STATE BAR COURT
REVIEW DEPARTMENT

In the Matter of

RICHARD ALLEN LENARD

A Member of the State Bar

[Nos. 09-O-11175, et al.]

Filed April 15, 2013

SUMMARY

Respondent was charged with committing twelve acts of unauthorized practice of law (UPL) in nine states while performing contract work for consumer debt settlement companies. The hearing judge found respondent culpable of this misconduct, and recommended disbarment after finding one factor in mitigation and three in aggravation, including extensive uncharged misconduct. (Hon. Richard A. Platel, Hearing Judge.)

The review department affirmed the hearing judge's finding that Lenard is culpable of 12 instances of UPL. Although the review department found less aggravation than the hearing judge because it did not consider any uncharged misconduct, the aggravation still clearly predominated over respondent's limited mitigation for cooperation, which was not compelling. Applying standard 1.7(b), the review department affirmed the hearing judge's recommended discipline of disbarment.

COUNSEL FOR PARTIES

For State Bar: Kevin B. Taylor

For Respondent: Richard A. Lenard

HEADNOTES

[1] **101 Generally Applicable Procedural Issues—Jurisdiction**
252.10 Rules of Professional Conduct Violations—Unauthorized practice in other jurisdiction (RPC 1-300(B); 1975 RPC 3-101(B)) (practice in other jurisdictions)
In order to find culpability under rule 1-300(B) of the Rules of Professional Conduct, the State Bar Court must examine applicable out-of-state authority to determine whether a California attorney has violated professional regulations in a foreign jurisdiction.

Editor's note: The summary, headnotes and additional analysis section are not part of the opinion of the Review Department, but have been prepared by the Office of the State Bar Court for the convenience of the reader. Only the actual text of the Review Department's opinion may be cited or relied upon as precedent.

[2a,b] **252.10 Rules of Professional Conduct Violations—Unauthorized practice in other jurisdiction (RPC 1-300(B); 1975 RPC 3-101(B))**

Respondent committed UPL in violation of authority in Wisconsin and New York, which only allow attorneys currently licensed in those states to practice law there, when he: 1) held himself out to clients in those states as an attorney with knowledge and authority to settle consumer debts; 2) represented to creditors that they should follow debt collection laws or his clients were prepared to take legal action; and 3) reviewed client files to determine whether they should file for bankruptcy despite having no license to perform bankruptcies outside of California.

[3a-c] **196 Miscellaneous General Issues in State Bar Court Proceedings—Comparison to ABA Model Code and/or Model Rules**

252.10 Rules of Professional Conduct Violations—Unauthorized practice in other jurisdiction (RPC 1-300(B); 1975 RPC 3-101(B))

Respondent violated seven states' UPL rules of professional conduct, which are either identical or substantially similar to the American Bar Association's Model Rules of Professional Conduct, rule 5.5(b), prohibiting a lawyer not licensed in a state from either: 1) establishing an office or other systemic and continuous presence in the state; or 2) holding out to the public or otherwise representing that the lawyer is admitted to practice law in the state. The form of communications used by respondent—specifically the use of the term"The Law Offices of" on Legal Services Agreements and cease and desist letters, and representations that the office acted as a "law firm" for clients and provided "legal services"—was evidence that he held himself out as entitled to practice law in states where he was unlicensed. By implying he was licensed in these seven states, respondent gave the false impression to clients and creditors that he held an advantage over a non-attorney debt negotiator. He also explicitly represented to clients he would perform legal services, and informed creditors that he was representing each client using law office letterhead.

[4a-c] **196 Miscellaneous General Issues in State Bar Court Proceedings—Comparison to ABA Model Code and/or Model Rules**

252.10 Rules of Professional Conduct Violations—Unauthorized practice in other jurisdiction (RPC 1-300(B); 1975 RPC 3-101(B))

Respondent's conduct did not fall under any safe harbor provision under American Bar Association's Model Rules of Professional Conduct, rule 5.5(b), which allows out-of-state attorneys to practice temporarily in states where they are not licensed without committing UPL. First, applying the factors defined by the model rule, respondent's contact with out-of-state clients was not reasonably related to his practice in California. Likewise, his contentions that the Model Rule enabled him to provide legal services related to bankruptcy law failed where his proposed legal services were not limited to issues of bankruptcy and he was not admitted to practice law in the federal courts or any of the seven states at issue.

