PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed August 2, 2017

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. 12-O-13553
	)	
DEBORAH ANN ELDRIDGE,	)	OPINION
	)	
A Member of the State Bar, No. 197963.	)	
	)	

In this matter, a hearing judge found Deborah Ann Eldridge culpable of failing to comply with the requirements of rule 9.20, subdivisions (a) and (c), of the California Rules of Court[1] as ordered by the Supreme Court in a 2010 discipline matter. Specifically, those two subdivisions require an attorney to notify all clients, cocounsel, opposing counsel, and the courts about a disciplinary suspension, and to file an affidavit with the Clerk of the State Bar Court showing full compliance with the rule. The judge found that Eldridge was not culpable for acts involving moral turpitude, even though Eldridge had filed a false rule 9.20 compliance declaration. The judge found, instead, that Eldridge had an honest, but mistaken, belief that she had complied with the requirements of rule 9.20. While noting that a willful violation of rule 9.20 is sufficient grounds for disbarment, the judge determined that such a recommendation would be unduly punitive. Ultimately, the judge recommended discipline that included another two-year actual suspension, continuing until Eldridge proves her rehabilitation and fitness to practice law.

The Office of Chief Trial Counsel of the State Bar (OCTC) appeals, asking that we find Eldridge culpable of moral turpitude and renewing its trial request for a disbarment

[1] All further references to rules are to the California Rules of Court unless otherwise noted.

recommendation. Eldridge does not appeal and asks that we affirm the hearing judge's findings and disciplinary recommendation.

Upon our independent review of the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge's finding that Eldridge willfully violated rule 9.20, but also find her culpable for moral turpitude by gross negligence for filing a false compliance affidavit. We affirm the judge's finding in aggravation for Eldridge's prior discipline and assign it significant weight because the prior misconduct was serious and similar to the misconduct here. We also affirm the judge's mitigation findings for good character, emotional difficulties, and remorse, but do not allow mitigation for lack of harm. While the Supreme Court has held that disbarment is "generally the appropriate sanction for a willful violation of rule [9.20]" (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131), we agree with the hearing judge that, given the facts of this matter and the mitigation, disbarment would be punitive. However, progressive discipline requires us to recommend more than the two-year actual suspension Eldridge received in her prior discipline matter. Under these circumstances, we recommend discipline that includes a three-year actual suspension.

I. FACTUAL AND PROCEDURAL BACKGROUND[2]

Eldridge was admitted to the practice of law in California on December 2, 1998. She practiced with her husband, Richard Eldridge, in their law firm, the Law Offices of Eldridge and Eldridge.

Eldridge has one prior record of discipline. On April 27, 2010, the Supreme Court suspended her for three years, execution stayed, and placed her on probation for five years subject to conditions, including a two-year actual suspension to continue until she provided proof

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

of her rehabilitation, fitness to practice, and present learning and ability in the general law.[3] (See Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)[4] The Supreme Court order required Eldridge to comply with rule 9.20, subdivisions (a)[5] and (c),[6] within 30 and 40 days, respectively, after the effective date of the order. The order was filed on April 27, 2010, and became effective on May 27, 2010. It was served on Eldridge, and she admits that she received it. Thus, Eldridge was required to comply with rule 9.20, subdivision (a), no later than June 26, 2010, and with rule 9.20, subdivision (c), no later than July 6, 2010.

Eldridge had at least four pending cases on the date that the Supreme Court order was filed, but she did not provide any of the notices required by rule 9.20, subdivision (a). Instead of providing the required notice to her clients, opposing counsel, and the courts for these pending cases, which should have included notice of her suspension and consequent disqualification to act as an attorney, she either substituted out of or withdrew from those cases just before the effective date of the Supreme Court order.

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[3] Supreme Court Case No. S180385; State Bar Case Nos. 06-O-13222, 08-O-12330, 08-O-13969, 08-O-13970.

[4] All further references to standards are to this source.

[5] In relevant part, rule 9.20, subdivision (a), provides that an attorney must "[n]otify all clients being represented in pending matters and any co-counsel of his or her [suspension] and his or her consequent disqualification to act as an attorney after the effective date of the [suspension], and, in the absence of co-counsel, also notify the clients to seek legal advice elsewhere . . ."; and must also "[n]otify opposing counsel in pending litigation or, in the absence of counsel, the adverse parties of the [suspension] and consequent disqualification to act as an attorney after the effective date of the [suspension], and file a copy of the notice with the court, agency, or tribunal before which the litigation is pending for inclusion in the respective file or files." (Rule 9.20(a)(1),(4).)

