NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re: The Disciplinary Proceedings of MARK R. HAMILTON	Case No. 2:17-mp-00108-PC **MEMORANDUM RE: MARK REMAN HAMILTON'S REQUEST FOR REHEARING AND CLARIFICATION OF DECISION**

Before the court is Mark Reman Hamilton's Request for Rehearing and Clarification of Decision ("Motion") filed on December 19, 2017, in which Mark Reman Hamilton ("Hamilton") seeks a reconsideration of this court's Memorandum Decision Imposing Two Year Minimum Suspension, With Conditions for Reinstatement ("Memorandum Decision") and Order Imposing Two Year Minimum Suspension, With Conditions for Reinstatement ("Order") entered on December 5, 2017. Having considered Hamilton's Motion and the evidence in support thereof and having reviewed the Memorandum Decision and Order in light of the Motion and supporting evidence, the court will dispense with oral argument and deny Hamilton's Motion based upon the following findings of fact and conclusions of law made pursuant to F.R.Civ.P. 52(a), as incorporated into FRBP 7052 and applied to contested matters by FRBP 9014(c).[1]

[1] Unless otherwise indicated, all "Code," "chapter" and "section" references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330. "Rule" references are to the Federal Rules of Bankruptcy Procedure ("FRBP"), which make applicable certain Federal Rules of Civil

I. STATEMENT OF FACTS

On May 8, 2017, Judge Erithe Smith filed a Statement of Cause (Referral for Discipline of Mark R. Hamilton Pursuant to Fourth Amended General Order 96-05) ("Statement of Cause") in the above referenced case. Hamilton was attorney of record for Elisabeth Mary Ziesmer ("Ziesmer"), Hamilton's girlfriend and debtor in Case No. 8:16-bk-13472-ES, In re Elisabeth Mary Ziesmer, Debtor, pending in the United States Bankruptcy Court, Central District of California, Santa Ana Division. Hamilton was duly served with the Statement of Cause, together with a copy of the court's Fourth Amended General Order 96-05 containing the disciplinary procedures adopted by the court and notice of the date, time and place of his disciplinary hearing. In response to the Statement of Cause, Hamilton filed and served a memorandum of points and authorities on September 1, 2017, and his declaration under penalty of perjury on September 25, 2017. After a hearing on October 2, 2017, at which Hamilton appeared with counsel and was given a further opportunity to present evidence and argument in response to the Statement of Cause, the panel took the matter under submission.

On December 5, 2017, the panel issued its Order which, in pertinent part, imposed the following sanctions on Hamilton for the misconduct detailed in the Statement of Cause based upon the findings of fact and conclusions of law set forth in its Memorandum Decision:[2]

> ORDERED that attorney Mark R. Hamilton, Esq. is suspended from admission to appear before any judge of this Bankruptcy Court for the Central District of California for a period of not less than two years from the date of entry of this order; and it is further
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> ORDERED that thereafter Mr. Hamilton may apply to the Chief Judge of this Bankruptcy Court for reinstatement, pursuant to the procedures set forth below and in Fourth Amended General Order 96-05 (as it may be further amended from time to time); and it is further

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Procedure ("F.R.Civ.P."). "LBR" references are to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California ("LBR").

[2] The Memorandum Decision's findings of fact and conclusions of law are adopted and incorporated herein by reference as though fully set forth herein.

> ORDERED that to be eligible for reinstatement Mr. Hamilton must present admissible evidence of (a) rehabilitation from the psychological and physical impairments that allegedly have impaired his judgment as described in the accompanying Memorandum Decision, or any treatments or medications that are sufficient to mitigate or counteract the effects of those impairments on his judgment, and (b) that he has completed not less than three hours of continuing legal education on the topic of ethics, plus not less than six hours on the topic of bankruptcy[.][3]

On December 19, 2017, Hamilton filed the Motion seeking both reconsideration of the panel's decision to impose a two-year suspension and reduction of the sanction imposed by the panel to an admonition.