[5] **531 Aggravation—Pattern of Misconduct (1.2(b)(ii))—Found**

Twelve acts of UPL across nine different states constitute a pattern of misconduct.

[6] **541 Aggravation—Bad faith, dishonesty, concealment (1.2(b)(iii))—Found**

Respondent's representations involved bad faith and dishonesty where he falsely implied he could provide legal representation in states where he was not licensed, advised clients to cease contact with their creditors because he was representing their interests but provided no services beyond sending cease and desist letters, terminated representation without helping clients find local counsel as promised, and included debt settlements in scope of services agreements when he had no specific knowledge of debt collection laws in states where the clients resided.

[7] **106.90 Generally Applicable Procedural Issues—Other issues re pleadings**
130 Generally Applicable Procedural Issues—Procedure on Review
565 Aggravation—Other uncharged violations (1.2(b)(iii))—Declined to find
Review Department declined to find uncharged misconduct where State Bar had ample opportunity but did not move to amend the notices of disciplinary charges to include new charges; therefore, respondent did not have sufficient notice or opportunity to defend against them.

[8] **735.30 Mitigation—Candor and cooperation with Bar (1.2(e)(v))—Found but discounted or not relied on**
Diminished weight given for cooperation in State Bar Court proceedings after respondent entered into extensive stipulation as to facts and admission of documents, but did not stipulate to culpability and continued to dispute it before the review department.

[9] **806.10 Application of Standards—Standard 1.7 (Effect of Prior Discipline)—(b) Disbarment after two priors—Applied**
Respondent with three prior disciplines presented no compelling mitigation or other reason to depart from disbarment as provided by standard 1.7(b). The prior record of discipline revealed a disturbing repetitive theme of failing to comply with ethical obligations over the course of 15 years. Respondent's misuse of his California license to thwart the regulations of other states placed the public at risk of considerable harm due to ongoing issues of competency, where he had previously failed to supervise employees who embezzled client funds, failed to remove his disbarred partner's name from the firm CTA, and did not meet his obligations to file several probation reports or make restitution.

ADDITIONAL ANALYSIS

Culpability
Found
252.11 Rules of Professional Conduct Violations—Rule 1-300(B) (practice in other jurisdictions)

Aggravation
Found
511 Prior record of discipline (1.2(b)(i))
531 Pattern of Misconduct (1.2(b)(ii))
541 Bad faith, dishonesty, concealment (1.2(b)(iii))

Declined to find
565 Other uncharged violations (1.2(b)(iii))

Mitigation
Found but Discounted
735.30 Candor and cooperation with Bar (1.2(e)(v))

Discipline
1010 Disbarment

Other
2311 Inactive enrollment after disbarment recommendation - Imposed

OPINION

REMKE, PJ.:

This is respondent Richard Allen Lenard's fourth discipline proceeding. The hearing judge found that Lenard committed 12 acts of the unauthorized practice of law (UPL) in 9 states while performing contract work for consumer debt settlement companies. He recommended that Lenard be disbarred after finding one factor in mitigation and three factors in aggravation, including extensive uncharged misconduct.

Lenard seeks review, contending all of the work done for out-of-state clients was performed in California, and none of it constituted the practice of law. The State Bar Office of the Chief Trial Counsel (State Bar) supports the hearing judge's decision.

We have independently reviewed the record (Cal. Rules of Court, rule 9.12), considering the specific factual findings raised by the parties. (Rules Proc. of State Bar, rule 5.152(C) [any factual error not raised on review is waived by parties].) We affirm the hearing judge's finding that Lenard is culpable of 12 instances of UPL. While we find less aggravation than the hearing judge because we do not consider any uncharged misconduct, the aggravation still clearly predominates over Lenard's limited mitigation for his cooperation, which is not compelling. Given Lenard's prior record of three disciplines, the presumptive discipline in this case, absent compelling mitigation, is disbarment under standard 1.7(b) of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.[1] We see no reason to depart from this standard, and find that Lenard should be disbarred in order to protect the public, the courts, and the legal profession.

I. FACTS

This proceeding involves two consolidated Notices of Disciplinary Charges (NDC): the first filed on November 10, 2011 (NDC I), and the second filed on November 28, 2011 (NDC II), involving a total of 13 cases and 13 counts of misconduct.[2] Lenard and the State Bar stipulated to many of the facts relevant to our analysis. Our findings are based on that stipulation as well as the evidence admitted at trial.

