PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

Filed April 1, 2014

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. 11-C-10329
	)	
DAVID TAYLOR KAYE,	)	OPINION
	)	
A Member of the State Bar, No. 171160.	)	
	)	

In this conviction referral matter, David Taylor Kaye stipulated that on eight occasions during March and April 2012, he surreptitiously photographed women in various states of undress at a tanning salon. Kaye, an attorney for 17 years, pled guilty and was convicted of four misdemeanor Penal Code violations — two counts of secretly filming a person and two counts of peeking through a private area. The hearing judge found that the facts and circumstances surrounding the convictions involved moral turpitude, and recommended discipline including a one-year suspension. However, the hearing judge did not recommend that Kaye be required to prove his rehabilitation and fitness to practice law, pursuant to standard 1.2(c)(1) of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, before he can be reinstated.[1]

The Office of the Chief Trial Counsel (State Bar) seeks review. At the hearing below, the State Bar requested a minimum of two years' suspension or disbarment, but urges on appeal that Kaye be disbarred. The State Bar argues the hearing judge gave too much weight to Kaye's

[1] On January 1, 2014, the standards were revised and renumbered, including standard 1.4(c)(ii), which was replaced by standard 1.2(c)(1). Since this case was submitted for ruling in 2014, we apply the new standards. All further references to standards are to the new standards, and references to the earlier version will be designated former standards.

mitigation (no prior record, cooperation, good character, and remorse) and failed to consider his dishonesty to the arresting officers as aggravation. Kaye did not appeal, but asks that we affirm the hearing judge.

After independently reviewing the record (Cal. Rules of Court, rule 9.12), we find that a one-year suspension is inadequate discipline. Kaye repeatedly violated the privacy rights of others and committed serious acts of moral turpitude. The criminal court imposed punishment for his actions, and we find that significant professional discipline is also warranted. While the applicable standard for misdemeanor convictions involving moral turpitude calls for actual suspension or disbarment (std. 2.11(c)), Supreme Court cases addressing such convictions support a lengthy actual suspension in this case. Given the nature of Kaye's crimes and the surrounding facts and circumstances, we recommend increasing discipline to include a two-year suspension continuing until Kaye proves his rehabilitation and fitness to practice law — a heavy burden given his egregious misconduct.

I. FACTS

The parties filed a Stipulation of Facts, Conclusions of Law and Admissibility of Documents, which included an agreement as to the aggravating and mitigating circumstances. Neither party presented any witnesses, and Kaye did not testify. Accordingly, we base our facts on the hearing judge's findings, the parties' stipulation, and the documents admitted into evidence. (Rules Proc. of State Bar, rule 5.155(A) [hearing judge's factual findings entitled to great weight on review].)

A. KAYE WAS CONVICTED OF SECRETLY PHOTOGRAPHING WOMEN

In 2010, Kaye frequented a tanning salon in Southern California. After receiving a complaint from a patron, the salon manager reported to police that Kaye had secretly

photographed a woman while she was tanning. The officers set up a "sting" operation to observe Kaye committing the crime.

On April 19, 2010, two officers went to the salon. A female undercover officer remained in the reception room, planning to pose as a new customer. When Kaye arrived, the salon attendant directed him and the undercover officer to adjacent tanning rooms. The rooms were separated by a partition that did not fully extend to the ceiling. Shortly thereafter, Kaye raised himself over the partition and used his cell phone to secretly photograph the female officer, who was wearing a bikini. The second officer observed Kaye's actions from a stepladder in a nearby tanning room.

Kaye was arrested as he left the salon. When an officer asked him if he had "any possessions" on him, he replied "No." The officer then reached into the pocket of Kaye's pants and removed his cell phone, which had a permanent camera lens attached to it.

In June 2011, Kaye pled guilty to four misdemeanors: two counts of violating Penal Code section 647, subdivision (j)(3)(A) (secretly filming a person),[2] and two counts of violating Penal Code section 647, subdivision (j)(1) (peeking through a private area).[3] He was sentenced to time served (nine days), three years of formal probation with a stayed sentence of 180 days, and payment of a fine. He was not required to register as a sex offender.

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[2] This section prohibits a person from using "a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, another, identifiable person who may be in a state of full or partial undress, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, in the interior of a bedroom, bathroom, changing room, fitting room, dressing room, *or tanning booth*, or the interior of any other area in which that other person has a reasonable expectation of privacy, with the intent to invade the privacy of that other person." (Italics added.)

