

Filed August 8, 2013

**STATE BAR COURT OF CALIFORNIA**

**REVIEW DEPARTMENT**

In the Matter of	)	Case Nos. 09-C-12545; 11-O-17317
	)	(Cons.)
JAMES MAZI PARSA,	)	
	)	OPINION
A Member of the State Bar, No. 153389.	)	
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Respondent James Mazi Parsa has been on interim suspension for almost four years due to his two misdemeanor convictions for unlawful sexual intercourse with a 17 year-old employee. Parsa was ordered to notify his clients of his suspension pursuant to California Rules of Court, rule 9.20.<sup>1</sup> The conviction referral matter was abated when Parsa submitted his resignation with charges pending and the State Bar assumed jurisdiction over his law practice.

In August 2011, the Office of the Chief Trial Counsel (State Bar) filed a Notice of Disciplinary Charges (NDC), alleging that Parsa falsely attested in two rule 9.20 compliance declarations that he had notified all of his clients of his suspension. In fact, eight out of his approximately 4,500 clients had not received notice. After the Supreme Court rejected Parsa's resignation, the hearing judge consolidated the conviction case and the rule 9.20 matter and proceeded to trial. The hearing judge found that Parsa intentionally or with gross negligence made false statements on his rule 9.20 declarations and that these acts of moral turpitude, combined with the circumstances of the misdemeanor convictions, warranted his disbarment.

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<sup>1</sup> All further references to rules are to the California Rules of Court unless otherwise noted.

Parsa requests review, asserting that he is not culpable of moral turpitude because he believed in good faith that his statements on his rule 9.20 declarations were true. He also contends that his misdemeanor convictions do not warrant disbarment. The State Bar supports the hearing judge's disbarment recommendation.

We have independently reviewed the record (Cal. Rules of Court, rule 9.12), considering the specific factual findings raised by the parties. (Rules Proc. of State Bar, rule 5.152(C) [any factual error not raised on review is waived by parties].) In so doing, we find that the record does not establish by clear and convincing evidence<sup>2</sup> that Parsa intentionally or with gross negligence misrepresented on his rule 9.20 declarations that all of his clients had been notified of his suspension. Accordingly, we reverse the hearing judge and dismiss the rule 9.20 matter (case number 11-O-17317) with prejudice.

We thus focus our analysis on the appropriate level of discipline in the conviction matter (case number 09-C-12545) arising from Parsa's two misdemeanor violations of Penal Code section 261.5.<sup>3</sup> Although his misconduct merits significant discipline, we do not find that disbarment is warranted in light of the facts of this case and the applicable decisional law. Instead, we find that a two-year actual suspension with conditions is sufficient discipline, given the absence of aggravating factors and the circumstances unique to this case. Parsa should be given credit for the period of his interim suspension. However, we recommend that his suspension should continue until he establishes his rehabilitation, fitness to practice law and present learning and ability in the law in satisfaction of standard 1.4(c)(ii) of the Standards for

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<sup>2</sup> 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.)

<sup>3</sup> Penal Code section 261.5, subdivision (a), provides: "Unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor. For the purposes of this section, a 'minor' is a person under the age of 18 years and an 'adult' is a person who is at least 18 years of age."

Attorney Sanctions for Professional Misconduct.<sup>4</sup> Such a showing will ensure that the public, the courts, and the legal profession are adequately protected.

## I. FACTUAL AND PROCEDURAL BACKGROUND

Parsa was admitted to practice law in California on June 14, 1991, and he has no prior record of discipline. He was the sole principal of his law firm, which focused on loan modification transactions.

### A. Parsa's Conviction for Sexual Relationship with a Minor

In late 1999, Parsa's firm hired a female employee who was a minor (the minor employee). Initially, Parsa had limited interaction with her, but after a few months, they developed a sexual relationship. The minor employee was 17 years old and Parsa was 35. In March 2000, they engaged in consensual sexual intercourse, and as a consequence, Parsa was convicted of two instances of having sex with a minor. At the trial below, the State Bar offered police reports containing additional, albeit limited, evidence of the circumstances surrounding Parsa's conviction. None of the officers who conducted the investigation or prepared the reports were called to testify.

