and seeks a dismissal of all counts,

Finding guidance in, *In the Matter of Collins*, *supra*, 5 Cal. State Bar Ct. Rptr. 551, this court concludes a recommendation to include 30-day period of actual suspension to be appropriate. In *Collins*, the Review Department applied standard 2.12(a) and recommended a 30- day period of actual suspension where Collins intentionally failed to comply with five separate sanctions orders in a single matter and had still not paid the court-ordered sanctions at the time of his disciplinary proceedings. Collins received moderate aggravating weight for his five acts of misconduct. As for mitigation, he received substantial weight for both his 22-year discipline-free practice and his cooperation with the State Bar, in which he stipulated to all of the predicate facts as well as to culpability on all five counts.

Like in *Collins*, Thibault's matter involves disobedience of a court order in a single client matter, and neither attorney had a prior record of discipline. But unlike Collins, Thibault did not enter into any stipulation of facts or culpability. Thibault also engaged in her misconduct within a mere three years of becoming licensed to practice law in California whereas Collins had a 22- year discipline-free practice. As further distinction, Thibault's two factors in aggravation outweigh the nominal mitigating circumstance.

Yet, Collins had engaged in five separate acts of misconduct compared to Thibault's three acts. And Collins did not provide poof of payment nor revolve his outstanding debt before his disciplinary trial, whereas Thibault, albeit belatedly, paid her sanctions and reported them to the State Bar.

So, on the whole and in spite of the differences, this court finds that a discipline recommendation similar to that made in *Collins* would be most appropriate in this matter.

2. Monetary sanctions are recommended.

As the NDC, which was filed after April 1, 2020, provided Thibault with notice that she could be subject to monetary sanctions, sanctions are required under rule 5.137. The guideline suggests "up to $2,500" where the recommendation is for a period of actual suspension. (Rules Proc. of State Bar, rule 5.137(E)(2); Bus. & Prof. Code, § 6086.13.) On a finding of good cause such as financial hardship, the court has discretion to waive the imposition of monetary sanctions, or allow payment in installments, but the burden lies with the respondent by a preponderance

of the evidence. (Rules Proc. of State Bar, rule 5.137 (E)(4).)

Here, Thibault argued against a finding of culpability on any counts and failed to present any evidence this court's exercise of discretion in waiving the sanctions in part or on the whole. So, because OCTC has shown a serious violation of ethical rules, marked by indifference, $2,500 is ordered in monetary sanctions.

Recommendations

It is recommended that Elana Thibault, State Bar Number 302572, be suspended from the practice of law for one year, that execution of that suspension be stayed, and that she be placed on probation for one year with the following conditions:

1. Actual Suspension. Elana Thibault must be suspended from the practice of law for the first 30 days of the period of her probation.

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

3. Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions. Thibault must comply with the provisions of the State

Bar Act, the Rules of Professional Conduct, and all conditions of 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, Thibault must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has her current office address, email address, and telephone number. If she does not maintain an office, she must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Thibault 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, Thibault must schedule a meeting with her assigned probation case specialist to discuss the terms and conditions of her 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, Thibault may meet with the probation case specialist in person or by telephone. During the probation period, Thibault 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 Thibault's probation period, the State Bar Court retains jurisdiction over her to address issues concerning compliance with probation conditions. During this period, Thibault must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to her official State Bar record address, as provided above. Subject to the assertion of applicable privileges, Thibault 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.** Thibault 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, Thibault 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.** Thibault must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether she 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.** Thibault is directed to maintain proof of 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 actual suspension has ended, whichever is longer. Thibault 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, Thibault 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 she will not receive MCLE credit for attending this session. If she provides satisfactory evidence of completion of the Ethics School after the date of this Decision but before the effective date of the Supreme Court's order in this matter, Thibault will nonetheless receive credit for such evidence toward her 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 Thibault 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 further recommended that Elana Thibault be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).) If Thibault provides satisfactory evidence of the 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, she will nonetheless receive credit for such evidence toward her duty to comply with this requirement.

Monetary Sanctions

It is further recommended that Thibault be ordered to pay monetary sanctions to the State Bar of California Client Security Fund in the amount of $2,500 in accordance with Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar. Monetary sanctions are enforceable as a money judgment and may be collected by the State Bar through any means permitted by law. Monetary sanctions must be paid in full as a condition of reinstatement or return to active status, unless time for payment is extended pursuant to rule 5.137 of the Rules of Procedure of the State Bar.

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, and may be collected by the State Bar through any means permitted by law. Unless the 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.

It is SO ORDERED.