II. DISCUSSION

This court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157(b) and 1334(b). This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A). See Price v. Lehtinen (In re Lehtinen), 332 B.R. 404, 410-11 (9th Cir. BAP 2005) ("[A]s the acts or actions on which Price's suspension was predicated took place in the course of his representation of debtor in matters central to the administration of her case, the disciplinary proceeding fits comfortably within the ambit of a core proceeding."), aff'd, 564 F.3d 1052 (9th Cir. 2009), cert. denied, 558 U.S. 1048 (2009). Venue is appropriate in this court. 28 U.S.C. § 1409(a).

A. Reconsideration Under F.R.Civ P. 59(e).

Hamilton's Motion seeks "reconsideration of the findings in the Memorandum of Decision, and rehearing and clarification of the Decision, . . . on the grounds that the period of suspension is unreasonable."[4] A motion to alter or amend a judgment under F.R.Civ.P. 59(e), as incorporated into FRBP 9023, must be filed no later than 14 days after entry of judgment. FRBP 9023. When reconsideration is sought within 14 days after entry of the judgment, the motion is treated under Rule 59(e) rather than Rule 60. See Am. Ironworks & Erectors, Inc. v. N. Am. Constr. Corp., 248 F.3d 892, 899 (9th Cir. 2001) ("[A] 'motion for reconsideration' is treated as a motion to alter or amend judgment under Federal Rule of Civil Procedure 59(e) if it is filed

[3] Order, 1:21-2:7.

[4] Motion, 1:22-25.

within [28] days of entry of judgment." (citation omitted)). "Otherwise, it is treated as a Rule 60(b) motion for relief from judgment or order." Id. In this case, Hamlton's Motion was filed on December 19, 2017 – 14 days after entry of the Memorandum Decision and Order on December 5, 2017. Therefore, the court's analysis must proceed under Rule 59(e).

Reconsideration under F.R.Civ.P. 59(e) is "an extraordinary remedy which should be used sparingly." Allstate Ins. Co. v. Herron, 634 F.3d 1101, 1111 (9th Cir. 2011) (citation omitted); see Kona Enters., Inc. v. Estate of Bishop, 229 F.3d 877, 890 (9th Cir. 2000) (""[T]he rule offers an 'extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources.'" (citation omitted)). "[A] motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." 389 Orange St. Partners v. Arnold, 179 F.3d 656, 665 (9th Cir. 1999). Reconsideration may also be granted "as necessary to prevent manifest injustice." Navajo Nation v. Confederated Tribes & Bands of the Yakima Indian Nation, 331 F.3d 1041, 1046 (9th Cir. 2003).

The Ninth Circuit has emphasized that "[a] Rule 59(e) motion may *not* be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." Kona Enters., 229 F.3d at 890. Nor is Rule 59 is "a vehicle for re-litigating old issues, presenting the case under new theories, securing a rehearing on the merits, or otherwise taking a 'second bite at the apple.'" Sequa Corp. v. GBJ Corp., 156 F.3d 136, 144 (2d Cir. 1998); see Phillips v. C.R. Bard, Inc., 290 F.R.D. 615, 670 (D. Nev. 2013) ("[M]otions for reconsideration are not the proper vehicles for rehashing old arguments and are not intended to give an unhappy litigant one additional chance to sway the judge." (citation omitted)). "Whether or not to grant reconsideration is committed to the sound discretion of the court." Navajo Nation, 331 F.3d at 1046.

Hamilton does not allege an intervening change in controlling law. Nor does Hamilton allege that the court's ruling must be set aside to prevent manifest injustice. Hamilton argues

that the court committed clear error in ordering a two-year suspension rather than an admonition as a disciplinary sanction based upon the facts and circumstances of the case. Hamilton further argues that the court should consider "new information, not previously available to [him] at the time of the hearing."[5]

B. Application of the ABA Standards for Imposing Lawyer Sanctions Are Discretionary, Not Mandatory.

Hamilton claims that "[a] bankruptcy court must expressly and overtly consider the ABA Standards for attorney sanctions in its decision regarding sanctions" and that its "failure to consider such factors constitutes an abuse of discretion," citing In re Brooks-Hamilton, 400 B.R. 238, 254 (9th Cir. BAP 2008). Hamilton is mistaken.