Parsa objected to the admissibility of the police reports on hearsay grounds, but the hearing judge summarily overruled his objection. On appeal, Parsa again objects. We conclude that the police reports are admissible under the public employee records exception to the hearsay rule. (Evid. Code, §1280; *Lake v. Reed* (1997) 16 Cal.4th 448, 461 ["police officer's report, even if unsworn, constitutes 'the sort of evidence on which responsible persons are accustomed to rely'"]; *Poland v. Department of Motor Vehicles* (1995) 34 Cal.App.4th 1128, 1136 [document purportedly signed by public employee acting in official capacity is deemed authentic even without employee's testimony].) But this hearsay exception is limited to the observations

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<sup>4</sup> All further references to standards are to title IV of the Rules of Procedure of the State Bar of California.

and other matters within the personal knowledge of the officers. (*Gananian v. Zolin* (1995) 33 Cal.App.4th 634, 639-640 [officer's sworn statement of his observations is admissible]; *People v. Baeske* (1976) 58 Cal.App.3d 775, 779-781 [statements by non-public employees without duty to observe and report are inadmissible].)

The statements by Parsa contained in the reports (i.e., he had sex with the minor employee "multiple times" and knew she was 17) are also admissible as they are excepted from the hearsay rule as party admissions. (Evid. Code, § 1220.) As to the statements by the minor employee regarding the circumstances surrounding their sexual relationship, we find most of the statements are inadmissible hearsay because they do not supplement or explain Parsa's statements to the police, his testimony at trial, or other admissible evidence. (Rules Proc. of State Bar, rule 5.104(D) ["Hearsay evidence may be used for the purpose of supplementing or explaining other *evidence*"]; see Gov. Code, § 11513, subd. (d).) We thus consider only those hearsay statements by the minor employee that conform to rule 5.104(D), which were that her sexual relationship with Parsa was consensual, that Parsa was aware of her age and that they engaged in sex on six occasions over a two-month period both at the office and at his home.<sup>5</sup>

Parsa was arrested and on May 17, 2001, he pled guilty to two misdemeanor counts of unlawful sexual intercourse with a person less than 18 years of age, in violation of Penal Code section 261.5. He received a suspended sentence with three years' informal probation and conditions, including a \$100 fee to the State Restitution Fund, 30 days of community service, no contact with the minor employee, and a \$500 donation to the Victim Witness Emergency Fund.

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<sup>5</sup> We do not consider statements in the police reports from unidentified persons regarding the minor employee's employment by the Parsa law firm since their statements were otherwise unsubstantiated and are not the "sort of evidence on which responsible persons are accustomed to rely. . . ." (Rules Proc. of State Bar, rule 5.104(C).) However, it is undisputed that she worked at his firm for several months.

Parsa was not required to register as a sex offender. Parsa successfully completed all of the conditions of his probation.

**B. Parsa Is Placed on Interim Suspension and Ordered to Comply with Rule 9.20**

Parsa did not report his conviction to the State Bar based on his counsel's advice that it was not required because his misdemeanor offenses were not committed in the course of the practice of law and did not constitute moral turpitude per se. At the time of Parsa's conviction in 2001, violations of Penal Code section 261.5 were classified as crimes that may or may not involve moral turpitude.<sup>6</sup>

On August 31, 2009, eight years after Parsa's conviction, the State Bar filed a Transmittal of Records of Conviction with the State Bar Court in case number 09-C-12545. On September 17, 2009, Parsa's crime was classified as moral turpitude per se and he was placed on interim suspension, effective October 16, 2009.<sup>7</sup> (Bus. & Prof. Code, § 6102;<sup>8</sup> rule 9.10(a).) He also was ordered to comply with rule 9.20 subdivisions (a) and (c) within 30 and 40 days, respectively, of the effective date of his suspension. As a result of the interim suspension order,