Lenard was admitted to practice law in California in August 1991. He is not admitted to practice law in any other state or before any federal court outside California. All of the charges discussed below involve clients from states other than California.

A. Lenard Acts as Contract Attorney for Settlement Companies

Lenard contracted with three California consumer debt relief companies: Freedom Financial Management; Beacon Debt Service; and Pathway Financial Management (the Settlement Companies). These companies paid Lenard a flat fee to provide limited legal services for clients regarding their consumer debt. Lenard testified that he customarily charged the Settlement Companies between $75 to $100 per client and spent 15 to 20 minutes on each file. He also estimated that he had over 1,000 clients "in credit repair" among all three companies.

The Settlement Companies advertised through television and radio ads in a number of states. Clients who retained one of the Settlement Companies agreed to pay retainer fees of up to 12% of the balance of their debts, contingency fees of 8% of the amount by which their debts were reduced, and monthly maintenance fees of between $15 to $25. Clients also were required to make monthly payments into the Companies' "client trust accounts," and those funds were to be used to settle their debts. The Settlement Companies represented that the clients' accounts would be "handled by our legal counsel."

B. Lenard's Legal Service Agreements and Welcome Letters

In 2008 and 2009, the clients who signed up with the Settlement Companies received an "Attorney-Client Legal Service Agreement" (Legal Service

1. All further references to standards are to this source

2. The hearing judge dismissed Count 8 of NDC I, charging Lenard with commingling personal funds in his client trust account (CTA) on three occasions, in violation of rule 4-100(A) of the Rules of Professional Conduct. The State Bar does not contest this ruling on appeal. We agree with the hearing judge and discuss only the 12 remaining UPL counts.

Agreement) from the "Law Office of Richard A. Lenard" (Law Firm). All of the Legal Service Agreements were signed by both the client and someone on behalf of the "Law Office of Richard Lenard, by Richard Lenard, Attorney at Law." Nowhere in the Legal Service Agreement did it specify that Lenard was licensed to practice law only in California. Rather, the Agreement stated:

> Client acknowledges that the attorneys that comprise Law Firm are *not licensed to practice in all states*. Law Firm will use its best efforts to respond to and prevent creditors from unlawfully contacting or harassing client. Client acknowledges that Law Firm cannot guarantee that certain creditors will stop collection efforts or harassment of Client, however, in that event, Law Firm will recommend a course of action to Client, including but not limited to, assisting Client in locating an attorney licensed to practice law in the appropriate state to address creditor's actions. (Italics added.)

The Legal Service Agreement described the scope of services as follows:

> Client is hiring Law Firm for the purpose of negotiating the settlement of certain unsecured debts that Client chooses to include within the scope of Law Firm's representation. Law firm will contact the unsecured creditors included in this representation . . . to advise them that Law Firm is representing Client and that all communications related to the debt(s) in question should be directed to Law Firm.

The Agreement further listed Lenard's obligations to "competently perform the legal services described above and otherwise required under this agreement." In a separate section, the Agreement also stated that "Client authorizes Law Firm to take appropriate and legal actions as Law Firm deems necessary to settle client's accounts included in this representation . . . ."

After the Legal Service Agreements were signed, at least nine of the clients received welcome letters from Lenard, bearing the letterhead "Law Offices of Richard A. Lenard."[3] The welcome letters advised: "If you are contacted by any creditors and debt collectors we strongly advise you not to speak to them, allow us to be your one single voice. If you feel you must speak to them, please read verbatim from the script we provided to place [them] on notice that you are now represented by our law firm." If Lenard sent cease-and-desist letters to creditors, he also included copies of those letters. None of the welcome letters specified that Lenard was licensed to practice law only in California.

C. Cease-and-Desist Letters

Lenard spent approximately 15 to 20 minutes on each of the 12 client matters at issue. The only work he performed on these cases was reviewing the files in order to authorize non-attorney staff to send cease-and-desist letters to creditors, and determining that none of the clients were good candidates for bankruptcy. Lenard concedes that he had no knowledge of the debt collection or bankruptcy laws specific to each of the nine states.[4]

3. The record does not contain welcome letters sent to clients Fisher (Pennsylvania resident), Quintana (Nevada resident), or Liesinger (South Dakota resident).