"Bankruptcy courts have the inherent authority to regulate the practice of attorneys who appear before them." In re Nguyen, 447 B.R. 268, 280 (9th Cir. BAP 2011). "Such authority is 'necessary to maintain the respectability and harmony of the bar, as well as to protect the public.'" Brooks-Hamilton, 400 B.R. at 247 (quoting Gadda v. Ashcroft, 377 F.3d 934, 948 (9th Cir. 2004) (citations omitted)).

Six years ago, the Ninth Circuit Bankruptcy Appellate Panel ("BAP") in In re Nguyen rejected the notion that a bankruptcy court must apply the ABA Standards for Imposing Lawyer Sanctions ("ABA Standards") in determining an appropriate sanction for attorney misconduct, stating:

> [W]e modify our holding in Crayton, such that the failure of a bankruptcy court to apply each criterion of the ABA Standards in imposing sanctions for attorney misconduct will no longer constitute an abuse of discretion. Bankruptcy courts remain free to consult the ABA Standards when formulating sanctions; however, it is not reversible error if a bankruptcy court does not do so.

447 B.R. 268, 277-78 (9th Cir. BAP 2011). In so holding, the BAP noted that:

> While the ABA Standards do promote a certain level of consistency for attorney discipline, requiring explicit consideration of the ABA Standards in determining the reasonableness of sanctions is too restrictive. As noted in Brooks-Hamilton, requiring a bankruptcy court to "slavishly intone" the ABA Standards makes little sense given that sanctions are within the sound discretion of the bankruptcy court,

[5] Id. at 2:11-12.

> and that deference should be given to bankruptcy courts' choice of sanction in that they have "the inherent power to run the type of courtroom that they believe best serves justice."

Id. at 277 (quoting In re Brooks-Hamilton, 400 B.R. 238, 255 (9th Cir. BAP 2009) (Markell, J., concurring). Therefore, the appropriateness of a particular sanction now hinges upon whether (1) the sanctions proceeding was fair; (2) the court's findings of fact are supported by the evidence; and (3) the sanctions imposed are reasonable. Id. at 278 ("Having determined that it is not an abuse of discretion for the bankruptcy court not to address the ABA Standards in imposing sanctions, the balance of our inquiry examines whether the bankruptcy court's sanctions . . . were fair, supported by the evidence, and reasonable.").

C. Hamilton's Disciplinary Proceeding Was Fair.

Hamilton's disciplinary proceeding was commenced on May 8, 2017. Hamilton was timely served with the Statement of Cause. He received advance notice of his alleged misconduct, the potential sanctions that could be imposed for such misconduct, the date and time of the hearing, and a reasonable time to respond. Hamilton filed and served a written response to the Statement of Cause, and provided declaration testimony in support of his response. Hamilton did not question the bankruptcy court's authority to impose sanctions. Hamilton then appeared with counsel at the disciplinary hearing on October 2, 2017, and was given a further opportunity to present evidence and argument to explain his conduct.

Hamilton complains that his ability to discuss the details surrounding his misconduct was hampered by the attorney-client privilege. Noting that his client's deposition is scheduled to be taken by the United States trustee in an unrelated matter on or after December 22, 2017, Hamilton asks that "the discipline matter be held in abeyance until such time as the [United States trustee] completes the planned deposition of the debtor, at which time Hamilton will be able to determine whether the debtor waives the attorney client privilege so that he is free to provide additional information to the panel in reference to this bankruptcy matter."[6]

[6] Id. at 5:19-22.

To obtain reconsideration on grounds of newly-discovered evidence, Hamilton must show that "the evidence (1) existed at the time of the trial; (2) could not have been discovered through due diligence, and (3) was 'of such magnitude that production of it earlier would have been likely to change the disposition of the case.'" Jones v. Aero/Chem Corp., 921 F.2d 875, 878 (9th Cir. 1990 (citation omitted). Reconsideration may be granted for newly discovered evidence, not yet-to-be-created evidence.