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<sup>6</sup> See *In re the Conviction of Michael Joseph Malloy* (S012535) November 16, 1989 Supreme Court order referring matter to determine whether facts and circumstances surrounding conviction for misdemeanor violation of Penal Code § 261.5, subdivision (c), which involved a 17-year-old victim, constituted moral turpitude or other misconduct warranting discipline, and February 14, 1991 discipline order imposing 60-day suspension for conviction.

<sup>7</sup> We followed the Supreme Court's classification in *In re the Conviction of Malloy* until 2005, when we found, based on the record of conviction, that a felony violation of Penal Code sections 261.5, subdivision (c) and 288.2, subdivision (b) (use of Internet to send harmful material to minor with intent to seduce) were crimes involving moral turpitude. (*In the Matter of Borrevik* (March 4, 2005, State Bar Court Case No. 04-C-14264.) It is unclear in that case whether the per se moral turpitude classification applied to Penal Code section 261.5, subdivision (c) independently, or only concurrently with section 288.2, subdivision (b). However, neither party has challenged the moral turpitude classification of Penal Code section 261.5, and therefore, the issue is not before us.

<sup>8</sup> All further references to sections are to the Business and Professions Code unless otherwise noted.

Parsa stopped work on all active files and laid off all but about 10 of his approximately 100 employees.

On October 16, 2009, Parsa submitted his resignation with charges pending, which the State Bar did not oppose. The hearing judge abated the conviction matter, and the State Bar petitioned the Orange County Superior Court for jurisdiction over Parsa's law practice, which the Superior Court granted on October 22, 2009. The superior court's order directed the State Bar to do the following: change Parsa's phone numbers and mailing address; remove all files and records from Parsa's firm, including electronic files; notify clients of Parsa's suspension and the procedure for obtaining their files; freeze all bank accounts and appoint a receiver to take control of these accounts; open and examine all mail addressed to Parsa's firm; and forward all client-related mail to the appropriate client.

In the meantime, Parsa hired State Bar defense counsel to assist him so that he might properly comply with his rule 9.20 obligations and transfer the management of his law practice to the State Bar in an orderly fashion. Pursuant to his attorney's directions, Parsa instructed his trusted office manager of five years, Alex Dastmalchi, to send every client a letter with the appropriate rule 9.20 notification language provided by his attorney. Each letter was signed using Parsa's electronic signature and mailed to addresses retrieved from hard-copy and electronic client files. There were approximately 4,500 clients with active files.

Dastmalchi organized a team comprised of the firm's remaining employees to send the registered or certified letters. Parsa did not personally complete this work due to the large number of clients and because the State Bar had assumed jurisdiction over his practice. In fact, he stayed away from his office during this time because he received death threats from angry clients. However, he spoke with Dastmalchi several times a day by phone and communicated by email about the progress of the mailing. Despite these efforts, eight clients did not receive the

letters, although seven of them learned of Parsa's suspension by November 2009 when they came to his office, and the last client learned of Parsa's suspension in January 2010 by a letter from the State Bar.

After Dastmalchi informed Parsa that all of the notices had been sent, Parsa signed a rule 9.20 compliance declaration on November 13, 2009, stating under penalty of perjury that he had notified all clients of his interim suspension. This declaration was rejected by the Office of Probation on March 15, 2010, because Parsa failed to check a box indicating he delivered pertinent client papers and property to the State Bar. On March 26, 2010, Parsa submitted an amended rule 9.20 compliance declaration, and he again verified that he had notified all clients of his suspension.

