

Filed October 2, 2023

STATE BAR COURT OF CALIFORNIA
REVIEW DEPARTMENT

In the Matter of) SBC-22-O-XXXXX
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Respondent CC,) OPINION AND ORDER
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_____)

In April 2022, the Office of Chief Trial Counsel of the State Bar (OCTC) filed a notice of disciplinary charges against respondent CC in the instant matter.¹ In June 2022, respondent filed a request for participation in the Alternative Discipline Program (ADP)² pursuant to rule 5.381(B) of the Rules of Procedure of the State Bar. Pursuant to rule 5.382, the Hearing Department issued an order later that month accepting respondent into ADP.³ OCTC then filed a petition for interlocutory review of the order, asserting that respondent is ineligible for the ADP

¹ We do not identify respondent by name because we rely on certain confidential information. (Rules Proc. of State Bar, rule 5.388.)

² Both “ADP” and “Program” are used in the Rules of Procedure of the State Bar to refer to the State Bar Court’s Alternative Discipline Program.

³ As part of respondent’s acceptance into ADP three months ago, respondent agreed to a high and a low level of discipline as set forth in the Confidential Statement of Alternative Dispositions by the Program Judge. In 2014, respondent established a solo practice that caused significant stress for him, resulting in his abuse of alcohol beginning in 2017 and his use of cocaine in 2018. Respondent entered the State Bar’s Lawyer Assistance Program (LAP) in 2022. The Program Judge found a nexus between respondent’s substance abuse issues and the charged misconduct as required pursuant to rule 5.382(A)(3).

under rule 5.382(C)(1) and (C)(3).⁴ Respondent filed a response to the petition, and OCTC later filed its reply.

In undertaking a review of the Hearing Department order, we are required to follow rule 5.389 of the Rules of Procedure of the State Bar. Unlike the abuse of discretion or error of law standard of review that generally applies for rule 5.150 petitions,⁵ we must “independently review the record and may adopt findings, conclusions, and a decision or recommendation different from those of the Program Judge.” (Rules Proc. of State Bar, rule 5.389(B)(1).) Pursuant to rule 5.150(C) and (G), we review the record as provided to us by OCTC in its appendix, along with a confidential appendix filed the same date.⁶

I. RESPONDENT’S STIPULATED MISCONDUCT

Under rule 5.382(C)(1) of the Rules of Procedure of the State Bar, an attorney will not be accepted to participate in the ADP if “the stipulation of facts and conclusions of law, including aggravating factors . . . shows that the attorney’s disbarment is warranted, despite mitigating circumstances.” As part of the ADP evaluation process by the Program Judge in the instant matter and pursuant to rule 5.382(A)(2), the parties filed a Stipulation Regarding Facts and Conclusions of Law (ADP Stipulation), which states respondent engaged in professional

⁴ As OCTC has limited its appeal of the Hearing Department order to respondent’s ineligibility under rule 5.382(C)(1) and (C)(3), we presume that all other conditions for respondent’s participation in ADP under rule 5.382(A) have been satisfied.

⁵ See rule 5.150(K) of the Rules of Procedure of the State Bar.

⁶ We previously struck the filing of the confidential appendix. OCTC then filed a motion to seal the confidential appendix and a motion for reconsideration of our order. Respondent did not file a response to these motions. As OCTC has now requested the confidential appendix be sealed and explained that the documents contained therein were mentioned in OCTC’s petition, we find them necessary to be included in the appended record under rule 5.150 of the Rules of Procedure of the State Bar. Therefore, we vacate the portion of our previous order striking the confidential appendix from the record. We grant OCTC’s motion for reconsideration and its request to seal the confidential appendix.

misconduct in five client matters and two probation violation matters (*Respondent CC III*). The ADP Stipulation also referenced respondent's two prior discipline matters (*Respondent CC I* and *Respondent CC II*), in which respondent stipulated to misconduct and the Supreme Court ordered discipline. We summarize the stipulations in this section to explain respondent's misconduct and evaluate that misconduct in light of the issues raised by OCTC's appeal.

