

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of)	17-C-05405
)	
NICHOLAS JAMES CAPLIN,)	OPINION
)	[As Modified on December 30, 2020]
State Bar No. 312343.)	
_____)	

On February 23, 2018, Nicholas James Caplin pleaded guilty in the North County Division of the San Diego County Superior Court to one misdemeanor count of violating Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol (DUI)), with an enhancement for Vehicle Code section 23578 (excessive blood alcohol concentration (BAC) greater than 0.15 percent or refusal to take a test). After his conviction was transmitted to us, we referred the case to the Hearing Department to determine if the facts and circumstances surrounding the conviction involved moral turpitude or other misconduct warranting discipline.

The hearing judge determined that the facts and circumstances did not include moral turpitude but did involve other misconduct warranting discipline. The judge recommended that Caplin be suspended for two years with the execution of that suspension stayed and that he be placed on probation for two years. The Office of Chief Trial Counsel (OCTC) appeals, arguing that the facts and circumstances surrounding Caplin’s crime involve moral turpitude, and requests that we impose a 60-day actual suspension. Caplin does not appeal and requests that we affirm the hearing judge’s decision.

Upon our independent review (Cal. Rules of Court, rule 9.12), we find that the facts surrounding Caplin’s conviction constitute moral turpitude. Our disciplinary standards and the

comparable case law guide us to recommend discipline that includes a 30-day actual suspension to protect the public and to maintain high professional standards.

I. FACTUAL BACKGROUND¹

Caplin was admitted to practice law in California on November 26, 2016 and has no prior disciplinary record. This case arises from a traffic collision resulting from Caplin driving under the influence of alcohol with a BAC nearly twice the legal limit.

A. Caplin Drives While Intoxicated and Causes Extensive Property Damage

On August 19, 2017, the Carlsbad Police Department (CBPD) was notified of a traffic collision between a silver Audi A5 and a parked BMW vehicle in the area of 7300 El Fuerte Street. Prior to CBPD's arrival, Caplin was walking around the Audi and had declared to several neighbors that a friend, Michael Fisher,² had been driving the vehicle and then had fled the scene on foot. Officer Friedrich was the first to arrive and contact Caplin. Caplin reported to Officer Friedrich that Fisher had been driving and left the scene of the accident. He described Fisher as a white male wearing a white buttoned-up shirt. Shortly thereafter, Officer Byrne arrived on the scene and searched the vicinity but was unable to locate anyone matching Fisher's description. A neighbor who reported the accident to CBPD, disclosed to the officers that she had told dispatch that a male left the scene of the accident only because that is what Caplin told her. She acknowledged that she did not witness anyone leaving the scene.

Upon inspecting the Audi A5, Officer Byrne learned that it was registered to Caplin. He also noticed that only the driver's side airbag had deployed, and the vehicle's keys were on the

¹ The facts are based on the parties' pretrial written stipulation, trial testimony, documentary evidence, and the hearing judge's factual findings, which are entitled to great weight. (Rules of Procedure of the State Bar, rule 5.155(A).) All further references to rules are to the Rules of Procedure of the State Bar unless otherwise noted.)

² Caplin later admitted he was the driver and he did not know anyone by that name. Upon being released from custody, Caplin called his insurance company and acknowledged fault as the driver.

passenger seat. Officer Byrne asked Caplin who had been driving and Caplin named his friend, Fisher. The officer then asked Caplin to call and ask Fisher to return to the scene but Caplin claimed he didn't have his friend's telephone number. However, he had also indicated at some point that he had contacted Fisher and asked to be picked up. When Officer Byrne confronted him about these inconsistencies, Caplin conceded that he did have Fisher's number, but it was not a saved contact. He refused to allow the officer to look through his cell phone.