[6] In relevant part, rule 9.20, subdivision (c), provides that, "[w]ithin such time as the order may prescribe after the effective date of the member's [suspension], the member must file with the Clerk of the State Bar Court an affidavit showing that he or she has fully complied with those provisions of the order . . . ."

In the first case, Eldridge represented Bonnie Siminski and was the attorney of record in Siminski's case until she filed a substitution of attorney on May 26, 2010, the day before her suspension became effective. The substitution was approved by Siminski and served on opposing counsel Denise Dirks. Siminski testified that she initially learned of Eldridge's upcoming suspension in January 2010 from Eldridge's husband.[7] Following that, she talked to Eldridge, who told Dirks she was going to be suspended and that her husband and law partner would take over Siminski's representation. In the second case, Eldridge represented Elissa Hackett and remained counsel of record in Hackett's case until she filed a motion to withdraw on May 26, 2010. Eldridge testified that she moved to withdraw out of an abundance of caution, but that the case was not pending because judgment had been entered in June 2009. In the third case, Eldridge represented Brandi-Lyn Vedder and remained counsel of record in her case, but did not file a substitution of attorney. In the fourth case, Eldridge represented Carole McCook and remained counsel of record in McCook's case until she filed a substitution of attorney on May 26, 2010. The substitution was approved by McCook and served on opposing counsel Margaret Walton.

Eldridge testified she believed that, by substituting out of cases before the effective date of the Supreme Court order, the notice provisions of rule 9.20, subdivision (a), were not triggered. She also testified she was confused by the rule's requirements and did not realize that she was required to file rule 9.20 notices for cases pending as of the date the Supreme Court order was filed.

On May 28, 2010, Eldridge filed a rule 9.20 compliance declaration on a State Bar Court form. The form instructed Eldridge to "[a]nswer each question by checking one box per question." It also directed her to attach a declaration under penalty of perjury to explain her

[7] Siminski had changed her name by the time of trial and testified as Bonnie Burlock.

individual situation if neither option on the form was correct. Eldridge crossed out the portion of the compliance declaration that referred to an order of disbarment or an order accepting a resignation because she testified she found this language to be inapplicable. Otherwise, she provided no additional narrative to explain her selections or her situation. Of the listed options regarding compliance with rule 9.20, Eldridge chose the following language, stating under penalty of perjury:

> I notified all clients and co-counsel, in matters that were pending on the date upon which the order to comply with rule 9.20 was filed by certified or registered mail, return receipt requested, of my consequent disqualification to act as an attorney after the effective date of the order of suspension/disbarment, and in those cases where I had no co-counsel, I urged the clients to seek legal advice elsewhere, calling attention to any urgency in seeking another attorney.
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> [¶] . . . [¶]
>
> I notified all opposing counsel or adverse parties not represented by counsel in matters that were pending on the date upon which the order to comply with rule 9.20 was filed by certified or registered mail, return receipt requested, of my disqualification to act as an attorney after the effective date of my suspension, . . . and filed a copy of my notice to opposing counsel/adverse parties with the court, agency or tribunal before which litigation was pending for inclusion in its files.

The compliance declaration also included a choice that stated, "As of the date upon which the order to comply with rule 9.20 was filed, I had no clients." Yet Eldridge did not check the box next to this statement. She testified that she carefully read the compliance declaration and checked the boxes that "seemed the most applicable."

On April 2, 2012, Eldridge filed a verified petition under standard 1.2(c)(1) for relief from actual suspension in her prior discipline case. Trial on her petition was held on June 19 and 22, 2012. After trial, the hearing judge denied Eldridge's petition, holding that she had not demonstrated sufficient evidence of rehabilitation, as required by the standards. Specifically, the hearing judge noted that Eldridge had not notified Siminski and Hackett that she had been suspended, as required by rule 9.20. The judge also found that although Eldridge and her

husband changed their firm name from Eldridge and Eldridge to the Law Offices of Richard Eldridge after her suspension, she did not take sufficient steps to ensure that the former name was not used. In fact, the judge found that the name Eldridge and Eldridge was used extensively while Eldridge was working there as an assistant. Finally, the judge found that Eldridge showed poor judgment in a family law matter involving her son by intimidating her grandson's mother in the custody matter and posting a threatening message on her Facebook page.