4. See, e.g., 11 U.S.C. § 522(b) (bankruptcy exemptions based on state or local laws of debtor's domicile).

The cease-and-desist letters Lenard sent to his clients' creditors bore the letterhead "Law Office of Richard A. Lenard." In these letters, Lenard advised each creditor that he had "been retained . . . to stop creditor calls while the client organizes finances." He instructed the creditors not to contact his clients or they would "take appropriate legal action to have the contacts permanently stopped." These cease-and-desist letters were sent to creditors located in various states, including Utah, Delaware, and Georgia. The cease-and-desist letters did not specify that Lenard was licensed to practice law only in California.

In spite of Lenard's cease-and-desist letters, many clients were contacted by creditors. Some became subject to collection litigation. Several clients contacted Lenard to seek guidance but he did not respond. Based on Lenard's inaction, at least two of these clients, Hector Quintana and Lee Ann Liesinger, requested refunds of approximately $3,800 each. In response to their demands, both received letters of disengagement from Lenard, advising that he would no longer represent them and warning: "Please be advised that most jurisdictions have limitations, such as time or manner, in which to bring certain legal defenses or causes of action. These may be critical to preserving your rights or remedies. You are strongly advised to immediately seek local counsel in your area." Lenard never met with any of the 12 clients, nor did he appear in court in any of the nine states.

II. THIS COURT MAY DETERMINE WHETHER LENARD HAS ENGAGED IN UPL

As a preliminary matter, Lenard challenges the authority of the State Bar to bring charges based on violations of professional responsibility rules in other states, and the jurisdiction of this court to apply laws and regulations outside of California in this proceeding. These contentions lack merit.

[1] Rule 1-300(B) of the Rules of Professional Conduct[5] provides: "A member shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction." In order to find culpability under this rule, we must necessarily determine whether a California attorney has violated professional regulations in a foreign jurisdiction. (*In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 903 [California attorney culpable of practicing law and holding herself out as entitled to practice law in violation of South Carolina statute].) Thus, we examine the applicable authority from the nine states listed in the NDCs to determine whether Lenard violated rule 1-300(B) by practicing law in violation of the regulations of those states.

III. CULPABILITY

A. Lenard Committed 12 Violations of Rule 1-300(B)

In 12 counts, the State Bar alleges that Lenard violated rule 1-300(B) by committing UPL in nine different states by practicing law without complying with local practice rules in willful violation of each state's professional regulations. We agree with the hearing judge that Lenard is culpable of all 12 counts of UPL, although we base our conclusions on different legal grounds.

The relevant details of the alleged violations are summarized below. Our analysis is divided into two groups with substantially similar laws: (1) Wisconsin and New York; and (2) the seven remaining states.

5. All further references to rules are to this source unless otherwise noted.

NDC	Count	Case No.	Client Name	Retainer Date	Client's Residency	Cease-and-Desist Letters Sent
NDC I	One	09-O-11175	Powell	7/08	Oklahoma	4 on 7/31/08
NDC I	Two	09-O-13870	Curry	12/08	Georgia	3 on 12/30/08
NDC I	Three	09-O-14231	Atha	2/09	Florida	4 on 3/5/09
NDC I	Four	09-O-16534	Fisher	1/09	Pennsylvania	3 on 1/28/09
NDC I	Five	09-O-16777	Burgess	12/08	Wisconsin	5 on 12/12/08
NDC I	Six	09-O-18627	Manfredi	9/08	New York	3 on 11/4/08
NDC I	Seven	10-O-00425	Jarrett	10/08	Florida	3 on 9/8/08
NDC II	One	10-O-02737	Quintana	7/09	Nevada	8 on 8/4/09
NDC II	Two	10-O-05950	Peguero	12/08	Florida	3 on 1/13/09
NDC II	Three	10-O-07962	Ledford	4/09	Kentucky	No evidence
NDC II	Four	10-O-10524	Padayao	6/09	Nevada	5 on 7/31/09
NDC II	Five	10-O-11144	Liesinger	11/08	South Dakota	No evidence

1. Lenard Committed UPL in Wisconsin and New York (NDC I, Counts 5 & 6)

[2a] In Wisconsin and New York, no person may practice law in the state unless currently licensed there.[6] (Wis. Sup. Ct. R. 23.02(1); N.Y. Jud. Law § 478.) Both states also prohibit holding oneself out as entitled to practice or representing the authority to practice without a license. (*Ibid.*) Lenard contends that the only actions he took – signing the Legal Service Agreements and authorizing the cease-and-desist letters – did not violate the provisions of these states. We disagree.