The police report reveals that Officer Byrne smelled alcohol on Caplin's breath and observed his eyes to be bloodshot, watery, droopy, red, and glassy. It also asserts that Caplin informed the officer that he had a couple of alcoholic beverages that evening and was feeling their effects. Officer Byrne administered four field sobriety tests (FSTs) on Caplin, who interrupted one test to insist that he was not the driver. Caplin failed each test. Around 15 minutes later, Officer Byrne administered two breathalyzer tests at 11:49 p.m. and 11:53 p.m., and the results were 0.171 percent and 0.165 percent, respectively.

Based on the damage to the vehicle, its registration, Caplin being the only person on the scene, and the failed FSTs, Officer Byrne determined that Caplin had been the driver at the time of the collision and placed him under arrest. The officer then explained that Caplin would have to submit either a blood or another breath test under the implied consent law.³ Caplin refused and requested an attorney. Officer Byrne sought a search warrant for Caplin's blood to test his BAC. Caplin's blood was drawn at 1:50 a.m. and showed a BAC of 0.150 percent as he was transported to Vista Detention Facility where he was booked.

³ The California implied consent law states that a driver lawfully arrested for a DUI offense is deemed to have given his consent to chemical testing of his blood or breath for the purpose of determining the alcoholic content of his blood. (Vehicle Code section 23612, subdivision (a)(1)(A).)

The San Diego County Sheriff's Crime Laboratory's report, dated August 31, 2019, showed Caplin's BAC to have been 0.150 percent plus or minus 0.006. The traffic accident report stated that Caplin damaged two light poles, an exterior wall, a light fixture, an irrigation system, and a mailbox. The report roughly estimated the cost of repairs to be \$12,000.

B. Caplin Pleaded Guilty to and Was Convicted of Misdemeanor DUI

On September 6, 2017, the San Diego County District Attorney's Office filed a two-count complaint against Caplin, charging him with one misdemeanor count for violating Vehicle Code section 23152, subdivision (a) (DUI), and one misdemeanor count for violating Vehicle Code section 23152, subdivision (b) (driving with 0.08 percent or more BAC). In addition, an enhancement was charged under Vehicle Code section 23578 (excessive BAC greater than 0.15 percent or refusal to take a test). On February 23, 2018, the section 23152, subdivision (b) count was dismissed in the interests of justice.

On February 23, 2018, Caplin pleaded guilty to the DUI and the excessive BAC enhancement. His sentence included five years of probation, a court fine of \$2,283, restitution for the damage caused (over which the court retained jurisdiction), six days of participation in a public service program, standard alcohol conditions, participation in a Mothers Against Drunk Driving program, and an order to report to Court Collections. Caplin is complying with the terms of his sentence, including probation, payment of the court fine, payment of \$5,000 restitution to the City of Carlsbad, attendance at Alcoholics Anonymous meetings, and completion of a DUI program.

In addition, Caplin personally paid \$2,260 in restitution, prior to his criminal restitution hearing, to the owner of the damaged mailbox. He also paid \$1,565.30 in emergency response costs, four months prior to his guilty plea, to the City of Carlsbad pursuant to a demand made under Government Code, section 53150.

II. STATE BAR COURT PROCEEDINGS

On April 18, 2018, OCTC transmitted Caplin's misdemeanor conviction records to this court. Upon finality of the conviction, we referred the matter to the Hearing Department on February 6, 2019, to determine whether the facts and circumstances surrounding the conviction involved moral turpitude or other misconduct warranting discipline. (Rules of Proc. of State Bar, rule 5.344.) On May 9, the parties filed a stipulation as to facts and admission of documents (Stipulation). A one-day trial took place on September 4. Following the disciplinary trial and posttrial briefing, the hearing judge issued her decision on November 19. She found that the facts and circumstances surrounding Caplin's conviction, which included seven misrepresentations he made to police officers, did not involve moral turpitude but demonstrated misconduct warranting discipline. OCTC challenges the judge's finding, arguing that Caplin repeatedly lied to the police to impede investigation and arrest, which constitutes moral turpitude.