[3] This section prohibits a person from looking "through a hole or opening, into, or otherwise view[ing], by means of any instrumentality, including, but not limited to, a . . . camera . . . the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which the occupant has a reasonable expectation of privacy, with the intent to invade the privacy of a person or persons inside. . . ."

B. KAYE UNDERWENT TWO PSYCHOLOGICAL EXAMINATIONS

After his arrest, Kaye hired Dr. Francesca Lehman, a psychologist, to assess his propensity to re-offend sexually. Following his sentencing, the superior court ordered that Kaye also be evaluated by Dr. James Reavis, a psychologist for the criminal court's Probation Department, to determine Kaye's risk of re-offense. Both psychologists' reports were admitted into evidence by stipulation.

1. Dr. Lehman's Report

Dr. Lehman conducted a sex-offender-specific psychological evaluation, which included interviews and psychological testing. Dr. Lehman reported that Kaye is 43 years old, had no substance abuse issues, and worked as a private attorney specializing in family and criminal law.

Kaye told Dr. Lehman that he decided to take the first surreptitious photograph after he observed an attractive, scantily clad woman entering an adjacent tanning booth. Upon hearing the woman disrobe, he realized that the partition separating the rooms did not reach the ceiling. When he did not get caught the first time, he decided to photograph other women. Kaye described his behavior as "opportunistic" rather than premeditated, and acknowledged that some type of sexual offense may have been committed. He characterized his offense as "the worst mistake [he] ever made." Although Dr. Lehman found that Kaye's approach to some of the testing suggested a "reluctance to admit problems or shortcomings," she concluded he did not meet the criteria for having a sexual disorder such as voyeurism, and deemed him a "low risk" to re-offend if he were in fact convicted of a sexual offense.

2. Dr. Reavis's Report

Dr. Reavis performed a post-conviction evaluation for the Probation Department to determine Kaye's risk of sexual re-offense, including whether community safety required any interventions. He noted that his report should not be considered a "complete psychosocial

evaluation," and he did not "conduct a clinical interview." Instead, he relied on Dr. Lehman's report and other documents including the: (1) Presentence Investigative Report; (2) Criminal History; (3) Substance Abuse History; (4) Static 99-R [measurement of a perpetrator's risk of committing new sexual crime]; (5) Structured Risk Assessment; and (6) Psychopathy Checklist.

Dr. Reavis concluded that "Mr. Kaye appears to have engaged in 'hypersexual' behavior, albeit over a relatively short time period." He opined that "for an 8-week time period Mr. Kaye's behavior rose above a threshold at which a diagnosis of Voyeurism was met." Ultimately, Dr. Reavis determined that Kaye: (1) was a "low-moderate risk" for sexual re-offense; (2) did not have a sexual interest in children; and (3) did not receive pleasure from sadistic sexual activity. He concluded that no interventions were necessary to ensure the safety of the community.

II. FACTS AND CIRCUMSTANCES SURROUNDING KAYE'S CONVICTIONS INVOLVE MORAL TURPITUDE

For purposes of attorney discipline, Kaye's convictions are conclusive proof of his guilt. (Bus. & Prof. Code § 6101, subd. (a).) After the State Bar transmitted his conviction records to us, we referred this matter to the hearing department to determine whether the facts and circumstances of the crimes involved moral turpitude or other misconduct warranting discipline and, if so, the appropriate level of discipline. (See Bus. & Prof. Code, § 6102, subd. (e).)

The hearing judge found that the facts and circumstances surrounding the convictions involved moral turpitude, specifically the deceptive manner in which Kaye repeatedly violated his victims' privacy. Kaye does not dispute this moral turpitude finding, and we adopt it. As the hearing judge properly noted, Kaye's deceitful misconduct was "vile" and demonstrated a flagrant disregard for the law and societal norms. (*In re Craig* (1938) 12 Cal.2d 93, 97 [moral turpitude is act of baseness, vileness, or depravity in duties owed to others or society in general and is contrary to accepted and customary rule of right and duty between people].) Kaye

consciously and repeatedly placed himself in a position to violate the privacy rights of eight women while they were in various states of undress. In addition, upon his arrest, he was dishonest with the arresting officer, denying that he possessed the cell phone/camera. His overall misconduct clearly demonstrates a lack of consideration for others and a disregard for the law. Significant public discipline is warranted.