[2b] Lenard practiced law and held himself out

6. Limited exceptions to this rule are not applicable here.

as an attorney with the authority and knowledge to settle consumer debts to Wisconsin and New York clients Burgess and Manfredi, respectively. He also represented to their creditors that they should follow debt collection laws or his clients were prepared to take legal action. In addition, Lenard claims he reviewed their files to determine whether they should file bankruptcy, although he admitted he was "not licensed to do a bankruptcy out of state." Wisconsin and New York have both considered conduct similar to Lenard's to constitute UPL. (*Junior Ass'n. of Milwaukee Bar v. Rice* (Wis. 1940) 294 N.W. 550, 557 [practice of law includes rendering advice about settlements of claims or legal rights]; *Carter v. Flaherty* (N.Y. App. Term 2012) 953 N.Y.S.2d 814, 816 [practice of law includes giving legal advice, promising to give legal advice in future, and holding oneself out to public as capable of giving legal advice].) Accordingly, we conclude Lenard committed UPL in violation of Wisconsin and New York authorities, and by so doing, he violated rule 1-300(B).[7]

2. Lenard Committed UPL in Oklahoma, Georgia, Florida, Pennsylvania, Nevada, Kentucky, and South Dakota (NDC I Counts 1, 2, 3, 4, and 7; NDC II Counts 1, 2, 3, 4, and 5)

a. Lenard violated the applicable rules of professional conduct.

[3a] In the remaining seven states, the relevant UPL rules of professional conduct are either identical or substantially similar to the American Bar Association's Model Rules of Professional Conduct (ABA Model Rules), rule 5.5(b).[8] This rule prohibits a lawyer who is unlicensed in a state from either: (1) establishing "an office or other systematic and continuous presence" in the state; or (2) holding "out to the public or otherwise represent[ing] that the lawyer is admitted to practice law" in the state. The hearing judge found that Lenard established a systematic and continuous presence in each of the jurisdictions listed in the NDCs. Based on the limited record, we do not find clear and convincing evidence of this proscription.[9] However, we find that Lenard committed UPL by holding himself out as entitled to practice law in each of the seven states for a total of ten willful violations of rule 1-300(B).

[3b] Our analysis of UPL is not confined to a consideration of the content or underlying purpose of the Legal Service Agreements or cease-and-desist letters. We also look to the form of these communications – specifically, the use of the term "The Law Offices of Richard Lenard" and the representations that this office was acting as the "law firm" for the clients and providing "legal services." By failing to make clear that he was *only* licensed to practice law in California, these representations are evidence that Lenard held himself out as entitled to practice to clients and creditors in states in which he was unlicensed.

[3c] By implying he was licensed in the relevant states, Lenard gave the false impression to his clients and their creditors that he held an advantage over a non-attorney debt negotiator. He explicitly represented to the clients that he would provide legal services, and informed creditors that he was representing each client utilizing his law office letterhead. The written communications Lenard provided to

7. Each violation meets the state's applicable standard of proof. (*In re Disciplinary Proceedings Against Crandall* (Wis. 2011) 798 N.W.2d 183, 196 [violations must be proved by clear, satisfactory, and convincing evidence]; *In re Capoccia* (N.Y. App. Div. 2000) 272 A.D.2d 838, 844 [standard of proof in civil enforcement proceedings charging attorneys with professional misconduct is fair preponderance of evidence].)

8. All seven states have adopted a version of this rule with the same UPL restrictions. (Okla. Stat. tit. 5, ch. 1, app. 3-A, R. Prof. Conduct, r. 5.5(b); Ga. Code, State Bar R. & Regs., r. 4-102, R. Prof. Conduct, r. 5.5(b); Fla. Stat., Bar r. 4-5.5(b); 42 Pa. Cons. Stat., R. Prof. Conduct, r. 5.5(b); Ky. Rev. Stat., R. Sup. Ct., r. 3.130(5.5(b)); Nev. Rev. Stat., R. Prof. Conduct, r. 5.5(d)(2); S.D. Codified Laws, R. Prof. Conduct, app., ch. 16-18, r. 5.5(b).)