On June 10, 2013, OCTC filed a two-count Notice of Disciplinary Charges (NDC) alleging that Eldridge (1) willfully violated rule 9.20 by failing to provide the required notices in the *Siminski* matter, and (2) made false statements in her rule 9.20 compliance declaration, an act involving moral turpitude, dishonesty, or corruption, in violation of section 6106 of the Business and Professions Code.[8] On September 16, 2013, Eldridge filed a motion to dismiss, alleging that she had complied with the spirit of rule 9.20. On October 21, 2013, the Hearing Department granted her motion. OCTC appealed the dismissal to the Review Department on November 15, 2013. On October 9, 2015, the Review Department reversed the dismissal and remanded the case for trial on culpability issues. A five-day trial was held on May 17, 18, 19, 23, and 24, 2016. The hearing judge issued her decision on August 29, 2016.

II. ELDRIDGE IS CULPABLE ON BOTH COUNTS

A. Violation of Rule 9.20 (Count One)

On Count One, the hearing judge found that Eldridge willfully failed to strictly comply with rule 9.20 as ordered by the Supreme Court. Eldridge does not challenge this finding, and

[8] All further references to sections are to this source unless otherwise noted. Under section 6106, "[t]he commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise . . . constitutes a cause for disbarment or suspension."

we affirm. The record clearly and convincingly[9] establishes that Eldridge failed to provide written notice to her client, opposing counsel, and the courts in the *Siminski* matter that she had been suspended and was disqualified to act as an attorney. Moreover, she did not provide the required notice even after she learned that she had not properly complied with rule 9.20.[10]

Eldridge argues that she had only "imperfect compliance" because she had either substituted out or withdrawn from each case on May 26, 2010, the day before the effective date of her suspension. However, as the hearing judge found, Eldridge's assertion that withdrawing as of May 26, 2010, immunized her from rule 9.20's requirements is not supported by case law. To the contrary, case law is well settled that strict compliance with rule 9.20 is required because the rule "performs the critical prophylactic function of ensuring that all concerned parties—including clients, co-counsel, opposing counsel or adverse parties, and any tribunal in which litigation is pending—learn about an attorney's discipline." (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187, citing *Durbin v. State Bar* (1979) 23 Cal.3d 461, 467-468 [referring to former rule 9.55, previous version of rule 9.20].) The operative date for identification of clients being represented in pending matters and others to be notified under rule 9.20 is the *filing* date of the Supreme Court order for compliance, not the later *effective* date. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45 [rule 9.55 clearly contemplates advance notice to existing clients—notice to clients at effective date of Supreme Court order does not comply].) Therefore, Eldridge had to provide written notice, as required by rule 9.20, for cases that were pending as of the

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

[10] We note that OCTC presented evidence at trial, without objection, regarding the three additional pending cases (i.e., *Hackett*, *Vedder*, and *McCook*) in which Eldridge failed to provide the notice required by rule 9.20. However, we do not consider this evidence in our culpability or discipline analysis since the NDC did not include reference to these cases in pleading the violation of rule 9.20. (See *Edwards v. State Bar* (1990) 52 Cal.3d 28, 35 [as general rule, attorney may not be disciplined for violation not alleged in NDC].)

April 27, 2010, filing date of the Supreme Court's order, and her failure to do so establishes her culpability.

B. Section 6106—Moral Turpitude (Count Two)

Count Two charged that Eldridge violated section 6106 by making statements under penalty of perjury in her rule 9.20 compliance declaration that she knew, or was grossly negligent in not knowing, were false. The hearing judge did not find culpability for moral turpitude, holding that Eldridge honestly believed that she had no clients based on her misunderstanding regarding the operative date for identification of pending cases. Yet the hearing judge's decision does not offer clear reasoning regarding why Eldridge's honest belief precludes her culpability for moral turpitude for filing the false rule 9.20 declaration. Moreover, this finding is inconsistent with the hearing judge's other finding that Eldridge "attempted to circumvent rule 9.20 by withdrawing from . . . matters on the eve of her suspension." On review, OCTC maintains that Eldridge is culpable for moral turpitude because of the false statements she made under penalty of perjury in the rule 9.20 declaration, but OCTC did not present evidence to prove that she acted intentionally in making the statements.