III. AGGRAVATION AND MITIGATION[4]

The offering party bears the burden of proof for aggravation and mitigation. The State Bar must establish aggravating circumstances by clear and convincing evidence. (Std. 1.5 [former std. 1.2(b)].)[5] Kaye has the same burden to prove mitigating circumstances. (Std. 1.6 [former std. 1.2(e)].) The parties stipulated to two factors in aggravation and four in mitigation under the former standards. The hearing judge adopted all six factors, and so do we.

A. TWO AGGRAVATING FACTORS

1. Multiple Acts of Misconduct (Std. 1.5(b) [Former Std. 1.2(b)(ii)])

Kaye stipulated to victimizing eight women on separate occasions over a two-month period. These multiple and similar acts of misconduct merit significant weight in aggravation.

2. Harm (Std. 1.5(f) [Former Std. 1.2(b)(iv)])

Kaye stipulated that his conduct "harmed the victims causing embarrassment and invasion of their privacy." We agree. The victims were particularly vulnerable as they reasonably expected privacy while disrobing in the individual salon rooms. Kaye intentionally violated their rights to privacy by secretly photographing them. However, we note the limited

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[4] Since the parties' stipulation cited to the former standards, we list both the former and the new standards for ease of reference. We note that the revised standards do not materially alter any of the listed factors.

[5] 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.)

nature of the stipulation, in particular, the lack of any cognizable harm beyond the general stipulated statement of harm. For example, there is no evidence that the victims suffered emotional difficulties that required them to undergo psychological counseling, miss work, or experience a financial hardship. (See *Calvert v. State Bar* (1991) 54 Cal.3d 765, 784-785 [no legally cognizable emotional harm for client frustration with attorney absent proof of receiving therapy or counseling, or experiencing symptoms due to stress].)[6] Nevertheless, we find that the stipulated harm considerably aggravates this case given the intimate setting in which Kaye committed his crimes.

3. No Additional Aggravation for Dishonesty or Concealment (Std. 1.5(d) [Former Std. 1.2(b)(iii)])

Standard 1.5(d) provides that it is an aggravating circumstance when an attorney's misconduct involves intentional wrongdoing, bad faith, dishonesty, concealment, or overreaching. The State Bar claims this case is aggravated by Kaye's: (1) overall concealment and deception in the way he committed the crimes; (2) dishonesty for lying to the arresting officer; and (3) cover-up attempt to destroy photographic evidence. As noted, we already considered Kaye's deception in surreptitiously photographing his victims and his dishonesty to the arresting officer to prove moral turpitude in the facts and circumstances surrounding his convictions. We do not consider these facts again in aggravation. (*In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 68 [where factual findings used to find culpability, it is improper to consider again in aggravation].)[7]

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[6] The State Bar chose not to call the victims to testify, presumably to avoid their further discomfort or indignity. However, a victim impact statement could have provided such clear and convincing evidence of significant harm. (Rules Proc. of State Bar, rule 5.107(A) [permits any victim to submit written statement setting forth nature, manner, and extent of harm].)

[7] We also note that the State Bar raised Kaye's dishonesty to the officer as aggravation for the first time on review. This belated request raises issues of due process and fairness since: (1) the prosecutor stated at the hearing below that the only aggravating factors were multiple acts and harm, as listed in the stipulation; and (2) given the prosecutor's representation, Kaye did not

Nor do we consider the claim that Kaye attempted to destroy evidence because the State Bar did not present reliable evidence to establish it. The only evidence is Dr. Reavis's report, which adopts a statement in the Presentence Investigative Report (PSI) that Kaye "remotely accessed his cell phone to delete images after his arrest." The PSI was not admitted into evidence, and its author did not testify. We conclude that the multilevel hearsay statement in Dr. Reavis's report suggesting Kaye deleted the photographs is not "the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs" (Rules Proc. of State Bar, rule 5.104(C)), and does not support the State Bar's allegation by clear and convincing evidence.

B. FOUR MITIGATING FACTORS

1. No Prior Record of Discipline (Std. 1.6(a) [Former Std. 1.2(e)(i)])

The stipulation states: "Respondent has been practicing since 1994 with no prior discipline. He is entitled to *some* mitigating credit for no prior discipline even where the underlying conduct is found to be serious or significant." (Italics added.)