9. Clear and convincing evidence requires a finding of high probability that is so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

clients (and their creditors) in those states are evidence that he violated the applicable rules of professional conduct, as well as relevant case law and advisory authority. (*State ex rel. Oklahoma Bar Ass'n. v. Samara* (Okla. 1989) 775 P.2d 806, 807-808 [misleading use of "Attorney at Law" on suspended attorney's letterhead constitutes UPL]; *In re UPL Advisory Opinion 2003-1* (Ga. 2005) 623 S.E.2d 464 [non-attorney representing debtor in debt settlement negotiations committed UPL]; *The Florida Bar v. Tate* (Fla. 1989) 552 So.2d 1106, 1107 [out-of-state attorney engaged in UPL by handing out business cards that did not properly disclaim he was not licensed in Florida]; *Ginsburg v. Kovrak* (Pa. 1957) 11 Pa. D. & C.2d 615 [out-of-state attorney licensed in federal courts who used terms "law office" and "attorney at law" on business cards and stationery for his tax consulting business engaged in UPL]; *Discipline of Lerner* (Nev. 2008) 197 P.3d 1067, 1074-1075 [out-of-state attorney committed UPL by negotiating settlement of client insurance claims and signing demand letters]; *Kentucky Bar Ass'n. v. Brooks* (Ky. 2010) 325 S.W.3d 283, 289-290 [non-attorney who advertised "Legal Self Help" business in "Attorneys" section of yellow pages committed UPL by creating misleading impression]; *Steele v. Bonner* (S.D. 2010) 782 N.W.2d 379, 386-387 [unlicensed law school graduate engaged in UPL by rendering legal advice and holding herself out as attorney].)[10]

b. Lenard's conduct does not fall into any exception for the temporary practice of law.

[4a] In addition to defining UPL, ABA Model Rule 5.5 also provides "safe harbor provisions," which permit temporary practice in certain specified circumstances by lawyers licensed in other states.[11] We find that Lenard's conduct does not fall under any of the safe harbor provisions.

[4b] First, Lenard appears to argue that he is not culpable of UPL because one of the exceptions under ABA Model Rule 5.5(c)(4) applies, i.e., his legal services were reasonably related to his practice in California. He contends that all work was done in California and any legal opinions rendered were based on California law. However, the factors

10. Each violation meets the state's applicable standard of proof for attorney misconduct, with five states requiring proof by clear and convincing evidence and two states requiring a preponderance of the evidence. (*State ex rel. Oklahoma Bar Ass'n. v. Zimmerman* (Okla. 2012) 276 P.3d 1022, 1027 [clear and convincing]; *The Florida Bar v. Forrester* (Fla. 2005) 916 So.2d 647, 651 [clear and convincing]; *Discipline of Lerner, supra*, 197 P.3d at p. 1075 [clear and convincing]; *In re Setliff* (S.D. 2002) 645 N.W.2d 601, 605 [clear and convincing]; Ga. R. Prof. Conduct, r. 4-221(e)(2) [clear and convincing]; see also *Office of Disciplinary Counsel v. Kiesewetter* (Pa. 2005) 889 A.2d, 47, 54, fn. 5 [preponderance of evidence]; *Kentucky Bar Ass'n. Craft* (Ky. 2006) 208 S.W.3d 245, 262 [preponderance of evidence].)

11. The relevant provisions of ABA Model Rule 5.5 provide:
(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that: (1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter; (2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized; (3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or (4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.
(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:
(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or (2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

defined in comment 14 of the ABA Model Rule[12] compel our conclusion that Lenard was not entitled to practice law even on a temporary basis in these states. Analyzing those factors, we find that he had no prior contact with the clients and they never lived in California or had substantial contact with this state. There is no evidence that California law would be relevant to any of the consumer debts in these matters. Further, Lenard has no knowledge of the specific laws of the states in which the clients resided, where they faced state collection actions and may have had assets. As such, the contact with these out-of-state clients was not reasonably related to Lenard's practice in California, and he was not authorized to provide legal services on a temporary basis under the states' versions of ABA Model Rule 5.5(c). (See Supreme Court of Ohio Board of Commissioners on Grievances & Discipline, Opn. 2011-2 (Oct. 7, 2011) Multijurisdictional Practice and Debt Settlement Legal Services [rule 5.5(c) of the Ohio Rules of Professional Conduct did not authorize out-of-state debt settlement attorneys to provide legal services on temporary basis in that state].)