We do not see how the attorney-client privilege prevented Hamilton from presenting a full and complete response to the Statement of Cause. At the hearing on October 2, 2017, Hamilton through counsel admitted that he was not contesting the findings of fact and conclusions of law made by Judge Smith on April 4, 2017, and that the only issue before the disciplinary panel was "the appropriate sanction for what occurred."[7] Hamilton acknowledged that discussions with his client were protected by the attorney-client privilege, but he did not complain that such privileged communications were vital to his defense of the charges that formed the basis for the disciplinary proceeding. There is no evidence that Hamilton sought, and his client refused, a waiver of the attorney-client privilege before he filed and served his response to the Statement of Cause or appeared at the hearing. Nor did Hamilton seek a continuance of the disciplinary hearing to obtain such a waiver. Assuming the deposition is ultimately taken, the post-hearing deposition testimony itself does not constitute "newly discovered evidence" because (1) it was not in existence at the time of Hamilton's disciplinary hearing; and (2) even if it was, its production would not have changed the disposition of the case. Ziesmer's statements made to Hamilton regarding her reasons and purpose for signing and filing false documents to mislead the court and her landlord have little relevance to Hamilton and the consequences of his own actions, particularly given Judge Smith's uncontested findings of fact and conclusions of law.

[7] Transcript of Proceedings in Case No. 2:17-mp-00108-PC, In re The Disciplinary Proceeding of Mark R. Hamilton ("Disciplinary Transcript") [Dkt. # 22] filed on November 13, 2017, at 9:16-17.

Finally, the fact that Hamilton has received post-hearing medical treatment with promising results does not merit reconsideration. Hamilton was given ample opportunity at the disciplinary hearing to present medical records and expert testimony regarding his medical condition, ongoing treatment, and prognosis for recovery. No evidence regarding his medical condition was offered at the hearing, other than his uncorroborated testimony. "Compelling policies of finality require that in the absence of exceptional circumstances, events occurring after a trial on the merits cannot justify the reopening of a judgment." Trinity County v. Andrus, 77 F.R.D. 29, 30 (E.D. Cal. 1977); see State of Wash. v. U.S., 214 F.2d 33, 46 (9th Cir.) ("The policy of law in having an end to litigation, would in most cases prevent the reopening of a case because of after-occurring events."), cert. denied, 348 U.S. 862 (1954). No such exceptional circumstances exist in this case.

In sum, the record demonstrates that Hamilton's disciplinary proceeding was fair and that the requirements of due process were satisfied. Hamilton understood the court's concerns regarding his conduct, and he was provided the requisite notice and an opportunity to be heard before the sanctions were imposed. The court declines to either stay its Memorandum Decision and Order or to reopen this disciplinary proceeding for additional evidence that was neither newly discovered since the hearing nor even in existence at the time of the hearing. The court will consider Hamilton's post-hearing medical treatment if and when Hamilton applies for reinstatement upon completion of his two-year suspension and the continuing legal education required by the Order.

D. The Court's Findings of Fact are Supported by the Evidence.

On April 4, 2017, Judge Smith made detailed findings of fact and conclusions of law regarding Hamilton's misconduct, including the following:

> 5. The Court concludes that the intentional omission of the landlord on the mailing matrix was done for an improper purpose, specifically, to hide from the landlord the fact that his tenant had filed a bankruptcy case. The intentional omission of the landlord from the mailing matrix has caused unnecessary delay and needless increase in the cost of litigation.

6. The Court concludes that counsel's actions have violated the provisions of F.R.B.P. Rule 9011.

7. Pursuant to the California Rules of Professional Conduct ("CRPC") Rule 3-210, a lawyer is prohibited from advising the violation of any law, rule or ruling or a tribunal unless he or she believes in good faith that such law, rule or ruling is invalid. ….

8. Pursuant to the California Rules of Professional Conduct Rule 5-200, in presenting a matter to a tribunal, a member (B) Shall not seek to mislead the judge, judicial officer, or jury by an artifice or false statement of fact or law.

9. The American Bar Association ("ABA") Model Rules prohibit lawyers from knowingly counseling or assisting clients to commit a crime or fraud.

10. Although California has not yet adopted a version of the ABA Model Rules, Model Rule 3.3 requires candor from an attorney towards the tribunal. Specifically Model Rule 3.3 subsection (a) provides that a lawyer shall not knowingly (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.