A. *Respondent CC I*

Respondent's first discipline matter began with charges filed against him in July 2020, and was resolved with a stipulation signed in November and approved by the court in December (2020 Stipulation). Respondent admitted to professional misconduct spanning from 2015 to 2017 and involving 31 clients. Respondent stipulated that he violated former rule 3-110 of the California Rules of Professional Conduct (failure to perform competently)⁷ by filing perfunctory petitions that failed to identify the issues of each case in 31 matters, failing to file motions for a stay in 31 matters, failing to pay a filing fee in 27 matters, failing to file a required opening brief in 12 matters, and failing to attach an underlying order to the petition in four matters. He also stipulated that he violated Business and Professions Code section 6103⁸ 13 times by failing to follow orders issued to correct errors in his filings and violated former rule 3-700(A)(2) four times by constructively withdrawing from employment without taking reasonable steps to avoid foreseeable prejudice to his client. Respondent also agreed that he failed to inform the State Bar within 30 days of being disbarred by the Board of Immigration Appeals on January 25, 2018, in violation of section 6068, subdivision (o)(6).⁹

⁷ The former California Rules of Professional Conduct were in effect until November 1, 2018, and we refer to them as "former rules."

⁸ All further references to sections are to the Business and Professions Code.

⁹ The January 25, 2018 order also disbarred respondent from practicing before the Department of Homeland Security and the United States Immigration Courts.

As part of the 2020 Stipulation, the parties agreed to a number of aggravating circumstances as provided under standard 1.5:¹⁰ multiple acts; a pattern of misconduct, including that he had “completely abandoned” three clients; significant harm, including that several of his clients had their cases dismissed because they could not obtain new representation; and all 31 clients were immigrants and thus vulnerable victims. As for mitigating circumstances under standard 1.6, the parties stipulated to a number of those: credit for extraordinary good character; entering into the stipulation; payment of restitution to at least 24 clients; remorse and recognition of wrongdoing; and severe family and emotional stress.

The 2020 Stipulation recognized that respondent’s misconduct “demonstrated a habitual disregard of his clients’ interests,” but the presumption of disbarment under standard 2.7(a)¹¹ was not “necessary or warranted” due to respondent’s highly significant mitigating circumstances. Consequently, the Supreme Court ordered respondent actually suspended for 30 months and until he proves rehabilitation; the suspension was effective in May 2021.¹²

B. *Respondent CC II*

Respondent’s second discipline matter was resolved with a stipulation signed and accepted by the court in June 2021 (2021 Stipulation). He admitted to professional misconduct

¹⁰ Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct. All further references to standards are to this source, unless otherwise noted.

¹¹ Standard 2.7(a) provides for disbarment when performance, communication, or withdrawal violations demonstrate “habitual disregard of client interests.”

¹² The parties relied on *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498 to support this level of discipline. In *Valinoti*, that attorney received a three-year actual suspension when he engaged in a “habitual failure to give reasonable attention to the handling of the affairs” of his nine clients over two and a half years. His misconduct was very similar to respondent’s misconduct, but Valinoti additionally engaged in acts of moral turpitude that included aiding the unauthorized practice of law and intentional misrepresentations to an immigration judge, along with serious aggravating circumstances that included, inter alia, a lack of candor to the State Bar.

in one matter involving two clients, which occurred from October 2017 through June 2018. Respondent allowed his paralegal to accept fees and provide legal services to his clients in violation of former rule 1-300(A). He also failed to refund his clients' fees after he terminated the representation in violation of former rule 3-700(D)(2); failed to inform them that he had withdrawn from their case in violation of section 6068, subdivision (m); and failed to avoid reasonably foreseeable prejudice to those clients upon termination of the employment in violation of former rule 3-700(A)(2).

The parties stipulated to aggravating circumstances including prior record of discipline, though reduced due to the overlapping misconduct from the 2020 Stipulation; multiple acts; vulnerable victims; and pattern of misconduct from the 2020 Stipulation. The parties stipulated to mitigating circumstances including credit for entering into the 2021 Stipulation and incorporated the mitigation from the 2020 Stipulation given the overlapping time period.