[4c] Likewise, we reject any contention by Lenard that ABA Model Rule 5.5(d)(2) enabled him to provide legal services related to bankruptcy law. Primarily, Lenard's proposed services were not limited to issues of bankruptcy. More importantly, as Lenard admitted, he was not admitted to practice law in the federal courts in any of the seven states, and therefore, he was not authorized to provide bankruptcy services.

In conclusion, Lenard improperly held himself out as entitled to practice law and practiced law in Oklahoma, Georgia, Florida, Pennsylvania, Nevada, Kentucky, and South Dakota. Thus, there is clear and convincing evidence he committed UPL and violated rule 1-300(B) in the ten counts of misconduct alleged in these seven states.

IV. AGGRAVATION OUTWEIGHS MITIGATION

The offering party bears the burden of proving aggravating and mitigating circumstances. The State Bar must establish aggravating circumstances by clear and convincing evidence (std. 1.2(b)), while Lenard has the same burden to prove mitigating circumstances (std. 1.2(e)).

A. Three Factors in Aggravation

1. Prior Record of Three Disciplines (Std. 1.2(b)(i))

Lenard's prior record of three disciplines is a very significant factor in aggravation. First, on March 19, 2003, the Supreme Court ordered Lenard placed on two years of suspension, stayed, with conditions including three years of probation and a one-year actual suspension that would continue until he paid more than $6,000 in restitution to two clients. (Supreme Court S112319 (*Lenard I*).) Lenard's misconduct involved his failure to supervise employees managing his CTA, resulting in the misappropriation of funds from five clients. Lenard stipulated to failing to maintain $19,760 in client funds in his CTA, failing to adequately supervise his employees handling financial records from December 1996 through March 1998, and moral turpitude in the resulting breach of his fiduciary duties toward his clients. There was no mitigation, and in aggravation were Lenard's failure to account for entrusted funds, harm to clients, and multiple acts of misconduct and/or a pattern of misconduct.

Second, on January 13, 2005, the Supreme Court ordered Lenard placed on one year of suspension, stayed, with conditions including two years of probation and a 30-day actual suspension. (Supreme Court S128824 (*Lenard II*).) Lenard willfully failed to

12. The factors are: "The lawyer's client may have been previously represented by the lawyer, or may be resident in or have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each. In addition, the services may draw on the lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally uniform, foreign, or international law."

remove his former law partner's name from his CTA until May 2002, even though the partner had been disbarred in March 2001. He also failed to promptly pay funds to another client whose settlement check was embezzled by the same office staff involved in the misconduct in *Lenard I*. Lenard was ordered to pay over $11,000 in restitution. Lenard's prior record of discipline was an aggravating factor. There was no mitigation.

Third, on October 13, 2010, the Supreme Court ordered Lenard placed on two years of suspension, stayed, with conditions including two years of probation and a one-year actual suspension. (Supreme Court S185110 (*Lenard III*).) Lenard stipulated that he violated his probation from *Lenard II* by failing to timely submit six quarterly reports to the State Bar Office of Probation from October 2005 until February 2007, and by failing to make restitution to the former client. At the time of the stipulation, he had only paid $1,500 of the more than $11,000 owed. Lenard's prior record of discipline was a factor in aggravation. He received credit in mitigation for cooperation in the discipline proceedings to the extent he stipulated to facts, conclusions of law, and level of discipline.

2. Multiple Acts/Pattern of Misconduct (Std. 1.2(b)(ii))

[5] We agree with the hearing judge that Lenard's misconduct is aggravated by its repetition. His 12 acts of misconduct also constitute a pattern of UPL across 9 different states.

3. Bad Faith and Dishonesty (Std. 1.2(b)(iii))

[6] The hearing judge found bad faith and dishonesty in aggravation based on Lenard's use of deceptive and misleading Legal Service Agreements in each of the 12 client matters. Not only did Lenard's Agreements and letters falsely imply that he could provide legal representation in the nine states, they also advised the clients to cease contact with their creditors because he was representing their interests. But after sending out cease-and-desist letters, he provided no other services. The Agreements also advised the clients that Lenard would help them find local counsel if necessary, but Lenard terminated representation of at least two clients and merely advised them to seek local counsel. Further, the scope of services included negotiating debt settlements when Lenard had no specific knowledge of debt collection laws in the states where the clients resided. We conclude that Lenard's representations involve bad faith and dishonesty, and constitute a significant aggravating factor.