11. The Court concludes from the evidence presented, which includes the declarations filed by counsel and the Debtor along with the skeletal petition filed on August 17, 2016 and the Verification of Master Mailing List of Creditors, signed under penalty of perjury by both the Debtor and attorney Mark R. Hamilton, attesting to the truth and accuracy of the list of creditors, that both the Debtor and attorney Mark R. Hamilton knew that the Master Mailing List of Creditors was false.

12. The Court concludes that Mr. Hamilton knowingly signed and permitted his client to sign under penalty of perjury a document they knew was false.

13. The Court concludes that Mr. Hamilton made representations on the record at the October 20, 2016 hearing that call into question the veracity of the sworn statements he filed with the Court on behalf of himself and the Debtor.

14. The Court concludes that attorney Mr. Hamilton violated the California Rules of Professional Conduct, and specifically CRPC Rule 3.210; CRPC Rule 5-200, and F.R.B.P. Rule 9011.[8]

[8] Findings of Fact and Conclusions of Law in Support of the Granting of the U.S. Trustee's Motion for Order to Show Cause ("OSC") Why Attorney Mark R. Hamilton Should Not Be Referred to the Disciplinary Panel of the Central District of California entered in Case No. 8:16-bk-13472-ES, In re Elisabeth Mary Ziesmer, Debtor ("Findings & Conclusions") [Dkt. # 58] on April 4, 2017, at 5:16-6:27 (emphasis added).

Judge Smith referred Hamilton to the Disciplinary Panel of the Central District of California with a recommendation that he be suspended from the practice of bankruptcy law before this court.[9]

At the hearing on October 2, 2017, Hamilton did not contest Judge Smith's findings of fact and conclusions of law. Based on the record, the panel accepted Judge Smith's recommendation and imposed a two-year suspension from practice before the United States Bankruptcy Court for the Central District of California based on the gravity of Hamilton's misconduct and his apparent inability or unwillingness to squarely acknowledge the misconduct. The panel observed that Hamilton's actions not only jeopardized the interests of his client who may lose her discharge over the false statements, but they also served to erode public confidence in the bankruptcy system. Hamilton attacks the panel's imposition of a two-year suspension as unreasonable, but does not otherwise challenge the court's findings of fact as unsupported by the evidence.

E. The Sanctions Imposed by the Court are Reasonable.

At his disciplinary hearing, Hamilton argued that a simple admonition was a reasonable sanction given the facts and circumstances of the case. The court disagreed and ordered a two-year suspension. On reconsideration Hamilton again seeks an admonition arguing that "[t]wo-year' suspension is excessive when Hamilton's conduct is compared with the discipline imposed on other attorneys for even more serious conduct, who have a history of discipline and numerous violations."[10] Hamilton further states:

> Hamilton's conduct did not involve multiple incidents across multiple matters. Hamilton does not have a history of discipline. The court does not benchmark the period of suspension against comparable discipline. The two year suspension here does not take into consideration the fact that Hamilton acknowledged his conduct and decided not to contest the findings of fact and conclusions of law. Further Hamilton expressed remorse to the court through his multiple apologies. In addition, he has no prior record of discipline. Nor does the period of suspension imposed reflect the absence of any selfish motive on the part of

[9] Id. at 7:4-8.

[10] Motion, 4:6-8.

> Hamilton and the unusual concern he had for the plight of his girlfriend's family over the conduct of her landlord.[11]

Given Hamilton's intentional omissions and multiple misrepresentations knowing made to the court, a two-year suspension from practice before the United States Bankruptcy Court for the Central District of California is reasonable under the facts and circumstances of this case and the authorities cited by Hamilton in the Motion do not compel a conclusion to the contrary.

In Girardi the Ninth Circuit explained that misrepresentations to the court "cannot be taken lightly" because they erode the integrity of the judicial system:

> The vice of misrepresentation is not that it is likely to succeed but that it imposes an extra burden on the court. The burden of ascertaining the true state of the record would be intolerable if misrepresentation was common. The court relies on the lawyers before it to state clearly, candidly, and accurately the record as it in fact exists.