We find that Eldridge's misrepresentations were made with gross negligence amounting to moral turpitude because she recklessly failed to carefully and accurately fill out the rule 9.20 declaration. The Supreme Court has held that gross negligence can constitute moral turpitude—both when the behavior impacts an attorney's duties to a client and when it affects non-clients. (*Vaughn v. State Bar* (1972) 6 Cal.3d 847, 859 [attorney's grossly negligent supervision of office staff resulting in attorney levying client's wages for attorney fees already paid amounted to moral turpitude; Supreme Court noted, "In some instances, as in the matter before us, an attorney's gross negligence may also affect non-clients with whom he deals or even the public generally"].) Compliance with rule 9.20 affects the public in general—accurate rule 9.20

compliance is essential to the discipline system and to maintaining public confidence in the legal profession. The rule ensures that all concerned parties learn of an attorney's discipline and allows the Supreme Court to monitor compliance with conditions of suspension. (*Lydon v. State Bar*, *supra*, 45 Cal.3d 1181, 1187; *Durbin v. State Bar*, *supra*, 23 Cal.3d 461, 468.) "Failure to comply with the rule causes serious disruption in judicial administration of disciplinary proceedings—proceedings designed to protect the public, the courts, and the legal profession." (*Durbin*, at p. 468.)

In addition, since Eldridge completed her rule 9.20 compliance declaration under penalty of perjury, she provided an imprimatur to her statements, which placed her on notice to ensure that the statements were accurate, complete, and true. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 786; *In the Matter of Yee* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330, 334.) While she testified that she carefully read the declaration, the statements she made in it were clearly false. Specifically, Eldridge declared that she had notified each client, opposing counsel, and the court of her disqualification to act as an attorney after her suspension when, in fact, she had not done so. Notably, she also did not check the box indicating that she had no clients, which would have been consistent with her testimony that she did not believe she had any cases pending. Further, she did not attach a declaration to explain her particular situation, as instructed to do if neither option on the form was correct.

We find that Eldridge's reckless failure to accurately complete the rule 9.20 declaration constitutes gross negligence amounting to moral turpitude. (See *In the Matter of Maloney and Virsik*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 786 [acts of moral turpitude include false or misleading statements to court]; *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 90-91 [attorney who omits he is not entitled to practice in application to become arbitrator is culpable of moral turpitude by gross negligence]; *In the Matter of Yee*, *supra*, 5 Cal.

State Bar Ct. Rptr. at p. 334 [attorney who files inaccurate MCLE compliance declaration by affirmation without verifying contents is culpable of moral turpitude by gross negligence].)

III. AGGRAVATION AND MITIGATION[11]

A. Significant Aggravation for Prior Discipline (Std. 1.5(a))

Eldridge has one previous 2010 record of discipline. The hearing judge considered this prior discipline in aggravation, but did not assign it any specific weight. We find that it should be accorded significant weight in aggravation because of the seriousness of the underlying misconduct and its similarity to the wrongdoing in this matter. Eldridge's prior misconduct included making misrepresentations, altering Judicial Council forms, and filing a false pleading. (See *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443-444 [similarities between prior and current misconduct render previous discipline more serious as they indicate prior discipline did not rehabilitate]; see also *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 841 [great weight placed on common thread among attorney's past and present misconduct].)

Eldridge stipulated to misconduct in four client matters. In State Bar Court Case No. 08-O-12330, she stipulated to culpability for multiple counts under section 6106 for impersonating the mother of a minor child in a family law proceeding and cancelling an airline flight scheduled for the child to visit the mother pursuant to a visitation order, and making misrepresentations regarding her conduct to counsel for the child and in a deposition. She also stipulated to culpability under section 6068, subdivisions (a) and (b), for interfering with the court's lawful custody order, and she stipulated to culpability under rule 3-110(A) of the Rules of Professional Conduct for failing to perform competently in the family law matter. This

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

misconduct occurred in 2008 and 2009 and also resulted in a criminal conviction for violation of Penal Code section 166, subdivision (a)(4) (contempt of court).