**C. State Bar Files NDC Alleging False Statements in Rule 9.20 Declaration**

On December 2, 2011, the State Bar filed an NDC alleging Parsa acted with moral turpitude because he falsely stated on his rule 9.20 compliance declarations that he had notified his clients of his suspension. At the time of trial, the parties filed two joint stipulations as to facts and admission of documents.

**II. CULPABILITY ANALYSIS**

**A. Parsa Reasonably Complied with Rule 9.20 Order (Case No. 11-O-17317)**

Section 6106 provides that an act involving moral turpitude "constitutes a cause for disbarment or suspension." The hearing judge found that Parsa was culpable of moral turpitude, in violation of this section, by falsely declaring in two rule 9.20 compliance declarations that he had notified all clients of his suspension. We disagree.

Parsa's efforts to comply with his rule 9.20 obligations were reasonable, responsible, and designed to ensure that his clients received the required notice. He worked closely with his counsel, who advised Parsa on an ongoing basis about his compliance with rule 9.20 and his

orderly transfer of his practice to the State Bar. His office manager, Dastmalchi, credibly testified in detail about the procedures that were adopted to comply with the rule 9.20 order. Given that Parsa had 4,500 clients, he could not accomplish that task within the required time period without the assistance of Dastmalchi and other employees.

Furthermore, even though Parsa was in daily contact with his office manager, he was unable to independently determine whether any of his client mail had been returned as undeliverable or whether the certifications of delivery had been signed by his clients. He had no access to his mail since the State Bar changed his firm's mailing address and phone numbers so that it received all mail addressed to his firm. Ultimately, eight clients did not receive the notice, but that was a minuscule fraction of Parsa's client pool. Under these circumstances, we find that Parsa's misstatements on his rule 9.20 declaration were neither intentional nor grossly negligent, and they do not support a finding of moral turpitude. (Compare *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322, 330-331 [attorney's violation of former rule 955 not reasonable where he failed to consult court rules, his former counsel, or State Bar]; *Vaughn v. State Bar* (1972) 6 Cal.3d 847, 857-858 [moral turpitude where attorney was grossly negligent in failing to supervise associate attorney and support staff].) Accordingly, we dismiss case number 11-O-17317 with prejudice.

**B. Parsa's Conviction for Sexual Intercourse with Minor Warrants Serious Discipline (Case No. 09-C-12545)**

Parsa's conviction for two misdemeanor counts of sexual intercourse with a minor in violation of Penal Code section 261.5 is conclusive evidence of his guilt. (*In re Utz* (1989) 48 Cal.3d 468, 480 [record of conviction is conclusive evidence of guilt and cannot be collaterally attacked in discipline proceedings].) Penal Code section 261.5 requires the victim to be 17 years old or younger and more than three years younger than the perpetrator, and consent of the victim is not a defense. (CALJIC 10.40.1) Parsa's conviction involves moral turpitude and therefore is



cause for disbarment or suspension. (§ 6106.) However, in analyzing the seriousness of his crime and assessing the appropriate discipline for this conviction, we observe that the same conduct, i.e., consensual intercourse with a 17-year-old, is not a crime in the vast majority of states. (*People v. Hofsheier* (2006) 37 Cal.4th 1185, 1204, fn. 7 [“voluntary sexual conduct with an adolescent 16 or 17 year of age is not a crime” in a majority of states].)

### **III. AGGRAVATION AND MITIGATION**

We also consider aggravating and mitigating factors in determining the appropriate level of discipline. (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.) The State Bar must establish aggravation by clear and convincing evidence (std. 1.2(b)), while Parsa has the same burden to prove mitigating circumstances. (Std. 1.2(e).) We find three factors in mitigation and none in aggravation.

#### **A. The State Bar Failed to Prove Aggravation**

The hearing judge found that Parsa’s misconduct was aggravated by uncharged misconduct and significant harm. We find neither of these factors was proven by clear and convincing evidence.