611 F.3d at 1037 (quoting In re Boucher, 837 F.2d 869, 871 (9th Cir. 1988). The Ninth Circuit in Girardi also pointed out that "[i]n assessing the appropriateness of a sanction, this court may consider, although it is not bound by, the ABA Standards for Imposing Lawyer Sanctions." Id. at 1035. "The ABA Standards provide a range of discipline for misrepresentations to the court, and the degree of discipline depends, in large measure, on the lawyer's mental state:

> 6.11. Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.
>
> 6.12. Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.
>
> 6.13. Reprimand is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

[11] Id. at 4:8-15.

> 6.14. Admonition is generally appropriate when a lawyer engages in an isolated instance of neglect in determining whether submitted statements or documents are false or in failing to disclose material information upon learning of its falsity, and causes little or no actual or potential injury to a party, or causes little or no adverse or potentially adverse effect on the legal proceeding.

Id. at 1038 (emphasis added).

"The ABA Standards set out aggravating and mitigating factors that justify an increase or reduction in the degree of discipline to be imposed." Id. at 1039. Aggravating factors include "a prior disciplinary offense, multiple offenses, a pattern of misconduct, or a refusal to acknowledge the wrongful nature of the conduct." Nguyen, 447 B.R. at 277. Mitigating circumstances include "the absence of a prior disciplinary record, personal or emotional problems, inexperience in the practice of law, or a timely good faith effort to make restitution or to rectify the consequences of the misconduct. Id. "[S]ubstantial legal experience may also be an aggravating factor, because an experienced attorney should know better than to engage in conduct that merits discipline." Girardi, 611 F.3d at 1039.

Based on the record in this case, Hamilton's conduct falls squarely between Standards § 6.11 and § 6.12. Judge Smith's uncontested findings of fact and conclusions of law established that Hamilton was guilty of the following misconduct:

> 1. Hamilton intentionally omitted Ziesmer's landlord from the mailing matrix "for an improper purpose, specifically to hide from the landlord the fact that his tenant had filed a bankruptcy case," and Hamilton's intentional omission "caused unnecessary delay and needless increase in the cost of litigation.[12]
>
> 2. Hamilton knowingly signed a Verification of Master Mailing List of Creditors under penalty of perjury attesting to the truth and accuracy of the creditor list when, in fact, Hamilton knew it was false.
>
> 3. Hamilton knowingly permitted his client, Ziesmer to sign a Verification of Master Mailing List of Creditors under penalty of perjury attesting to the truth and accuracy of the creditor list when, in fact, Hamilton knew it was false.
>
> 4. In a declaration signed under penalty of perjury and filed it with the court on October 11, 2016, Hamilton stated that "Debtor did not intend that her landlord

[12] Findings & Conclusions, 5:16-20.

should have any knowledge of her bankruptcy, which is the reason she left his name off the creditor list."[13]

5. In a declaration signed under penalty of perjury and filed with the court on October 11, 2016, Ziesmer stated that she "did not intend that my landlord should have any knowledge of this bankruptcy, which is the reason I left his name off the creditor list."[14]

6. At the hearing on October 20, 2016, Hamilton made representations on the record "that call into question the veracity of the sworn statements he filed with the Court on behalf of himself and the Debtor."[15]

Hamilton's misconduct warrants, at a minimum, suspension. Hamilton's conduct was not reckless as in Girardi, 611 F.3d at 1039 ("We will therefore formally reprimand Girardi for his recklessness in determining whether statements or documents central to an action on which his name appears are false."). Nor was Hamilton merely negligent in the Ziesmer case by failing to act as a reasonably competent attorney – conduct which might merit a reprimand. See In re Spickelmier, 469 B.R. 903, 911-12 (Bankr. D. Nev. 2012); In re Schivo, 462 B.R. 765, 777 (Bankr. D. Nev. 2011); In re Martinez, 393 B.R. 27, 33 (Bankr. D. Nev. 2008). Hamilton's conduct certainly was not "an isolated incident of neglect . . . with little or no actual or potential injury" which is the ABA Standard justifying a simple admonition. Hamilton's actions were intentional. He knowingly filed false statements with the court which caused actual injury to Ziesmer's landlord, a creditor and party in interest in the case.[16]

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[13] Response to Motion Regarding the Automatic Stay and Declarations in Support filed in Case No. 8:16-bk-13472-ES, In re Elisabeth Mary Ziesmer, Debtor [Dkt. # 29] on October 11, 2016, at 4:8-9.