In State Bar Court Case No. 06-O-13222, Eldridge stipulated to the following misconduct: (1) agreeing to exchange legal services for home repair services from her client, a professional contractor, in violation of rule 3-300 of the Rules of Professional Conduct; (2) subsequently asserting a possessory interest on her client's tools without putting the interest in writing, obtaining the client's written consent, or giving the client the opportunity to seek the advice of independent counsel, in violation of rule 3-300 of the Rules of Professional Conduct; (3) improperly failing to account for or return the client's tools for almost six years, in violation of rule 4-100(B) of the Rules of Professional Conduct; and (4) altering a Judicial Council form and misrepresenting to the client his discovery obligations, in violation of section 6106 by gross negligence. This misconduct occurred between 2003 and 2008.

In State Bar Court Case No. 08-O-13969, Eldridge stipulated to communicating directly with an opposing party who she knew was represented by counsel, in violation of rule 2-100 of the Rules of Professional Conduct. Finally, in State Bar Court Case No. 08-O-13970, Eldridge stipulated to filing a pleading purportedly signed by a client under penalty of perjury, when the client had not signed it, in violation of section 6106 by gross negligence. The misconduct in these matters occurred in 2008.

B. Aggravation for Lack of Candor Not Established (Std. 1.5(l))

In its closing briefs at trial and on review, OCTC argues that aggravation should be assigned for Eldridge'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 Eldridge. 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 finding of lack of candor 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.) Absent such a finding by the trial judge, we decline to assign aggravation for lack of candor.

C. Mitigation for Extraordinary Good Character (Std. 1.6(f))

The hearing judge found that Eldridge established mitigation under standard 1.6(f) by demonstrating good character attested to by a wide range of references. Under this standard, mitigation may be assigned for "extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct." OCTC argues that Eldridge's character evidence is only entitled to minimal weight because some of the witnesses said they would change their opinion if she were found to have engaged in misrepresentations, some did not understand the details of her current and prior misconduct, and many did not offer persuasive reasons for their opinions.

We affirm the hearing judge's findings and assign substantial mitigation to this factor. Eldridge presented a total of 14 character witnesses. The judge properly did not consider the testimony of three witnesses who were unaware of the full extent of the disciplinary charges or Eldridge's prior disciplinary record. (*In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 495, 508-509 [no good character mitigation for testimony of two attorneys who did not know scope of charges].) The judge did consider the remaining 11 references, which included a superior court judge, three attorneys, a client, a therapist, and friends. (See *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [significant consideration given to testimony of attorneys and judges due to their "strong interest in maintaining the honest administration of justice"].) The judge found that these witnesses credibly testified to Eldridge's

good character, tenacity, integrity, professionalism, sincerity, diligence, thoughtfulness, and dedication. We give great weight to these credibility assessments and affirm the hearing judge's determination that Eldridge has established mitigation for good character. (See *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 591-592 [significant weight given to testimony of character witnesses who had long-standing familiarity with attorney and broad knowledge of his good character, work habits, and professional skills]; *McKnight v. State Bar*, *supra*, 53 Cal.3d 1025, 1032 [hearing judge's credibility evaluations viewed with great deference].)

D. Some Mitigation for Extreme Emotional Difficulties (Std. 1.6(d))

Mitigation is available for extreme emotional difficulties if (1) the attorney suffered from them at the time of the misconduct; (2) they are established by expert testimony as being directly responsible for the misconduct; and (3) they no longer pose a risk of future misconduct. (Std. 1.6(d).) Although she found that Eldridge had not established the nexus required by the standard, the hearing judge assigned minimal weight in mitigation for Eldridge's severe depression during her "steady progress toward rehabilitation" through her participation in the Lawyer Assistance Program (LAP) and regular attendance at group therapy. OCTC argues that Eldridge is not entitled to mitigation for her participation in the LAP.