##### **1. No Uncharged Misconduct (Std. 1.2(b)(iii))**

The hearing judge found that Parsa’s testimony at trial about his failure to report his convictions to the State Bar was evidence of uncharged misconduct. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 35-36.) An attorney is required to report “a misdemeanor committed in the course of the practice of law, or in a manner in which a client of the attorney was the victim, or a necessary element of which, as determined by the statutory or common law definition of the misdemeanor, involves improper conduct of an attorney, including dishonesty or other moral turpitude . . . .” (§ 6068, subd. (o)(5).)

When the State Bar initiated these proceedings, it had notice of Parsa's failure to report his convictions, yet it did not charge him with misconduct. Nor did the State Bar move to amend the NDC to conform to proof. To now impose culpability after the fact unfairly denies Parsa the opportunity to fully develop the record on this new allegation of misconduct. (*In the Matter of Taylor* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 221, 235, fn. 16.) We decline to consider this factor in aggravation.

**2. No Significant Harm (Std. 1.2(b)(iv))**

The hearing judge found that Parsa's criminal misconduct involved significant harm to his 17-year-old employee. The State Bar introduced no evidence to establish harm other than the minor's age, which is a requisite element of the crime. Where factual findings are used to find culpability, it is improper to again consider them in aggravation. (*In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 68.)

**B. Parsa Established Three Factors in Mitigation**

**1. No Prior Record of Discipline (Std. 1.2(e)(i))**

Parsa had practiced law for nine years without discipline when he engaged in the unlawful sexual relationship with his minor employee in 2000. By the time of his disciplinary trial in 2012, another 12 years had passed without any evidence of misconduct. These lengthy periods without discipline significantly mitigate Parsa's misconduct. (Std. 1.2(e)(i); *Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [significant mitigation for over 10 years of discipline-free practice].)

**2. Cooperation with the State Bar (Std. 1.2(e)(v))**

The hearing judge afforded Parsa credit for cooperation for entering into partial stipulations of facts and admission of documents prior to trial. We assign minimal credit for his cooperation since Parsa stipulated to facts that are easily provable. (*In the Matter of Johnson*

(Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive weight in mitigation accorded those who admit culpability as well as facts].)

### **3. Remorse and Recognition of Wrongdoing (Std. 1.2(e)(vii))**

We find Parsa demonstrated recognition of his wrongdoing by actively assisting the State Bar in assuming jurisdiction over his practice so as to protect the interests of his clients. (*In the Matter of McKiernan* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420, 424.) At the time of the misconduct, Parsa apologized to the minor employee and told her that it was completely his fault. Further, when asked at trial if he had learned anything from his misconduct, he testified that “the consequences [of his sexual relationship with his employee] obviously go very wide and far. I’ve learned quite a bit.” We give his remorse and recognition modest weight.

## **IV. LEVEL OF DISCIPLINE**

In determining the appropriate discipline, the Supreme Court has instructed that we follow the standards “whenever possible” (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11), and give them great weight to promote “ “the consistent and uniform application of disciplinary measures. . . .” ’ ” (*In re Silvertan* (2005) 36 Cal.4th 81, 91, citation omitted.) Nevertheless, the standards are to be applied in a manner that is consistent with the goals of attorney discipline, which are not to punish the attorney, but to protect the public, the courts and the legal profession, to preserve public confidence in the profession and to maintain high professional standards for attorneys. (Std. 1.3.)

Standard 3.2, which applies to felony or misdemeanor crimes involving moral turpitude, provides for disbarment unless the most compelling mitigating circumstances clearly predominate, in which case discipline shall include at least a two-year period of actual suspension. However, the Supreme Court has “question[ed] whether strict reliance on standard 3.2 leads to just and consistent recommendations” of discipline. (*In re Young, supra*,

49 Cal.3d at p. 267 [fairness of std. 3.2 questioned where attorney convicted of felony as accessory in concealing principal to crime].) Rather, the Court has instructed that “the degree of discipline must correspond to some reasonable degree with the gravity of the misconduct. [Citation.]” (*In re Strick* (1987) 43 Cal.3d 644, 656.) This guidance is consistent with the relevant provision of the State Bar Act, which pre-dates the standards and specifically provides for a range of discipline from suspension to disbarment “according to the gravity of the crime and the circumstances of the case.” (§ 6102, subd. (e).)