III. FACTS AND CIRCUMSTANCES INVOLVE MORAL TURPITUDE

For the purposes of attorney discipline, Caplin's conviction is conclusive proof of the elements of his crime. (See Bus. & Prof. Code, § 6101, subs. (a) & (e).) Thus, his misdemeanor conviction establishes that he drove under the influence of alcohol (Veh. Code § 23152, subd. (a)) and with a BAC of at least 0.15 percent (Veh. Code § 23578). The issue before us is whether the facts and circumstances surrounding his criminal conviction, which was not committed in the practice of law, demonstrate moral turpitude. We are guided by the Supreme Court's definition of moral turpitude: "a deficiency in any character trait necessary for the practice of law (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) *or* if it involves such a serious breach of a duty owed to another or to society, or such a flagrant disrespect for the law or for societal norms, that knowledge of the attorney's conduct would be likely to undermine public confidence in and respect for the legal profession." (*In re*

Lesansky (2001) 25 Cal.4th 11, 16) (italics added). The hearing judge found that Caplin's overall misconduct involved seven misrepresentations to police officers; however, the judge concluded, without further analysis, that the facts and circumstances surrounding Caplin's offense did not involve moral turpitude. We disagree, as discussed below.

Caplin argues that the principle of stare decisis compels a finding that moral turpitude cannot be found in this case based on *In re Kelley* (1990) 52 Cal.3d 487 and *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208. He is mistaken. We emphasize that it is the misconduct, not the conviction, that warrants discipline. (*In re Gross* (1983) 33 Cal.3d 561, 566.) Although Caplin's misdemeanor DUI conviction does not involve moral turpitude per se, the facts and circumstances surrounding it may be considered in determining moral turpitude. (*In the Matter of Miller* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 110, 115 ["wide ambit of facts surrounding the commission of a crime is appropriate to consider in a conviction referral proceeding".])

In both *Kelley* and *Anderson*, the attorneys' misconduct warranted discipline but did not involve moral turpitude. Although *Kelley*, with a prior DUI conviction, lied to police about not having consumed alcohol when being arrested (*In re Kelley, supra*, 52 Cal.3d at p. 494), *In re Kelley* is distinguished because the attorney's lies were generic and limited to not being intoxicated. Here, Caplin's lies were far more elaborate and numerous, and had the potential for great harm since he shifted blame to a fictitious driver, whom the police attempted to locate, thereby wasting valuable law enforcement resources. Our moral turpitude finding is also not constrained by our holding in *In the Matter of Anderson*. Although *Anderson* was uncooperative by attempting to leave the scene, struggling with officers, and resisting arrest in connection with his DUI conviction, he did not make any misrepresentations to police.

We find that Caplin’s conviction, taken together with all the surrounding facts and circumstances, establishes moral turpitude. (See *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 935 [moral turpitude analysis is not restricted to examining elements of crime but must look at whole course of misconduct].) When questioned by Officer Friedrich at the accident scene, Caplin falsely identified a Michael Fisher as the driver of the vehicle, when in fact Caplin does not know anyone by that name. He repeated the lie to Officer Byrne. Caplin continued to conceal that he was the driver and made five additional statements promoting the false Michael Fisher narrative. Specifically, Caplin was deceitful with Officer Friedrich and Officer Byrne during the following seven interactions, to which he stipulated:

- (1) Caplin informed Officer Friedrich that his friend Michael Fisher had been driving the vehicle;
- (2) Caplin described Fisher as a white man wearing a buttoned-up shirt;
- (3) Caplin told Officer Byrne that his friend Fisher had been driving;
- (4) Caplin denied having Fisher’s telephone number when Officer Byrne asked Caplin to call Fisher to return to the scene;
- (5) Caplin advised Officer Byrne that he contacted Fisher and asked him to pick up Caplin;
- (6) When confronted with his inconsistent statements about not having Fisher’s phone number, Caplin conceded that he did have the number, but it was not a saved contact; and
- (7) Caplin interrupted Officer Byrne during the FSTs instructions to explain that he was not the driver of the vehicle.