Standard 1.6(a) provides mitigation credit for a lengthy practice without discipline where the present misconduct is not serious. But when the misconduct is serious, as it decidedly was here, a discipline-free record counts most if the wrongdoing is aberrational, caused by transient emotional problems, or unlikely to recur. (*Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [medical evidence that misconduct caused by emotional problems that attorney overcame makes past record of no discipline "unquestionably" relevant].) Kaye did not prove any of these factors. His misconduct was not the result of an identified emotional problem, he offered no explanation for repeatedly committing the offenses, and Dr. Reavis opined that Kaye was a "low-

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have an opportunity to develop the trial record on this issue. (See *In re Strick* (1983) 34 Cal.3d 891, 899 [attorney is entitled to "procedural due process in proceedings which contemplate the deprivation of his license to practice his profession"].)

moderate" risk of sexual re-offense. Thus, we cannot say Kaye's misconduct was aberrational, caused by transient emotional problems, or unlikely to recur. Accepting the parties' stipulation, we assign modest weight in mitigation for Kaye's discipline-free record.

2. Cooperation (Std. 1.6(e) [Former Std. 1.2(e)(v)])

The stipulation states: "Respondent cooperated with the State Bar by entering into a stipulation with the State Bar prior to trial avoiding the victims from having to face Respondent and face possible discomfort from testifying. Respondent entered into this stipulation with the goal of resolving this matter and relieving the State Bar and the State Bar Court of otherwise unnecessary proceedings." We agree that Kaye's cooperation is a mitigating factor.

3. Good Character (Std. 1.6(f) [Former Std. 1.2(e)(vi)])

The stipulation states: "Respondent's good character is attested to by eight individuals, including four attorneys who are aware of the Respondent's misconduct related to these matters."

Standard 1.6(f) authorizes mitigating credit for an extraordinary demonstration of 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 member's misconduct. Kaye's character witnesses included four attorneys and four long-term reputable friends who testified by declaration that he is hard-working, ethical, scrupulously honest, and sensitive to the rights of others despite his criminal convictions.

The State Bar argues Kaye is entitled to only minimal credit because the witnesses did not acknowledge details of the crimes nor indicate Kaye had expressed remorse for his wrongdoing. We do not agree. The stipulation itself states the witnesses were aware of Kaye's misconduct, and the State Bar did not present contrary evidence. Further, we give serious consideration to the testimony of attorneys because they have a "strong interest in maintaining

the honest administration of justice." (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319.) Kaye's showing of good character is an important factor in mitigation.

4. Remorse/Recognition of Wrongdoing (Std. 1.6(g) [Former Std. 1.2(e)(vii)])

The stipulation states: "Respondent promptly accepted responsibility for his actions and consulted with a physician to address the reasons for his criminal activity."

Standard 1.6(g) provides mitigation credit where an attorney takes prompt objective steps that demonstrate spontaneous remorse and recognition of wrongdoing and timely atones for the misconduct. The State Bar argues for minimal credit because Kaye consulted Dr. Lehman only to assist in his criminal case and met with Dr. Reavis to comply with his criminal probation terms. We agree. While Kaye entered a plea in his criminal case, neither physician consultation proved a spontaneous demonstration of remorse/recognition of wrongdoing or provided rehabilitative therapy. Accordingly, we assign limited weight in mitigation to this factor.[8]

IV. LEVEL OF DISCIPLINE

We begin by acknowledging that "the aim of attorney discipline is not punishment or retribution; rather, attorney discipline is imposed to protect the public, to promote confidence in the legal system, and to maintain high professional standards." (*In re Brown* (1995) 12 Cal.4th 205, 217.) It is not our role to punish Kaye for his convictions — the superior court has taken care of that by imposing a criminal sentence, which includes three years of formal probation. Instead, our objective is to recommend the professional discipline that will protect the public, the courts, and the legal profession and, particularly in this case, will preserve public confidence in the profession. (Std. 1.1.) To accomplish this, we follow the standards "whenever possible," and balance all relevant factors, including mitigating and aggravating circumstances, on a case-

[8] The State Bar claims it "erred" by stipulating to two mitigating factors: lack of prior record and remorse. However, it acknowledges being "bound by the Stipulation" and "does not seek to withdraw from [it]." Since the Stipulation is binding, we consider all stipulated factors and assign appropriate weight to each.

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.) We conclude that discipline should be increased.