As for discipline, the 2021 Stipulation again referred to a "habitual disregard of [respondent's] clients' interests," and his "significant mitigating circumstances." The 2021 Stipulation concluded that disbarment was not necessary or warranted, and no progressive discipline was needed, such that only a stayed suspension was necessary. Consequently, the Supreme Court ordered respondent be placed on a stayed suspension, effective in November 2021, along with a one-year stayed probation subject to conditions, including that respondent pay his clients \$500 in restitution within the first 30 days of his probation.

C. *Respondent CC III (Instant Matter)*

In the ADP Stipulation, respondent stipulated to professional misconduct in three immigration matters, two criminal defense matters, and two probation violation matters related to *Respondent CC I* and *Respondent CC II*. The ADP Stipulation covers misconduct from March 2017 through January 2022.

1. Immigration Matters

Respondent stipulated to misconduct related to three immigration clients, all occurring in 2017.¹³ In the first matter, respondent agreed he failed to inform his client about his suspension in violation of section 6068, subdivision (m), and former rule 3-700(A)(2); failed to perform competently in violation of former rule 3-110(A) by failing to file a motion to reopen an immigration matter; failed to provide an accounting in violation of former rule 4-100(B)(3); failed to provide a refund of unearned fees in violation of former rule 3-700(D)(2); and failed to respond to State Bar communications regarding the investigation of this matter in August 2021 in violation of section 6068, subdivision (i). In the second matter, respondent agreed he again failed to provide an accounting, issue a refund, and respond to the State Bar between March 2021 and July 2021 regarding the investigation. In the third matter, respondent accepted an attorney's fee from a third party without informed written consent from his client in violation of former rule 3-310(F). Also, he again failed to inform the client about his suspension and other significant developments in the case;¹⁴ failed to perform competently by failing to substitute a new attorney to his client's case, reacquire the client's confiscated property, file an appellate brief in March 2018, and respond to an appellate order; and failed to respond to the State Bar in September 2021 and January 2022 regarding the investigation. In addition, he agreed he violated section 6106 by making false statements to his former employee regarding her responsibilities to the client and the status of the client's case.

¹³ The first and third matters occurred during respondent's representation of two clients from March to November 2017; the second matter was for representation around October and November 2017.

¹⁴ He did not tell his client that the attorney handling the case had left respondent's firm, that he had not filed a brief in the client's petition for review in March 2018, and that the appellate court had issued an order in August 2018 requiring the client to move for voluntary dismissal or show cause otherwise.

2. Criminal Defense Matters

Respondent stipulated to misconduct in two criminal defense matters. The first matter involved respondent's representation from January 2020 to May 2021, and the second matter involved representation from June 2020 to May 2021. In the first matter, he failed to inform his client of his suspension in violation of section 6068, subdivision (m), and rule 1.16(d);¹⁵ failed to provide an accounting in violation of rule 1.15(d)(4); and failed to respond to State Bar communications regarding the investigation of this matter in July and August 2021 in violation of section 6068, subdivision (i). In the second matter, respondent failed to perform competently by failing to appear at a hearing in March 2021 to address a bench warrant issued against his client in violation of rule 1.1(a). He again failed to inform his client of his suspension, to provide an accounting, and to respond to State Bar communications in August 2021 regarding the investigation.

3. Probation Violations

Respondent stipulated he did not comply with certain probationary conditions as required from his two prior disciplines, thus violating section 6068, subdivision (k). Regarding *Respondent CC I*, respondent did not submit quarterly reports from October 2021 to October 2022 (five times) and did not file a rule 9.20 compliance declaration by the June 2021 deadline. His first attempt to file his compliance declaration was timely but rejected, and he correctly submitted it again about one month later, which was past the deadline. Regarding

¹⁵ All further references to rules are to the Rules of Professional Conduct, effective November 1, 2018, unless otherwise noted.