Such deceit involves moral turpitude. (*Cutler v. State Bar* (1969) 71 Cal.2d 241, 253 [“An attorney’s practice of deceit involves moral turpitude”]; *In the Matter of Lais* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112, 120 [attorney who deceived sheriffs about child custody order engaged in act of moral turpitude].)

Caplin argues his conduct does not involve moral turpitude under either prong of *In re Lesansky*—that he was dishonest or that he breached his duty to society. He asserts he was not intentionally deceitful but rather made “drunken misrepresentations” while interacting with the police. OCTC challenges this claim and argues that Caplin’s lies were detailed and precise,

which shows they were calculated to avoid criminal and civil responsibility for DUI. We find that the record supports OCTC's position with clear and convincing evidence.

At the disciplinary trial, Officer Byrne testified that although Caplin was intoxicated, he appeared alert and sober enough to answer questions. Caplin's grandfather, Alan Turner, testified that, when he picked Caplin up from jail the morning after the accident, Caplin confessed to him he had lied to the police and told them he was not the driver. Although Caplin testified that he accepts the police report as an accurate account of the events on the night of the accident, he also testified he does not recall lying to police officers. Caplin cannot have it both ways. The totality of the evidence leads us to conclude that he consciously and persistently fabricated a complex narrative involving a phony driver to thwart arrest and place himself above the law. (See *In re Rohan* (1978) 21 Cal.3d 195, 203 [conscious decision to not file income tax returns "evinces an attitude on the part of the attorney of placing himself above the law"].)

Not only did Caplin's conviction involve dishonesty but his driving while intoxicated and causing property damage reveal a lack of respect for the law and public safety. Caplin drove while he was significantly impaired, as established by his BAC of nearly twice the legal limit and his failure to pass four FSTs. This behavior exhibits contempt for the law and public safety and reflects poorly on Caplin's judgment and the legal profession. (*In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406, 416 [discipline system is responsible for preserving integrity of legal profession as well as protection of public].) Accordingly, we find clear and convincing evidence⁴ that the facts and circumstances surrounding Caplin's conviction involve moral turpitude.

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

IV. AGGRAVATION AND MITIGATION

OCTC must establish aggravating circumstances by clear and convincing evidence.

(Std. 1.5.) Caplin has the same burden to prove mitigation. (Std. 1.6.)

A. Aggravation

1. No Significant Harm to Clients, Public, or Administration of Justice (Std. 1.5(j))

The hearing judge found that Caplin's misconduct caused significant harm to the public by damaging both private and public property and assigned significant weight. (Std. 1.5(j)

[significant harm to client, public, or administration of justice is aggravating circumstance].)

Neither OCTC nor Caplin challenges this finding. We disagree that Caplin significantly harmed his clients, the public, or the administration of justice.

Caplin's misconduct undoubtedly caused some harm to the owner of the destroyed mailbox who incurred over \$2,260 in property damage. Caplin also caused harm to the City of Carlsbad by damaging two light poles, an exterior wall, a light fixture, and an irrigation system, resulting in a \$5,000 restitution payment. He further harmed the City of Carlsbad by causing it to expend \$1,565.30 in emergency response resources. However, Caplin promptly repaid all of these costs shortly after he learned of the extent of the damage. As such, we do not find that his conduct resulted in *significant* harm.

2. No Aggravation for Lack of Candor (Std. 1.5(l))

On review, OCTC argues that aggravation should be assigned for Caplin's lack of candor in these proceedings. The hearing judge did not analyze this issue in her decision, and made no adverse credibility finding against Caplin. We give great weight to the judge's findings based on credibility evaluations. (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [hearing judge best suited to resolve credibility questions "because [the judge] alone is able to observe the witnesses' demeanor and evaluate their veracity firsthand"].) A lack of candor finding must be supported by

an express finding that the testimony lacked candor or was dishonest. (*In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 67.) OCTC claims that Caplin’s trial testimony was dishonest because he stated he did not specifically recall making false statements to the police. However, Turner and Khoi Nguyen, Caplin’s friend, both testified he admitted to them shortly after the accident that he had lied. While the record does indicate some incongruities, OCTC has not presented clear and convincing evidence to establish that Caplin’s testimony lacked candor. (See *Ballard v. State Bar* (1983) 35 Cal.3d 274, 291 [all reasonable doubts resolved in favor of attorney].) Thus, we adopt the hearing judge’s finding that Caplin testified credibly and decline to find aggravation for lack of candor.