[14] Id. at 5:4-5.

[15] Findings & Conclusions, 5:16-20 (emphasis added).

[16] Fritz Firman, attorney for Ziesmer's landlord, Ikram Shah and Ikram Shah and Fauzia Shah, Trustees of The Shah Family Trust Dated August 15, 1996, testified at the disciplinary hearing that Ziesmer remained in the leased premises after filing her undisclosed bankruptcy and that his clients lost two months rent at $2,475 per month, plus $800.00 in attorneys' fees and $176.00 in costs, incurred pursuing a motion for relief from the automatic stay after learning that Ziesmer had filed for bankruptcy. Disciplinary Transcript, 21:20-23:5.

Hamilton asserts that mitigating factors, such as his lack of a prior record of discipline, prompt corrective action, and multiple apologies, weigh in favor of a reduction of the sanction from suspension to admonition. Hamilton views is conduct in Ziesmer as simply regrettable, an isolated incident involving the pro bono representation of his girlfriend, exacerbated by medical issues over which he has little control, and for which he is truly remorseful.

Hamilton is not inexperienced in the practice of law. Hamilton graduated from Western State College of Law in Fullerton, California, and was admitted to the State Bar of California on June 5, 1995. Except for a period between June 23 -July 3, 2006, during which he was inactive and November 26-December 19, 2012, during which he was not eligible to practice law, Hamilton has been an active member of the State Bar of California for 22 years.

Hamilton admitted in his declaration that he had not handled a bankruptcy case for seven years, and that his last case was a pro bono chapter 7 case in 2010. Hamilton undertook to represent Ziesmer with little bankruptcy experience and virtually no substantive knowledge of the Bankruptcy Code, Federal Rules of Bankruptcy Procedures, or the local rules of this court. Rather than undertake to educate himself in bankruptcy law and procedure in order to properly represent his client, Hamilton, a lawyer with 22 years' experience, surfed the web for bankruptcy assistance and ostensibly relied on information offered at an unidentified internet site to intentionally omit a creditor from Ziesmer's mailing matrix for the express purpose of preventing that creditor from learning about Ziesmer's bankruptcy and to lie under oath about the accuracy of the mailing matrix in a declaration filed with the court.

Hamilton testified that he suffers from Post-Traumatic Stress Disorder ("PTSD"), and that a degenerative disc disease prevents him from mitigating the effects of his PTSD. He did not testify regarding the cause of the PTSD, the length of time that he has suffered from PTSD, the treatment he has received for the condition, or the prognosis for recovery. More importantly, Hamilton offered little credible evidence that his medical condition played a role in his decision to intentionally omit Ziesmer's landlord from the mailing matrix for an improper purpose on

August 17, 2016, and thereafter, to knowingly file false documents with the court in Ziesmer's bankruptcy case.

Hamilton claims that "he has no prior record of discipline."[17] Hamilton has no prior record of public discipline, but Hamilton admits entering into "an agreement in lieu of discipline arising from a situation in 2004" which, according to his testimony, "did not involve the practice of law."[18]

Hamilton claims that he took action promptly to correct the false mailing matrix by filing an amended creditor matrix with the court listing Ziesmer's landlord. However, Hamilton did not file the amended creditor matrix until October 11, 2016 – nearly two months after Ziesmer's petition date and only after Ziesmer's landlord had filed a motion seeking relief from the automatic stay to continue an unlawful detainer action to recover from Ziesmer possession of the leased premises at 1822 Kilmer Drive, Placentia, California.

Finally, Hamilton argues that he has "expressed remorse to the court through multiple apologies."[19] Hamilton gave the following apology to Judge Smith at the hearing on October 20, 2016:

> MR. HAMILTON: Your Honor, I apologize. I was doing pro bono work. I haven't done this for ten years.
>
> THE COURT: Well, that's -- no.
>
> MR. HAMILTON: And I'm – I tried to help –
>
> THE COURT: Submitting a false statement is not –
>
> MR. HAMILTON. – someone.
>
> THE COURT: -- is not – is not -- pro bono clients deserve better than that. You do not submit declarations that are false. You just don't. I don't care who you're representing. And if you're getting paid zero, I mean, I commend you for doing

[17] Motion, at 4:3.