Respondent CC II, respondent did not schedule a meeting with his probation case specialist by November 2021, and he failed to provide proof of restitution by December 2021.¹⁶

4. Aggravation and Mitigation in the ADP Stipulation

Regarding aggravation, the parties stipulated that respondent's two prior records were of significant weight because he was on notice to his misconduct following the filing of charges in July 2020. The parties also stipulated that these acts indicated a common pattern spanning across all three stipulations, along with aggravation for multiple acts, significant harm, failure to make restitution, and vulnerable victims. As for mitigation, the parties stipulated that the ADP Stipulation entitled respondent to mitigation. While the parties also stipulated that other mitigating factors applied (evidence of extraordinary good character, remorse and recognition of wrongdoing, and severe family and financial stress), the mitigation applied to only the immigration matters because they overlapped with the prior discipline, and did not apply to the criminal defense and probationary matters.

II. RESPONDENT'S MISCONDUCT DOES NOT WARRANT DISBARMENT

We have not previously decided a matter that applies rule 5.382(C)(1) of the Rules of Procedure of the State Bar.¹⁷ Therefore, we begin with the pertinent language from that rule: "An attorney will not be accepted to participate in the [ADP] if (1) the stipulation of facts and conclusions of law, including aggravating factors . . . shows that the attorney's disbarment is warranted, despite mitigating circumstances." In interpreting this rule, we look to its "plain, commonsense meaning" in its application. (*Berkeley Hills Watershed Coalition v. City of*

¹⁶ Regarding *Respondent CC II*, the ADP Stipulation also states he failed to submit four quarterly reports from January 2022 to October 2022, but this misconduct appears to overlap with *Respondent CC I*.

¹⁷ As a rule of procedure promulgated by the State Bar, rule 5.382(C)(1) is an administrative regulation.

Berkeley (2019) 31 Cal.App.5th 880, 890 [administrative regulations interpreted like statutes].) Employing this principle, we focus on the operative phrase, “is warranted,” and conclude that this phrase does not have a plain meaning as it has a wide range of meanings when used as a verb.¹⁸

When a plain meaning or intent “cannot be discerned directly from the language of the regulation, we may look to a variety of extrinsic aids, including the purpose of the regulation, the legislative history, public policy, and the regulatory scheme of which the regulation is a part.” [Citation.]” (*Berkeley Hills Watershed Coalition v. City of Berkeley, supra*, 31 Cal.App.5th at p. 891.) While we have limited extrinsic aids to guide us here,¹⁹ we can also turn to case law. In *Natural Resources Defense Council v. Fish & Game Com.*, 28 Cal.App.4th 1104, the definition of the phrase “may be warranted” is discussed as part of an evidentiary standard under the California Endangered Species Act. The court found that the word “may” in that phrase describes a “substantial possibility” because “may” is “an auxiliary verb qualifying the meaning of another verb by expressing ability, competency, liberty, permission, possibility, probability or contingency.” (*Id.* at p. 1119.) From that discussion, we discern that the phrase “disbarment is warranted” would require more than a “substantial possibility” of disbarment because our rule does not use “may.” Using that definition, we interpret rule 5.382(C)(1) of the Rules of Procedure of the State Bar to convey that disbarment is conclusive or guaranteed, which is also consistent with the way “warrant” is defined in Black’s Law Dictionary. In other words, under

¹⁸ According to Black’s Law Dictionary, “warrant” as a verb has many meanings, including (1) “[t]o guarantee the security of”; (2) “to give warranty of”; (3) “[t]o promise or guarantee”; (4) “to justify”; or (5) “to authorize.” (Black’s Law Dict. (11th ed. 2019) p. 1902, col. 1.)

¹⁹ On July 14, 2023, OCTC filed a request for judicial notice of the prior versions of the Rules of Procedure of the State Bar governing ADP eligibility. Respondent did not object to the request. We find good cause and grant OCTC’s request. Over the years, the eligibility rules have changed, narrowing who is eligible for ADP.

rule 5.382(C)(1), we conclude that an attorney is ineligible for ADP when disbarment is required by his misconduct and the aggravating circumstances.