B. Mitigation

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

Standard 1.6(a) offers mitigation where there is an “absence of any prior record of discipline over many years of practice coupled with present misconduct, which is not likely to recur.” The hearing judge did not afford Caplin any mitigation for discipline-free practice. We agree. Since Caplin was admitted to practice in November 2016, he had been practicing for less than one year before the accident in August 2017. Therefore, we conclude that he is not entitled to any mitigation credit. (*In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456, 473 [no mitigation where attorney had practiced only four years prior to misconduct].)

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

Caplin is entitled to mitigation if he establishes “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 found that Caplin established good character and afforded moderate mitigating weight. We agree.

Six character references—including attorneys, his employer, and friends—presented letters attesting to Caplin’s exceptional character. Also, two friends and a family member testified on his behalf. These references, representing a broad spectrum of the community, described him as trustworthy, supportive, responsible, and professional. The attorney witnesses affirmed Caplin’s exemplary moral character and integrity. (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [serious consideration given to attorneys’ testimony due to their “strong interest in maintaining the honest administration of justice”].) However, as the hearing judge found, we note that all the character references do not demonstrate full awareness of the extent of Caplin’s misconduct, as the standard requires. (*In re Aquino* (1989) 49 Cal.3d 1122, 1131 [testimony of witnesses unfamiliar with details of misconduct not given significant weight in mitigation].) Like the hearing judge, we find that the mitigating weight afforded Caplin’s good character evidence is somewhat diminished. We therefore assign moderate weight to this factor.

3. Cooperation (Std. 1.6(e))

Under standard 1.6(e), Caplin is entitled to mitigation for cooperation by entering into the Stipulation as well as the admission of documents. Before trial, Caplin stipulated to certain facts and circumstances related to his conviction that were not easily provable and formed the basis of the moral turpitude finding. We agree with the hearing judge that such action merits substantial mitigation. (See *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive mitigation for admission of culpability and facts].)

4. Remorse and Recognition of Wrongdoing (Std. 1.6(g))

Caplin requests mitigation for remorse in acknowledging his misconduct. Standard 1.6(g) provides mitigation credit where an attorney takes “prompt objective steps, demonstrating spontaneous remorse and recognition of the wrongdoing and timely atonement.” OCTC challenges this factor, arguing that Caplin has not shown remorse. Caplin testified that he feels

“extremely regretful” that his actions caused harm and inconvenience. He stated that the accident has formed a “lasting impression” on his views on alcohol. Shortly after the accident, Caplin notified his insurance company that he was at fault. He also paid the owner of the mailbox—prior to any threat of State Bar disciplinary action—for damage not covered by the insurance company. We conclude that the record supports substantial mitigation for Caplin’s remorse. (Cf. *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 519 [greatly reduced mitigating weight for attorney’s confession of misdeeds to client one year later, as not “an objective step ‘promptly taken’ spontaneously demonstrating remorse and recognition of the wrongdoing”].)

5. Restitution (Std. 1.6(j))

Restitution is a mitigating circumstance if it is “made without the threat or force of administrative, disciplinary, civil or criminal proceedings.” (Std. 1.6(j); see *Hitchcock v. State Bar* (1989) 48 Cal.3d 690, 709.) The hearing judge did not assign mitigation for restitution. We conclude that Caplin is entitled to mitigation of moderate weight. Upon learning of the amount owed, and prior to his conviction and criminal restitution hearing, Caplin promptly reimbursed the City of Carlsbad and the owner of the damaged mailbox.