To begin, this case presents a unique procedural history regarding application of the standards. Since the trial occurred in 2013, the hearing judge considered former standard 3.2. That standard provides a presumption of disbarment for convictions of any crimes that involve moral turpitude absent compelling mitigation that clearly predominates.[9] Accepting that the standards are guidelines, and unable to find controlling case law on point, the hearing judge recommended a one-year suspension, reasoning that Kaye was "unlikely to reoffend" because he: (1) recognized and accepted his wrongdoing; (2) consulted a physician; and (3) entered into a stipulation.

Effective January 1, 2014, standard 2.11(c) replaced former standard 3.2. The amendments were intended "to better reflect current case law, rule, and statutory authority," and for convictions "to distinguish between felonies and misdemeanors." (Agenda Item II.C., Board of Trustees Meeting, July 2013, pp. 1 & 9.) Pursuant to these goals, the new standard provides: "Disbarment or actual suspension is appropriate for final conviction of a misdemeanor involving moral turpitude." (Std. 2.11(c).) Under this new standard, disbarment is no longer the presumptive discipline for *misdemeanor* convictions involving moral turpitude. But given the broad range of discipline from suspension to disbarment, we turn to case law to further guide us. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311 [case law provides guidance on discipline].)

[9] Former standard 3.2 provided: "Final conviction of a member of a crime which involves moral turpitude, either inherently or in the facts and circumstances surrounding the crime's commission shall result in disbarment. Only if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than a two-year actual suspension . . . ."

Like the hearing judge, we find no case that discusses the specific crimes Kaye committed, and little relevant law that addresses discipline for misdemeanors where the facts and circumstances constitute moral turpitude based on similar deviant behavior.[10] The most comparable case is *In re Safran* (1976) 18 Cal.3d 134, which was decided pre-standards. Safran was convicted of two misdemeanor counts of annoying or molesting a child under 18, in violation of former Penal Code section 647a (re-numbered as Penal Code § 647.6 effective in 1988). He had previously been convicted of indecent exposure. The facts and circumstances surrounding the crime involved moral turpitude and Safran received a three-year stayed suspension. In mitigation, the Supreme Court found that he was undergoing psychiatric treatment, which he was committed to continuing, and that "a period of probation under intensive supervision by the State Bar will adequately protect the public and the profession." (*Id.* at p. 136.)

Kaye's case is more serious in several respects. Safran was convicted of two counts of sexual misconduct; Kaye violated the privacy rights of eight women. Safran was committed to psychiatric therapy; Kaye failed to prove he obtained any psychological treatment. In fact, Kaye presented no rehabilitative evidence, such as making amends to the community he harmed, performing pro bono work, or undergoing psychological treatment to address the issues that led to his misconduct. (See *In the Matter of Brown, supra,* 2 Cal. State Bar Ct. Rptr. at pp. 317-319 [rehabilitation in reinstatement proceeding shown by pro bono service and psychological counseling 15 years after criminal acts].) That he stopped photographing women after the police intercepted him does not demonstrate his rehabilitation. (See *id.* at p. 320.)

[10] Nor do we find guidance in cases involving felonies that constitute moral turpitude per se as summary disbarment is statutorily mandated for such offenses, leaving no room for inquiry. (See *In re Grant* (2014) 58 Cal.4th 469 [summary disbarment for moral turpitude per se felony possession of child pornography]; *In re Lesansky* (2001) 25 Cal.4th 11 [summary disbarment for moral turpitude per se felony lewd act on child].) Instead, Kaye's crime was a misdemeanor and, unlike the offenses in *Grant* and *Lesansky*, it does not require registration as a sex offender.

Also important to our analysis is that Kaye has not fully acknowledged his wrongdoing. He told Dr. Lehman his misconduct was "opportunistic," which he has continued to argue in this proceeding. Such characterization of his crimes simply does not ring true. Each time he returned to the tanning salon to commit his pre-planned crime, he did so after he had time to reflect on and consider the consequences of his misconduct. As an experienced criminal law attorney, Kaye knew the costs of such behavior — to the victims and to himself. Although he denies that sexual gratification was his motive, he fails to explain his behavior or provide evidence that he has recovered from whatever caused him to commit the offenses. Regardless of the reasoning, his wrongdoing demonstrated a lack of trustworthiness and honesty that, as the hearing judge noted, "undermine[s] the public confidence in and respect for the legal profession."