The narrowing of ADP eligibility under the Rules of Procedure of the State Bar also supports such an interpretation. In 2004, there were no limitations on eligibility; in 2007, attorneys who were subject to summary disbarment were ineligible; and, since 2009, attorneys are ineligible if “disbarment is warranted,” which we interpret as disbarment is *required*. OCTC’s arguments in the petition also support this interpretation at times: “Attorneys who have committed serious misconduct warranting disbarment should in fact be disbarred and required to submit to a full reinstatement proceeding to show rehabilitation from their substance or mental health issues, and not through an abbreviated ADP proceeding.”²⁰ Such a statement supports the conclusion that only those attorneys who would otherwise *necessarily* be disbarred should be prohibited from acceptance into ADP, not just those attorneys who have a substantial possibility of disbarment.²¹

In its appeal, OCTC mainly argues that the disciplinary standards, particularly standards 1.8(a) and 2.7(a), along with relevant case law and section 6001.1, “compel” respondent’s disbarment. First, we conclude that utilizing the disciplinary standards in evaluating ineligibility under rule 5.382 of the Rules of Procedure of the State Bar is inappropriate because standard 1.1 states that the disciplinary standards are “a means for determining the appropriate disciplinary sanction in a particular case.” While using the standards

²⁰ We disagree with OCTC’s other description for ineligibility, that “attorneys who engage in serious misconduct [are] ineligible for participation [in ADP].” We find the word “serious” to be too vague and would disqualify more attorneys than the current grounds for ineligibility under rule 5.382(C) are intended to do. There are many attorney discipline cases involving serious misconduct that do not result in disbarment.

²¹ This appears to be consistent with both OCTC’s and respondent’s briefs regarding the appropriate level of discipline given respondent’s participation in ADP, which state that disbarment should be the outcome if respondent fails to successfully complete ADP.

would be appropriate in determining potential dispositions for discipline by the Program Judge pursuant to rule 5.384, an evaluation by the Program Judge does not, in itself, result in a disciplinary sanction. Second, while we agree that “protection of the public shall be paramount” concerning the disciplinary functions of the State Bar as stated in section 6001.1, we are also reminded that section 6230 declares the Legislature’s intent to have the State Bar establish “ways and means to identify and rehabilitate attorneys with impairments due to substance use or a mental health disorder affecting competency so that attorneys so afflicted may be treated and returned to the practice of law in a manner that will not endanger the public health and safety.”²² The State Bar has specifically established the ADP to accomplish this goal, which includes giving attorneys, like respondent with substance abuse problems who have become unable to practice law competently, the opportunity to rehabilitate and return to the practice of law.

As to OCTC’s argument that relevant case law compels respondent’s disbarment, it cites to a number of disbarment cases to support its conclusion that respondent is ineligible for the ADP under rule 5.382(C)(1) of the Rules of Procedure of the State Bar:²³ *Twohy v. State Bar* (1989) 48 Cal.3d 502; *In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547; *In the Matter of Lenard* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250; *In the Matter of Dixon* (Review Dept 1999) 4 Cal. State Bar Ct. Rptr. 23; and *In the Matter of Berg* (Review

²² Pursuant to section 6230, the State Bar subsequently established LAP to implement the intent of the Legislature.

²³ OCTC also argues that rule 5.382(C)(3) makes respondent ineligible because “respondent committed an act of moral turpitude that resulted in harm to a client . . .” OCTC misreads the rule, which clearly states that an attorney is ineligible for ADP if “the attorney’s current misconduct involves acts of moral turpitude, dishonesty, or corruption that has resulted in *significant* harm to one or more clients or to the administration of justice.” (Italics added.) In the ADP Stipulation, regarding the third immigration matter, the parties stipulated that his misconduct “harmed one set of clients because his lack of communication allowed the client to be misled by respondent’s former employee into thinking that their case was still being handled appropriately by respondent and his staff.” Because the stipulation does not provide for significant harm, rule 5.382(C)(3) does not apply.

Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725. Upon review, we conclude that the misconduct in these cases exceeds that of respondent's and does not support a conclusion that respondent's conduct would necessitate or require disbarment.

For instance, in *Twohy*, the Supreme Court disbarred an attorney who had been already disciplined twice and additionally had probation revoked in those matters for failing to comply with the terms of probation.²⁴ Twohy committed additional misconduct that occurred after the misconduct that was the subject of his earlier disciplines. The misconduct included moral turpitude and failure to communicate with another client, failure to take timely action and to appear at scheduled court appearances on his client's behalf, a failure to return an advance fee, and failure to cooperate with the State Bar investigation. (*Twohy v. State Bar, supra*, 48 Cal.3d at p. 510.) Twohy's misconduct resulted in a habitual disregard of his clients' interests, but the Supreme Court did not base disbarment solely on that determination. Important to the recommendation was that Twohy's actions constituted several acts of moral turpitude, occurring over two to three years, resulting in significant detriments to his client including having a bench warrant issued against him and having no ability to contact Twohy to obtain a refund of unearned fees. (See *id.* at p. 512.)