V. THIRTY DAYS’ ACTUAL SUSPENSION IS THE APPROPRIATE DISCIPLINE

We begin our disciplinary analysis by acknowledging that our role is not to punish Caplin for his criminal conduct, but to recommend professional discipline. (*In re Brown* (1995) 12 Cal.4th 205, 217 [aim of attorney discipline is not punishment or retribution; it is imposed to protect the public, to promote confidence in legal system, and to maintain high professional standards; std. 1.1.]) We do so by following the standards whenever possible and balancing 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, 267, fn. 11.)

Standard 2.15(b) provides for a wide range of discipline for Caplin's misconduct. It instructs that disbarment or actual suspension is appropriate for misdemeanor convictions involving moral turpitude. OCTC submits that a 60-day actual suspension should be imposed. Caplin requests that the hearing judge's discipline recommendation of a two-year stayed suspension be upheld.

In addition to the standards, we look to case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310–1311.) Beyond the standards, myriad cases deal with DUI convictions, but none involving similar facts as presented here. In recommending a one-year stayed suspension, the hearing judge mainly relied on *In re Kelley, supra*, 52 Cal.3d 487. *Kelley* involved an attorney with a second DUI misdemeanor conviction where the facts and circumstances surrounding her crime were not found to involve moral turpitude. Her lack of respect for the legal system, her misrepresentation regarding the amount of alcohol she drank, and her alcohol dependency problem warranted a public reproof with conditions. Unlike the hearing judge, we find that Caplin's misconduct—particularly the seven misrepresentations that he made to the police to perpetuate his false Michael Fisher narrative—constitutes moral turpitude because it demonstrates his dishonesty and his attempt to thwart arrest. “[D]ishonest conduct is inimical to both the high ethical standards of honesty and integrity required of members of the legal profession and to promoting confidence in the trustworthiness of members of the profession. [Citations.]” (*Stanley v. State Bar* (1990) 50 Cal.3d 555, 567.)

In support of its request for a 60-day actual suspension, OCTC cites to *In the Matter of Guillory* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 402 and *In the Matter of Peters* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 536. Guillory, who had three prior DUI convictions,

received a two-year actual suspension when the facts and circumstances surrounding his fourth DUI misdemeanor conviction were found to involve moral turpitude. Guillory lied to the arresting officers by saying that he was permitted to drive to and from work with a suspended license. Further, he tried to avoid arrest by engaging in “badging,” i.e., he sought to exploit his insider status as a deputy district attorney. (*In the Matter of Guillory, supra*, 5 Cal. State Bar Ct. Rptr. at pp. 406, 408.) In *Peters*, the attorney was disbarred, and the facts and circumstances surrounding her felony conviction of vehicular manslaughter while intoxicated also involved moral turpitude. She failed to accurately tell a police officer the quantity of pills she had taken when she drove erratically, struck a car, and caused grave injury and death. Two years later, she told a probation officer that she was not impaired when the collision occurred and failed to disclose that she had been abusing prescription drugs for months.

The facts and circumstances in the present matter are far less serious than those in *Guillory* or *Peters*. Caplin has not been convicted of multiple DUI offenses, like Guillory, nor was he convicted of a felony. His misdemeanor DUI did not cause death or great bodily injury, like *Peters*. But we do find guidance from Guillory, particularly in the attempt to avoid criminal liability by engaging in “badging.” Like Guillory, Caplin also attempted to avoid arrest by creating a false narrative with Michael Fisher as the driver of the vehicle.

We recognize, however, that this is Caplin’s first DUI, his crime was a misdemeanor, and no one was physically injured as a result of his recklessness. He exhibited exemplary behavior after his conviction, including full compliance with the terms of his probation and restitution. He has no aggravation and has received mitigation for cooperation, good character, remorse, and restitution. This warrants a level of discipline at the lowest end of the range for actual suspensions. (Std. 1.2(c)(1) [actual suspension generally for 30 days, 60 days, 90 days, six

months, one year, 18 months, two years, or three years].) Given these findings, a 30-day actual suspension is appropriate discipline to protect the public, the courts, and the legal profession.