PHONG WANG
Judge of the State Bar Court

Dated: **October 17, 2022**

CERTIFICATE OF ELECTRONIC SERVICE

(Rules Proc. of State Bar, rule 5.27.1)

I, Nicholas Lewis, certify that I am over the age of eighteen and not a party to the within proceeding. I am employed as a Court Specialist for the State Bar Court of California, and my business address is 180 Howard Street, Floor 6, San Francisco, California, 94105-1639. My electronic service address is CTROOM2@statebarcourt.ca.gov.

Pursuant to standard court practice, on **October 17, 2022**, I electronically served a true copy of the following document(s):

DECISION

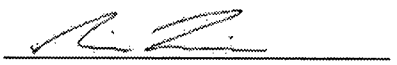
As provided in rule 5.26.1 of the Rules of Procedure of the State Bar of California, I electronically served the aforementioned document(s) to the following parties at their electronic service address(es) as indicated:

WHITNEY L. GEITZ, Deputy Trial Counsel
whitney.geitz@calbar.ca.gov

ELANA THIBAULT, Respondent Pro Se
elanathibault@yahoo.com

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: October 17, 2022



Nicholas Lewis
Court Specialist, State Bar Court

APPENDIX D

ORDER DENYING PETITION FOR REHEARING EN BANC, SUPREME COURT OF CALIFORNIA (MAY 1, 2024)

State Bar Court - No. SBC-22-O-30033
S282783

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re ELANA THIBAULT on Discipline.

The petition for rehearing is denied.

The stay of the order imposing discipline is hereby dissolved. The order of discipline is final 30 days after the filing of this order denying rehearing. Elana Thibault must comply with California Rules of Court, rule 9 .20, and perform the acts specified in (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the date this order is filed. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.)

APPENDIX E

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. CONSTITUTION

U.S. Const. amend. XIV, § 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX F

STATUTORY PROVISIONS

CALIFORNIA BUSINESS AND PROFESSIONS CODE

Cal. Bus. & Prof. Code § 6103

A willful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, and any violation of the oath taken by him, or of his duties as such attorney, constitute causes for disbarment or suspension."

Cal. Bus. & Prof. Code § 6068(O)(3)

It is the duty of an attorney to do all of the following:

(o) To report to the State Bar, in writing, within 30 days of the time the attorney has knowledge of any of the following:

(3) The imposition of judicial sanctions against the attorney, except for sanctions for failure to make discovery or monetary sanctions of less than one thousand dollars ($1,000).

EVIDENCE CODE

California Evidence Code § 958.

There is no privilege under this article as to a communication relevant to an issue of breach, by

the lawyer or by the client, of a duty arising out of the lawyer-client relationship.

APPENDIX G

RULES

RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA

(Former) Rule 3-310(E) (In Effect From 1992 Through October 31, 2018), Avoiding The Representation Of Adverse Interests

(E) A member of the bar shall not without the informed written consent of the client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment.

Rule 5.103 The State Bar's Burden of Proof

The State Bar must prove culpability by clear and convincing evidence.

Rule 5.104 Evidence

(D) Hearsay. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but over timely objection will not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

(H) Judicial Notice of Court Records and Public Records.

(1) For purposes of this rule, "court records" means pleadings, declarations, attachments,

dockets, reporter's transcripts, clerk's transcripts, minutes, orders, and opinions that have been filed with the clerk of any tribunal or court within the United States.

(2) The State Bar Court may take judicial notice of the following:

(a) court records that have been certified by the clerk of the court or tribunal;

(b) non-certified court records of the State Bar Court;

(c) non-certified orders of the California Supreme Court in attorney disciplinary cases;

(d) non-certified court records that have been copied from the tribunal or court's official file and timely provided to the opposing party during the course of formal or informal discovery. The party offering such records must provide a declaration stating the date on which the documents were copied and certifying that the documents presented to the State Bar Court are an accurate copy of the court records obtained from the court's official file; and

(e) non-certified court records that have been copied from a public access website operated by a court or government agency for the purpose of posting official public records or court records, e.g., the federal court website called "Public Access to Court Electronic Records" and more commonly known as PACER. The party offering such records must provide a declaration stating the date on which the

documents were copied and certifying that the documents presented to the State Bar Court are an accurate copy of the court records obtained from the website.

(3) The State Bar Court must take judicial notice of the records mentioned in paragraph (2) if they are relevant to the proceeding unless a party proves, e.g., through certified records, that the proffered records are incomplete or not authentic.

(4) This rule is not intended to limit the judicial notice provisions contained in Evidence Code, section 450 et seq.

Eff. January 1, 2011; Revised May 18, 2018; January 1, 2019; January 25, 2019.