In the instant matter, respondent also stipulated to a habitual disregard of his clients' interests and misconduct involving moral turpitude. However, the moral turpitude to which

²⁴ The misconduct in Twohy's first discipline included failure to use reasonable diligence in representing clients' interests, failure to communicate with clients, failure to return unearned fees and client funds, failure to return client files and documents, commingling client funds, and making misrepresentations to clients regarding settlement (moral turpitude). (*Twohy v. State Bar, supra*, 48 Cal.3d at p. 513.) He had another discipline later that year resulting in a stayed suspension and probation, which ran concurrently with the first discipline. Twohy was then suspended for failing to pass the professional responsibility examination related to his probation. While suspended, he continued to practice law, resulting in a conviction for the unlawful practice of law and another State Bar disciplinary matter for misrepresenting his status to the court, which we determined was misconduct involving moral turpitude. (*Id.* at pp. 506-507.)

respondent stipulated is less serious than the misconduct in *Twohy*.²⁵ OCTC's argument that respondent should be ineligible for the ADP due to a pattern or habitual disregard of client interest overlooks the role of moral turpitude in the disbarment cases it cites and the moral turpitude stated in the ADP Stipulation.²⁶ We find it relevant that OCTC agreed in *Respondent CC I* and *Respondent CC II* that disbarment was not "necessary or warranted" despite involving 32 client matters that demonstrated a habitual disregard of client interests.²⁷ However, OCTC now argues that the misrepresentations in March and April 2018 require respondent's disbarment. *Twohy* is not sufficiently analogous to the instant matter to come to

²⁵ Respondent stipulated to one violation of section 6106 for telling an attorney, his former employee, in March and April 2018 false and misleading statements regarding representation of clients with his firm, including that an appellate brief had been filed and was being handled by the firm.

²⁶ OCTC also argues that respondent has failed to comply with his disciplinary probation conditions and case law warrants his disbarment because he is not a candidate for any new or further probation, citing to cases including *Barnum v. State Bar* (1990) 52 Cal.3d 104. In *Barnum*, the Supreme Court stated that disbarment was supported by the attorney's "poor performance on probation," but that attorney had no evidence for his claimed clinical depression, and the court emphasized such evidence was "critical to determining whether we risk exposing the public to additional harm by departing from the disbarment recommendation." (*Id.* at p. 113.) Here, we have a completely different situation, specifically the psychiatric examination used to establish the required nexus that diagnoses respondent's clinical syndromes and the LAP that provides treatment for his substance use disorders. Successful completion of LAP would be evidence that would justify the risk that the Supreme Court could not justify in *Barnum*.

²⁷ OCTC states in its brief that respondent's misconduct in the three immigration matters as described in the ADP Stipulation "can [be treated] . . . as part of respondent's prior discipline[s] because they overlap . . ." (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619 [aggravating weight of prior discipline reduced if prior misconduct occurred during same time period as instant misconduct].) We interpret this statement to mean that OCTC considers the three immigration matters to not be sufficient additional misconduct to necessitate or warrant disbarment as that is the conclusion stated in both the prior disciplines, but that consideration of the two criminal defense matters and the two probationary matters thus makes respondent ineligible under rule 5.382(C)(1) of the Rules of Procedure of the State Bar. However, we see no reason to not consider all of respondent's misconduct as one extended period for the purpose of evaluating him for the ADP. We do not see *Sklar* as limiting here, as *Sklar* applies in determining the weight to give to an aggravating circumstance, a different task than the one we are called to do here.

such a conclusion.²⁸ Likewise, our reading of the remainder of the disbarment cases cited by OCTC reveals acts that are or equate to moral turpitude and appear to be far more serious than respondent's: bad faith, dishonesty, and breach of fiduciary duties (*Lenard*); misrepresentations to courts (*Dixon*); fraudulent billing of client (*Berg*); or the pattern of misconduct itself is moral turpitude (*Kaplan*).