The State Bar argues that it is these facts and circumstances surrounding Kaye's crimes that call for his disbarment, which is in the upper range of discipline suggested by standard 2.11(c). Kaye urges us to affirm the hearing judge's recommended one-year suspension since: (1) his misconduct has no connection with his practice of law; (2) he has a 17-year discipline-free record since his admission to the Bar in 1994; (3) he promptly accepted his wrongdoing by consulting Dr. Lehman; (4) his case is mitigated by good character evidence; and (5) both psychologists' reports show his unlikelihood of re-offense. In deciding the proper discipline to recommend, we are mindful that the issue before us is the level of discipline necessary to "protect the public from the threat of future *professional* misconduct." (*In re Kelley* (1990) 52 Cal.3d 487, 498, italics added.) We find, as did the hearing judge, that disbarment is not warranted for Kaye's misdemeanor offenses.[11]

[11] We note that the Supreme Court has imposed discipline less than disbarment for crimes involving moral turpitude based on the facts unique to the specific case. Although the offenses in those cases did not involve sexual or other deviant social behavior, the misconduct was more

Several factors persuade us that an actual suspension, rather than disbarment, is the proper discipline. First, new standard 2.11(c) instructs that an actual suspension is appropriate discipline for misdemeanor convictions involving moral turpitude. (See also Bus. & Prof. Code, § 6102, subd. (e) [disbarment *or* suspension for convictions not subject to summary disbarment pursuant to section 6102, subdivision (c) (i.e., felonies involving moral turpitude per se)].) While Kaye's misconduct is extremely serious, he has been punished for his crimes, committed no other misconduct in 17 years of practice, and received credit for four mitigating circumstances. We also note that he was not convicted of Penal Code section 647, subdivision (j)(2), a misdemeanor that includes an element that the secret filming was done "with intent to arouse, appeal to, or gratify the lust, passions, or sexual desires" of the perpetrator. Perhaps most importantly, no Supreme Court case supports disbarment in a *misdemeanor* conviction referral under similar circumstances as presented here.[12]

After considering all relevant factors, we conclude Kay must be suspended for a lengthy period and then prove he is rehabilitated before he can be reinstated to the practice of law. Given his serious misconduct and failure to demonstrate reform, we recommend a two-year actual suspension with the requirement that he present proof at a formal hearing of his rehabilitation

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directly connected to the practice of law and therefore relevant in our analysis. (See, e.g., *Chadwick v. State Bar* (1989) 49 Cal.3d 103 [one-year suspension for misdemeanor convictions for fraudulent insider trading and counseling co-conspirator to lie to Securities and Exchange Commission]; *In re Chira* (1986) 42 Cal.3d 904, 909 [one-year stayed suspension for felony conspiracy to obstruct collection of federal tax revenues].)

[12] Kaye focused on cases where an actual suspension was imposed in conviction referral cases (see, e.g., *In the Matter of Nadrich* (1988) 44 Cal. 3d 271 [one-year suspension for possession with intent to distribute LSD]), which are not helpful since the attorneys proved more mitigation, such as emotional problems, substance abuse, or, most notably, voluntary participation in counseling programs. The State Bar suggested cases addressing dishonesty (see, e.g., *Lebbos v. State Bar* (1991) 53 Cal.3d 37 [disbarment for multiple acts of dishonesty including forging court commissioner's signature, giving false deposition testimony, and making false statements about judges]), which were also not helpful because, as discussed, we find the *core* of Kaye's wrongdoing to be his repeated acts of photographing his victims — not his dishonesty to the arresting officer.

and present fitness to practice law. We believe this discipline will protect the public, the courts, and the legal profession, and send the proper message that misconduct such as Kaye's will result in significant professional sanctions.

V. RECOMMENDATION

For the foregoing reasons, we recommend that David Taylor Kaye be suspended for two years, that execution of that suspension be stayed, and that he be placed on probation for three years with the following conditions:

1. He is suspended from the practice of law for a minimum of the first two years of the period of his probation and until he provides proof to the State Bar Court of his 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. He must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his 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 his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, he 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, he must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, he must meet with the probation deputy either in person or by telephone. During the period of probation, he must promptly meet with the probation deputy as directed and upon request.

5. He 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, he must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his 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, he must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein.

7. Within one year after the effective date of the discipline herein, he 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 he 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 he 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 David Taylor Kaye be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners during the period of his actual suspension in this matter 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 David Taylor Kaye be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to 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 proceeding. Failure to do so may result in disbarment or suspension.

VIII. COSTS

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

PURCELL, J.

WE CONCUR:

REMKE, P. J.

EPSTEIN, J.