[18] Declaration of Mark Reman Hamilton Re Discipline Proceeding ("Hamilton Decl.") [Dkt. # 15] filed on September 25, 2017, at 2:20-21.

[19] Motion, 4:12-13.

pro bono work but I cannot condone submitting a declaration that is false. Two declarations.

MR. HAMILTON: So you'll make it so I can't help anyone ever again?

THE COURT: No. I'm –

MR. HAMILTON: Cool. Can I leave now? Can I leave now? I want to leave.

THE COURT: Please do.

MR. HAMILTON: I don't want to ever see you again.[20]

On February 14, 2017, the United States trustee filed a motion seeking an order to show cause why Hamilton should not be referred for discipline. Hamilton did not respond to the motion nor appear at the hearing on March 16, 2016. Hamilton's only other apology came after the disciplinary proceeding commenced. In a declaration filed in response to the Statement of Cause, Hamilton stated, in pertinent part: "I have apologized to the court[;]"[21] and later, "I recognize that what occurred was not appropriate and I apologize for it, again."[22] He reiterated his apology at the hearing.[23]

Hamilton did not contest Judge Smith's findings of fact and conclusions of law, but sought at the hearing to recharacterize as negligence the misconduct Judge Smith had determined was intentional to secure an admonition. Even if the court were to accept Hamilton's explanation that uncontrolled adrenaline caused by an inability to exercise for three years prevented him from delivering a more meaningful apology to the court on October 20, 2016,[24]

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[20] Transcript of Hearing Re: Motion for Relief from the Automatic Stay filed in Case No. 8:16-bk-13472-ES, In re Elisabeth Mary Ziesmer, Debtor, [Dkt. # 39] on November 4, 2016, at 12:9-13:5.

[21] Hamilton Decl., 2:19.

[22] Id. at 3:6.

[23] Disciplinary Transcript, 17:12; 15-17.

[24] Hamilton testified that PTSD caused his performance in Ziesmer's bankruptcy case to be "inadequate," that he "became hostile with the court," and that he "attacked the court several

the court gives little weight to Hamilton's show of remorse since the beginning of this disciplinary hearing when balanced with his apparent inability or unwillingness to squarely acknowledge the severity of his misconduct.

In sum, the panel's findings demonstrate that its decision to impose a two-year suspension from practice before this court was consistent with the first two criteria of the ABA Standards. Moreover, the panel acted within its authority and in a manner consistent with this court's Fourth Amended General Order 96-05 regarding attorney discipline. Finally, the panel's choice of sanctions was narrowly tailored to address the gravity of Hamilton's misconduct.

CONCLUSION

For the reasons stated, the court will deny Hamilton's Motion. A separate order will be entered consistent with this memorandum.

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DATED: 12/29/2017

Peter H. Carroll, Presiding
United States Bankruptcy Judge

DATED: 12/29/2017

Neil W. Bason
United States Bankruptcy Judge

DATED: 12/29/2017

Scott H. Yun
United States Bankruptcy Judge

times." Id. at 15:11-14. Hamilton further testified that he has "to work out for two hours a day every couple of days" to control his adrenaline, but has "not been exercising for three years because of the pain." Id. at 17:7-9; 16:13-14.

CERTIFICATE OF SERVICE

I, the below-named deputy clerk of the United States Bankruptcy Court, certify that I placed a true and correct copy of the attached document in a sealed envelope for collection and mailing, no later than the next business day that is not a court-observed holiday, in the United States mail, first class, postage prepaid, and addressed as follows:

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The State Bar of California

As of December 29, 2017, the following person(s) are currently on the Electronic Mail Notice List for this proceeding to receive NEF transmission at the email address(es) indicated below.

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☐ Service information continued on attached page

Date: 12/29/2017 Signature: Josie Hunt

Deputy Clerk [*printed name*]: Josie Hunt