We have also found cases where the Supreme Court ordered discipline less than disbarment, even where that attorney's acts demonstrated a pattern of willfully disregarding professional obligations or where the attorney had abandoned clients. First, in *Hawes v. State Bar* (1990) 51 Cal.3d 587, the attorney failed in multiple matters, to act competently, improperly withdrew from employment, failed to return unearned fees, demonstrated a lack of support of state law, showed disrespect to the courts, and failed to cooperate in a State Bar investigation. While we acknowledge that respondent's misconduct is more extensive than the misconduct in *Hawes*, we also observe that the Supreme Court's discipline order was only one year of actual

²⁸ We also conclude that *Twohy* has limited application as disbarment was predicated on that attorney's substance abuse issues due to stress, which the Supreme Court indicated it was "hesitant to consider . . . as a mitigating factor." (*Twohy v. State Bar, supra*, 48 Cal.3d at p. 514.) *Twohy* was decided in 1989, prior to the establishment of a diversion program in 2002 by the Legislature or the ADP that was later established by the State Bar. The ADP is specifically designed to address substance abuse issues such as respondent's. (Rules Proc. of State Bar, rule 5.380.) Further, the Supreme Court determined that *Twohy* was unable to show that he recovered from his addiction, which also lead to the conclusion of disbarment. (*Id.* at p. 515.) Under ADP, an attorney participates over an 18- to 36-month period and is successful only when LAP certifies that the attorney has been substance-free for at least one year.

discipline, far less than disbarment.²⁹ The *Valinoti* case, discussed *ante*, is another case where a habitual disregard was found but the discipline ordered was less than disbarment, even though serious acts of moral turpitude greater than respondent's were established. Finally, *In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944 [two years' actual suspension for abandonment of clients and overreaching] and *In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1 [18-month actual suspension for abandoning over 300 indigent dependency clients and failing to appear in 39 matters] demonstrate that respondent's misconduct resulting in client abandonment, while serious, does not require disbarment.

III. CONCLUSION

We acknowledge that respondent's professional misconduct for the approximately seven years that lead to his request to participate in the ADP is considerable. However, we believe that the ADP should be provided to attorneys such as respondent, even when their misconduct is considerable. In accordance with rule 5.384(B) of the Rules of Procedure of the State Bar, the ADP provides incentives for attorneys to overcome substance abuse or mental issues. If they successfully complete the program, they receive a lesser disposition than if they did not complete the program. Failure to complete ADP may result in disbarment, which is a potential risk respondent faces, and one that he has acknowledged would be appropriate if he does not complete the program.

²⁹ The Supreme Court's discipline order was based on mitigating evidence, which, in part, demonstrated Hawes's rehabilitation for slightly less than a year from his substance addiction and bipolar disorder issues. While we do not use mitigation here to evaluate respondent's ineligibility for ADP, we conclude that this case is sufficiently applicable to show that respondent's misconduct would not require disbarment.

Therefore, upon consideration of the evidence provided in the record, along with the applicable case law, we conclude that the ADP Stipulation, including aggravating circumstances, does not require respondent's disbarment, despite mitigating circumstances. We do not find that respondent is ineligible to participate in the ADP under rule 5.382(C)(1) or (C)(3). Consequently, we affirm the Hearing Department's order accepting respondent into the ADP and deny the relief requested in OCTC's petition.

McGILL, J.

WE CONCUR:

HONN, P. J.

RIBAS, J.

No. SBC-22-O-XXXXX

In the Matter of
RESPONDENT CC

Hearing Judge

Hon. Yvette D. Roland

Counsel for the Parties

For Office of Chief Trial Counsel:

Danielle Adoracion Lee
Office of Chief Trial Counsel
The State Bar of California
180 Howard Street
San Francisco, CA 94105

For Respondent:

Anthony Patrick Radogna
Law Offices of Anthony Radogna
1 Park Plaza, Suite 600
Irvine, CA 92614