The Supreme Court has not hesitated to impose discipline less than disbarment for crimes involving moral turpitude based on the facts unique to the case. (See, e.g., *In re Leardo* (1991) 53 Cal.3d 1 [five-year stayed suspension for two felony violations of 21 U.S.C. § 841(a)(1) (possessing controlled substances with intent to distribute)]; *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].)

Following the Supreme Court’s directive, we also have declined to “automatically [apply] standard 3.2 to disbar [a] respondent” for crimes involving moral turpitude. (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 514-516 [perjury conviction surrounded by concealment of scheme for financial gain, bad faith, dishonesty, and overreaching resulting in six months’ actual suspension with credit given for interim suspension and until satisfaction of std. 1.4(c)(ii)]; see, e.g., *In the Matter of Duxbury, supra*, 4 Cal. State Bar Ct. Rptr. 61 [six-month suspension for misdemeanor crime involving subterfuge in obtaining client referrals with no understanding of seriousness of crime]; *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737 [60-day suspension for felony convictions for

harboring fugitive and false currency reports]; Cf. *In the Matter of Sullivan* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 189, 195 [disbarment for misdemeanor conspiracy to obstruct justice for attorney with three prior disciplines, although disbarment not certainty if discipline-free record].)

There are only a few conviction cases involving misdemeanor sex crimes to provide guidance. We observed in *In the Matter of Buckley* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 201 that “[m]isdemeanor convictions of sex offenses which are not serious and are unrelated to the practice of law have generally resulted in only private reproof absent additional factors in aggravation.[fn.]” (*Id.* at p. 204, citing *State Bar Discipline* (May 1990) 10 Cal.Law, vol. 5, pp. 75, 80, identifying three conviction matters involving misdemeanor sex crimes resulting in private reproofs.)

The closest analogy to Parsa’s misconduct is found in a pre-standards case, *In re Safran* (1976) 18 Cal.3d 134. 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 in 1987). He had previously been convicted of indecent exposure. The Supreme Court referred the matter to the State Bar Court to determine whether the facts and circumstances of the offense involved moral turpitude or other misconduct warranting discipline. Based on a finding that the facts and circumstances surrounding the crime involved moral turpitude, Safran received a three-year stayed suspension. The Supreme Court found in mitigation 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.)

Those cases resulting in disbarment are distinguishable from the instant matter because they involved far more serious crimes or other significant aggravating circumstances. In *In re*

*Lesansky* (2001) 25 Cal.4th 11, an attorney was summarily disbarred as the result of a felony conviction for an attempted lewd act on a 14-year-old child who was at least ten years younger than the attorney. (Pen. Code § 288, subd.(c).) The Supreme Court regarded this as a serious crime because “one who admits ‘that he intended to arouse, appeal to or gratify sexual desire with a child . . . necessarily admits that he intended to harm the child.’ [Citation.]” (*Id.* at p. 17.) The Court was particularly concerned “when the unlawful sexual behavior is committed against a [14-year-old] child who is substantially younger than the perpetrator” because such conduct “showed a flagrant disrespect for the law and for societal norms. . . .” (*Ibid.*)

In *In re Duggan* (1976) 17 Cal.3d 416, the Supreme Court was unwilling to provide the specifics of an attorney’s conviction for violating Penal Code section 272 (contributing to the delinquency of a minor) but described the attorney’s conduct as “a reprehensible crime, offensive to every conception of morality.” (*Id.* at pp. 422-423.) The Court further found the seriousness of the attorney’s offense was “augmented by the fact that he became involved with the victim of his crime while ostensibly in the course of his duties as an attorney representing a client.” (*Id.* at p. 424.) In recommending disbarment, the Supreme Court also considered that the attorney had a record of two serious prior disciplines.