[7] The hearing judge also found in aggravation that the record established uncharged violations of rules 3-310(F)(3) (accepting compensation from one other than client without client's informed written consent) and 3-110(A) (failure to perform competently) in each of the client matters. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 35-36 [evidence of uncharged misconduct can be considered in aggravation].) But here, we decline to find this uncharged misconduct because the State Bar had ample opportunity but did not move to amend the NDCs to include these charges. Thus, Lenard did not have sufficient notice or opportunity to defend against them. (*In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315, 341.)

B. One Factor in Mitigation

[8] The hearing judge afforded significant mitigating credit for cooperation in these proceedings after Lenard entered into an extensive stipulation as to facts and admission of documents. However, Lenard did not stipulate to culpability and continues to dispute it. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive weight in mitigation accorded those who admit culpability as well as facts].) Accordingly, we diminish the weight given to this factor.

V. MISCONDUCT CALLS FOR DISBARMENT

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. 1.3.) We balance all relevant factors, including mitigating and aggravating circumstances, on a case-by-case basis to ensure that the discipline imposed is consistent with its purpose. (*In re Young* (1989) 49 Cal.3d 257, 266.) Our analysis begins with the standards. The Supreme Court has instructed that we should follow them "whenever possible" (*Id.* at p. 267, fn. 11), and give them great weight to promote "the consistent and uniform application of disciplinary measures." (*In re Silverton* (2005) 36 Cal.4th 81, 91, internal quotations and citation omitted.) We focus on standard 1.7(b), which is the most severe and deals with disciplinary recidivism.

Standard 1.7(b) provides that an attorney who commits professional misconduct who "has a record of two prior impositions of discipline . . . shall be disbar[red] unless the most compelling mitigating circumstances clearly predominate." The standard suggests disbarment in cases, such as this one, with multiple disciplines and little or no mitigation. (E.g., *Barnum v. State Bar* (1990) 52 Cal.3d 104, 113 [disbarment under std. 1.7(b) imposed where no compelling mitigation]; compare *Arm v. State Bar* (1990) 50 Cal.3d 763, 778-779, 781 [disbarment under std. 1.7(b) not imposed where compelling mitigation included lack of harm and no bad faith].) Since Lenard did not present compelling mitigation, we see no reason to depart from disbarment as provided for under the standard.

[9] Notably, Lenard's prior record of discipline reveals a "disturbing repetitive theme" of failing to comply with ethical obligations over the course of 15 years, which began only five years after he was admitted to the Bar. (*In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 841.) From 1996 until 1998, he failed to supervise his employees, who embezzled funds from his CTA in six client matters. His misconduct continued from 2001 to 2002, when he failed to uphold his duties to remove his disbarred partner's name from the firm CTA. And despite the opportunity to reform, Lenard's misconduct persisted from 2005 until 2010, when he did not meet his obligations to file several probation reports and make restitution. In the midst of these ongoing failures to meet the ethical requirements of his license in California, Lenard engaged in employment in which he performed little or no services of value to his clients and traded on his title of "attorney" while violating professional regulations in nine other states. Requiring legal services to be performed by licensed attorneys in each state "ensure[s] that the public is served by those who have demonstrated training and competence and who are subject to regulation and discipline." (*Discipline of Lerner, supra,* 197 P.3d at p. 1072.) Lenard's misuse of his California license to thwart the regulations of other states placed his out-of-state clients and the public in general at risk of considerable harm due to his ongoing issues of competency.

Considering his past and present misconduct, it appears that Lenard is either "unwilling or unable" to conform his behavior to the rules of professional conduct. (*Barnum v. State Bar*, *supra*, 52 Cal.3d at p. 111.) "We believe that the risk of [Lenard] repeating this misconduct would be considerable if he were permitted to continue in practice." (*McMorris v. State Bar* (1983) 35 Cal.3d 77, 85.) Disbarment is warranted and necessary to protect the public, the courts and the legal profession.

VI. RECOMMENDATION

We recommend that Richard Allen Lenard be disbarred and that his name be stricken from the roll of attorneys.

We further recommend that he must comply with rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule, within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.

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

VII. ORDER

The order that Lenard be enrolled as an inactive member of the State Bar pursuant to Business and Professions Code section 6007, subdivision (c)(4), effective June 9, 2012, will continue, pending the consideration and decision of the Supreme Court on this recommendation.

WE CONCUR:

EPSTEIN, J.
PURCELL, J.