We affirm the hearing judge's finding of mitigation for emotional difficulties, but increase the weight for this mitigation. While Eldridge did not provide expert testimony to establish a nexus between her emotional difficulties and her misconduct, she did testify that she was being treated for depression and anxiety at the time she completed her rule 9.20 declaration and that her condition and the medications she took to treat it had caused her to experience confusion and lack of clarity. (*In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47, 59-60 ["some mitigating weight" assigned to personal stress factors established by lay

testimony].) In addition, Eldridge and Dr. Timothy Willison, a group facilitator for LAP, testified that she has regularly participated in group therapy since 2010. Dr. Willison first saw Eldridge through the LAP in 2010 and thereafter on a weekly basis in private group therapy that continues to the present. Dr. Willison testified that as a result, he had much less concern about Eldridge's ability to practice law now than he did in 2010. Thus, Eldridge presented evidence that she is working on preventing further misconduct. However, we find that overall she has not established by clear and convincing evidence that the problems she claims led to her misconduct have been fully resolved or will not recur. (See *Kaplan v. State Bar* (1991) 52 Cal.3d 1067, 1073 ["Without assurance that [respondent's] emotional problems are solved, we must be concerned that routine . . . stresses or medical emergencies in the future will trigger similar behavior"].)

E. Mitigation for Remorse (Std. 1.6(g))

The hearing judge assigned mitigation for remorse based on the testimony of Dr. Willison. Standard 1.6(g) provides mitigation for prompt objective steps demonstrating spontaneous remorse, recognition of wrongdoing, and timely atonement. Dr. Willison testified that over the course of her treatment by him, she has accepted responsibility for her wrongdoing. OCTC argues that Eldridge has not demonstrated remorse.

We affirm the hearing judge's finding and assign mitigation for remorse. Dr. Willison testified that Eldridge has grown as a person, come to be remorseful, and developed insight that her misconduct was inappropriate. Also, Eldridge testified that she would act differently if she had to do it again. Her expressions of remorse at trial and Dr. Willison's testimony that she understands and regrets her misconduct merit some mitigation. (*Hipolito v. State Bar* (1989) 48 Cal.3d 621, 626-627 [expression of remorse merits mitigation].)

F. Mitigation for Lack of Harm Not Established (Std. 1.6(c))

The hearing judge assigned mitigation for lack of harm, concluding that no clients were harmed since Eldridge substituted out of their cases. OCTC argues that mitigation should not be afforded for lack of harm, and we agree.

Standard 1.6(c) provides for mitigation where there is clear and convincing evidence of a lack of harm to clients, the public, or the administration of justice. Even if no client harm occurred, Eldridge's misconduct constitutes harm to the public and the administration of justice because "[f]ailure to comply with . . . rule [9.20] causes serious disruption in judicial administration of disciplinary proceedings—proceedings designed to protect the public, the courts, and the legal profession." (*Durbin v. State Bar*, *supra*, 23 Cal.3d 461, 468; *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322, 331 [court declined to assign mitigation based on lack of harm noting that concerned parties protected by rule 9.20 include not only clients, but also cocounsel, opposing counsel, adverse parties, and tribunal in which matter is pending].)

IV. A THREE-YEAR ACTUAL SUSPENSION IS APPROPRIATE DISCIPLINE

The purpose of attorney discipline is not to punish the attorney but to protect the public, the courts, and the legal profession. (Std. 1.1.) Here, given the circumstances in Eldridge's case, the hearing judge recommended two years' actual suspension and until Eldridge can demonstrate her rehabilitation, fitness to practice, and learning and ability in the general law. OCTC asserts that disbarment is the appropriate discipline. Eldridge asks that we affirm the judge's decision.

A rule 9.20 violation is deemed a serious ethical breach for which disbarment is generally

considered the appropriate discipline. (*Bercovich v. State Bar*, *supra*, 50 Cal.3d at p. 131.)[12] However, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059.) Lesser discipline has been imposed on occasion where the late filing of a compliance affidavit was the only issue *and* the attorney demonstrated good faith, unsuccessful attempts to file the declaration, significant mitigation, little aggravation, or other extenuating circumstances.[13] Yet we are mindful that standard 1.8(a) requires that since Eldridge has a prior discipline that is serious and not remote in time, the recommended discipline here must be greater than the two-year actual suspension she received for her previous misconduct.

In this case, the hearing judge found that disbarment was not required and would be punitive considering Eldridge's cooperation in the disciplinary process, that her noncompliance with rule 9.20 did not involve dishonesty, her attempt to properly comply with the rule, and that she did not take advantage of any client's lack of knowledge of her suspension. Despite our additional culpability finding, that Eldridge acted with gross negligence in completing her rule 9.20 declaration, we agree with the judge that disbarment would be overly harsh. Instead, we find that a three-year actual suspension, to continue until Eldridge proves her rehabilitation, fitness to practice, and learning and ability in the general law, is appropriate progressive discipline that will adequately protect the public.