The instant matter is very different from these two disbarment cases. Unlike the *Duggan* case, there are no factors in aggravation here. Although Parsa’s sexual relationship was with a minor, she was 17 years old, not a 14-year-old as in the *Lesansky* case. The substantial age differential between Parsa and his employee *is* a concern and his conduct was irresponsible and unacceptable. But we cannot conclude that his misconduct involved such a flagrant disrespect

for the law or societal norms as to warrant his disbarment, especially when the majority of the states do not criminalize his misconduct.<sup>9</sup>

The fact remains, Parsa committed two crimes in California for which he has been punished. In assessing the seriousness of his crimes for discipline purposes, we note that Parsa was charged with two misdemeanors rather than felonies, an indication to us that his conduct was considered less serious by the State.<sup>10</sup> (*In the Matter of Jackson* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 610, 614 [grade of crime bears on degree of discipline].) Furthermore, Parsa received a suspended sentence and probation, was not incarcerated, and was not ordered to register as a sex offender. These facts also indicate that his crime was considered less serious under the circumstances. (*In the Matter of Meza* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 608, 613 [leniency of attorney's criminal sentence may be relevant in assessing discipline].) Further, there is no evidence that Parsa committed any other misconduct either in the nine years before his criminal conduct in 2000 or in the 12 years since it ended. The evidence thus demonstrates that Parsa's crime was aberrational.

These factors bear on our conclusion that imposing the most severe discipline of disbarment is unwarranted, particularly in the absence of any aggravating circumstances. It is not our role to punish Parsa for his wrongdoing; that is the responsibility of the criminal court. We therefore recommend Parsa be suspended from the practice of law in the State of California for a minimum of two years. And although he is entitled to credit for his nearly four years of

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<sup>9</sup> Sexual intercourse is not a crime if the minor is 17 or older in the District of Columbia and the following 33 states: Alabama; Alaska; Arkansas; Colorado; Connecticut; Georgia; Hawaii; Indiana; Iowa; Louisiana; Maryland; Massachusetts; Michigan; Minnesota; Mississippi; Missouri; Montana; Nevada; New Hampshire; New Jersey; New Mexico; New York; North Carolina; Ohio; Oklahoma; Pennsylvania; Rhode Island; South Carolina; South Dakota; Texas; Vermont; Washington; and West Virginia.

<sup>10</sup> Penal Code section 261.5 is a "wobbler," i.e., it may be charged as either a misdemeanor or a felony.

interim suspension, Parsa's suspension should continue until he establishes his rehabilitation, fitness to practice law and present learning and ability in the law in satisfaction of standard 1.4(c)(ii), which will adequately protect the public, the courts and preserve public confidence in the profession.

## **V. RECOMMENDATION**

For the foregoing reasons, we recommend that James Mazi Parsa be suspended from the practice of law for two years, that execution of that suspension be stayed, and that Parsa be placed on probation for two years with the following conditions:

1. He must be suspended from the practice of law for a minimum of the first two years of his probation with credit given for the period of interim suspension that commenced on October 16, 2009, and until he provides proof to the State Bar Court of rehabilitation, fitness to practice and learning and ability in the general law before suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)
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.)
8. The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter.

#### **VI. PROFESSIONAL RESPONSIBILITY EXAMINATION**

We further recommend that James Mazi Parsa be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year of the effective date of the Supreme Court order 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 find it unnecessary for Parsa to comply with the provisions of rule 9.20 since he did so at the time of his interim suspension and has not practiced law since that time.

#### **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.

EPSTEIN, J.

WE CONCUR:

REMKE, P. J.

PURCELL, J.