VI. RECOMMENDATION

We hereby recommend that Nicolas James Caplin, State Bar No. 312343, be suspended from the practice of law for one year, that execution of that suspension be stayed, and that he be placed on probation for one year with the following conditions:

- 1. Actual Suspension.** Caplin must be suspended from the practice of law for the first 30 days of his probation.
- 2. Review Rules of Professional Conduct.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Caplin must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to his compliance with this requirement, to the State Bar Office of Probation in Los Angeles (Office of Probation) with his first quarterly report.
- 3. Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions.** Caplin must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of his probation.
- 4. Maintain Valid Official State Bar Record Address and Other Required Contact Information.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Caplin must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has his current office address, email address, and telephone number. If he does not maintain an office, he must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Caplin 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, Caplin must schedule a meeting with his assigned probation case specialist to discuss the terms and conditions of his discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, he may meet with the probation case specialist in person or by telephone. During the probation period, Caplin 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 Caplin's probation period, the State Bar Court retains jurisdiction over him to address issues concerning compliance with probation conditions. During this period, Caplin must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to his State Bar record address, as provided above. Subject to the assertion of applicable privileges, Caplin 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. Caplin 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, Caplin 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. Caplin must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether he has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.

c. Submission of Reports. All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).

d. Proof of Compliance. Caplin is directed to maintain proof of his compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of his actual suspension has ended, whichever is longer. He is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

8. State Bar Ethics School. Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Caplin must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and he will not receive MCLE credit for attending this session. If he provides satisfactory evidence of completion of the Ethics School after the date of this opinion but before the effective date of the Supreme

Court's order in this matter, Caplin will nonetheless receive credit for such evidence toward his duty to comply with this condition.

- 9. Commencement of Probation/Compliance with Probation Conditions.** The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the probation period, if Caplin has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.
- 10. Abstinence.** Caplin must abstain from using alcoholic beverages and must not use or possess any illegal drugs or illegal drug paraphernalia. In each quarterly and final report submitted to the Office of Probation, he must report compliance with this condition.
- 11. Criminal Probation.** Caplin must comply with all probation conditions imposed in the underlying criminal matter and must report such compliance under penalty of perjury in all quarterly and final reports submitted to the Office of Probation covering any portion of the period of the criminal probation. In each quarterly and final report, if Caplin has an assigned criminal probation officer, he must provide the name and current contact information for that criminal probation officer. If the criminal probation was successfully completed during the period covered by a quarterly or final report, that fact must be reported by Caplin in such report and satisfactory evidence of such fact must be provided with it. If, at any time before or during the period of probation, Caplin's criminal probation is revoked, he is sanctioned by the criminal court, or his status is otherwise changed due to any alleged violation of the criminal probation conditions by him, Caplin must submit the criminal court records regarding any such action with his next quarterly or final report.

VII. MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Caplin 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 Caplin 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, he will nonetheless receive credit for such evidence toward his duty to comply with this requirement.

VIII. 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 reinstatement or return to active status.

IX. MONETARY SANCTIONS

The court does not recommend the imposition of monetary sanctions as all the misconduct in this matter occurred prior to April 1, 2020, the effective date of rule 5.137, which implements Business and Professions Code section 6086.13. (See *In the Matter of Wu* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 263, 267 [rules of statutory construction apply when interpreting Rules Proc. of State Bar]; *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1208–1209 [absent express retroactivity provision in statute or clear extrinsic sources of intended retroactive application, statute should not be retroactively applied]; *Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 841 [where retroactive application of statute is ambiguous, statute should be construed to apply prospectively]; *Fox v. Alexis* (1985) 38 Cal.3d 621, 630–631 [date of offense controls issue of retroactivity].)

HONN, J.

WE CONCUR:

PURCELL, P. J.

McGILL, J.