We further agree with the hearing judge that *Shapiro v. State Bar* provides support for discipline less than disbarment. In *Shapiro*, the Supreme Court imposed discipline including a one-year actual suspension for violation of former rule 955, subdivision (c). This discipline

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[12] Rule 9.20, subdivision (d), provides: "A suspended member's willful failure to comply with the provisions of this rule is a cause for disbarment or suspension and for revocation of any pending probation."

[13] See *Shapiro v. State Bar* (1990) 51 Cal.3d 251; *Durbin v. State Bar*, *supra*, 23 Cal.3d 461; *In the Matter of Rose* (1994) 3 Cal. State Bar Ct. Rptr. 192; *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527.

recommendation was based on several factors, including that the attorney's late filing of a compliance declaration was partially due to inadequate advice from the Bar's probation monitor, that the he had orally notified clients and others of his suspension, and that he made prompt efforts to correct his compliance declaration once he learned it was insufficient. The Court also found substantial mitigation for no prior discipline, good character, and emotional difficulties. The Court stressed that it is important in determining appropriate discipline to bear in mind "the overriding principle that the purpose of these proceedings is not to punish an attorney but to inquire into the moral fitness of an officer of the court to continue in that capacity and to afford protection to the public, the courts, and the legal profession." (*Shapiro v. State Bar*, *supra*, 51 Cal.3d 251, 260.)

However, Eldridge's conduct was more serious than that in *Shapiro*—her compliance declaration contained false statements, and she never filed a corrected declaration. We are also concerned that Eldridge's current misconduct is similar to her past wrongdoing, which involved moral turpitude for misrepresentations. (*In the Matter of Shalant*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 841 [great weight placed on common thread among attorney's past and present misconduct].) But, like the attorney in *Shapiro*, Eldridge's failure to comply with rule 9.20 "demonstrate[d] a diligent, if ultimately unsuccessful, attempt to comply with the rule." (*Shapiro v. State Bar*, *supra*, 51 Cal.3d at p. 259.) She filed her declaration in a timely manner, but credibly testified that she made misstatements on the form because she was confused about how to properly complete it. She also demonstrated significant mitigation for good character and some mitigation for remorse and the emotional difficulties she suffered from at the time of her misconduct. Considering the totality of circumstances, including the Supreme Court's guidance that a violation of 9.20 is "by definition, deserving of strong disciplinary measures" (*Lydon v. State Bar*, *supra*, 45 Cal.3d at p. 1187) and standard 1.8(a)'s instruction that we impose

progressive discipline, we find that a three-year actual suspension, to continue until Eldridge proves her rehabilitation and fitness to practice, is a significant and appropriate discipline.

V. RECOMMENDATION

For the foregoing reasons, we recommend that Deborah Ann Eldridge be suspended from the practice of law for four years, that execution of that suspension be stayed, and that she be placed on probation for four years on the following conditions:

1. She must be suspended from the practice of law for a minimum of the first three years of her probation and until she provides proof to the State Bar Court of her rehabilitation, fitness to practice, and learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

2. She must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of her probation.

3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including her current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, she must report such change in writing to the Membership Records Office and the State Bar Office of Probation.

4. Within 30 days after the effective date of discipline, she must contact the Office of Probation and schedule a meeting with her assigned probation deputy to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, she must meet with the probation deputy either in person or by telephone. During the period of probation, she must promptly meet with the probation deputy as directed and upon request.

5. She must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, she must state whether she has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of her probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.

6. Subject to the assertion of applicable privileges, she must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to her personally or in writing, relating to whether she is complying or has complied with the conditions contained herein.

7. Within one year after the effective date of the discipline herein, she must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and she shall not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.) 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 period of probation, if she has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

VI. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Deborah Ann Eldridge be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners during the period of her actual suspension and to provide satisfactory proof of such passage to the Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

VII. RULE 9.20

We further recommend that Eldridge 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 days, respectively, after the effective date of the Supreme Court order in this matter.

VIII. COSTS

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

McGILL, J.

WE CONCUR:

PURCELL, P. J.

HONN, J.