PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

Filed October 28, 2016

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. 13-O-14606
	)	
LORI JO SKLAR,	)	OPINION
	)	
A Member of the State Bar, No. 170218.	)	
	)	

This matter was referred to the State Bar by the Second District Court of Appeal (Court of Appeal) in a 34-page published opinion upholding a superior court sanction order against Lori Jo Sklar for misuse of discovery. (*Ellis v. Toshiba America Information Systems, Inc.* (2013) 218 Cal.App.4th 853, 890 (*Ellis*).) Based on the civil court findings and the corroborating testimony and evidence introduced in these proceedings, a hearing judge found Sklar culpable of seeking to mislead a judge and failing to obey court orders. The judge recommended a 30-day actual suspension.

Sklar appeals, raising several factual, legal, and procedural challenges, and claims she did nothing wrong. She asks that we dismiss the charges altogether or, at most, impose a private reproval. The Office of the Chief Trial Counsel of the State Bar (OCTC) does not appeal and supports the hearing department recommendation.

We find no merit to Sklar's challenges. She primarily repeats arguments she previously advanced, which were rejected by the superior court, the Court of Appeal, and the State Bar Court Hearing Department. We independently review the record (Cal. Rules of Court, rule 9.12), find clear and convincing evidence of Sklar's misconduct, and affirm the hearing

judge's disciplinary recommendation. We find no compelling reason to depart from the disciplinary standards that call for a period of actual suspension.

I. SIGNIFICANT PROCEDURAL BACKGROUND

On August 7, 2013, the Court of Appeal directed the clerk to send a certified copy of its opinion in *Ellis* to the State Bar. On December 22, 2014, OCTC filed a three-count Notice of Disciplinary Charges (NDC) against Sklar, alleging violations of: (1) Business and Professions Code section 6068, subdivision (d) (misleading a judge);[1] (2) section 6106 (moral turpitude—misrepresentation); and (3) section 6103 (disobeying court orders). The parties filed a joint pretrial stipulation in which Sklar stipulated to just three facts with no admission of culpability.

A four-day trial commenced on August 18, 2015. On November 16, 2015, the hearing judge issued her decision. She found Sklar culpable of seeking to mislead a judge and disobeying court orders, dismissed the moral turpitude count, and recommended a 30-day actual suspension.

II. FACTS

A. Summary of *Ellis* Class Action Lawsuit

On February 9, 2005, Caddell & Chapman (C&C), a Texas law firm, and Sklar, a solo practitioner doing business as Sklar Law Offices (SLO), filed a class action lawsuit against Toshiba America Information Systems, Inc. (Toshiba) on behalf of consumers who purchased Toshiba laptop computers that developed an electrostatic discharge problem in their covers.[2] Basically, the laptops would malfunction and shut down. The parties reached a tentative

[1] All further references to sections are to the Business and Professions Code.

[2] Sklar's involvement began in October 2004 when she bought a Toshiba laptop computer for her personal use and experienced the electrostatic discharge problem. She investigated the issue that year and then associated with C&C, which was experienced in handling class action lawsuits. When the complaint was filed in February 2005, the case was captioned *Elihu v. Toshiba*, Los Angeles Superior Court, case no. BC 328556, and Sklar was listed as "of counsel."

settlement on the merits phase of the case nine months after the complaint was filed. The superior court granted preliminary approval of that settlement in October 2006 and final approval in May 2007.[3]

B. Sklar's Request for Attorney Fees

Germane to this proceeding is the attorney fees aspect of the case, which lasted for over a decade and was ongoing as of the date of the disciplinary trial in this matter.

Between August 2006 and April 2009, Sklar made repeated representations to the superior court that she was seeking between $22 and $24 million in attorney fees, including the following:

1. On August 14, 2006, Sklar filed a declaration, under penalty of perjury, in support of the Motion for Preliminary Approval of the Settlement. In an attached exhibit, she stated: "Sklar has offered evidence that the benefit of the settlement is $98,975,862 and believes that a reasonable fee for Class Counsel is 25% of that benefit [$24,743,965.50]. Sklar will seek legal fees in that amount, to be apportioned between her and C&C by the Court." In the same document, C&C listed its portion as $1,125,000;

2. On October 16, 2006, the Class Notice stated: "Sklar Law Offices will ask the Court for attorneys' fees in the amount of $24,743,965.50, less whatever the Court awards [C&C] for its attorneys' fees.";

3. On August 15, 2007, Sklar was present in court when the judge asked her attorney: "Is [Sklar] claiming $24 million?" and her attorney answered: "In the neighborhood of $24 million; that's correct.";

4. On February 1, 2008, Sklar filed her fee petition, requesting "an award of fees under the lodestar/multiplier approach in the amount of $7,847,362.50 ($6,578,350 + $1,269,012.50) plus $410,383.53 in expenses; or $25% of the value of settlement totaling $24,743,965.50 plus expenses."; and

5. On April 24, 2009, Sklar was present in court when the judge asked her attorney: "Is she asking for $22 million dollars?" and her attorney answered: "That's my understanding."

Then, on April 5, 2010, in open court, Sklar disavowed her request for $24 million, insisting that she had never sought more than $12 million in attorney fees. She claimed that the

[3] The settlement gave each class member a 12-month repair warranty (or, if the class member already had an extended warranty, a $35 credit) and either $25 in cash or a $50 voucher for the replacement of the defective part.

$24 million figure was the "maximum amount" of the recovery she could receive, but $12 million was always the actual amount of her fee request. The superior court rejected this argument, as do we, because it is unsupported by the documentary evidence and contrary to the testimony of Toshiba's attorney, Dean Zipser. He testified in this proceeding that he was present in court with Sklar and her attorneys on several occasions when she represented in filings and in statements to the judge that she was seeking $24 million in fees.

On June 30, 2010, the superior court issued its ruling regarding Sklar's fee petition. The court found that Sklar was "not being truthful" about the amount of her fee request and considered it perplexing and of concern that Sklar did not just admit to what was evident from the plain face of the record:

> It is clear that [Sklar] initially asked for some $22-24 million in fees and has since reduced [the] request significantly. Ms. Sklar's dissembling and outright distortions of this portion of the record impact her fee petition in two major respects: [¶] First, she has seriously damaged her credibility with this Court. The Court cannot understand why Ms. Sklar did not simply acknowledge her earlier requests . . . . This behavior leaves the Court in the unfortunate position of doubting her word . . . . [¶] Second, Ms. Sklar's reduction by over half of the fees [she] originally requested calls into serious question the legitimacy of her numbers. One raises an eyebrow upon learning that work she once said was worth over $23 million now deserves a lodestar of only $3.3 million. Indeed a court would be justified in denying outright [the] fee request for this reason.

The court awarded SLO $176,900 in fees (for work by the SLO staff during the merits phase of the class action), but declined to award Sklar herself any fees at all. Sklar filed an appeal with the Court of Appeal, and the matter was consolidated with her later appeal of the sanction award, as discussed below.

C. Violation of Court Orders and Resulting Sanctions

Protracted discovery disputes followed Sklar's initial $24 million fee request in 2006. Faced with a fee request for what it called a "staggering" amount of money, the superior court permitted Toshiba to conduct discovery pertaining to the amount of time Sklar actually worked on the matter, and ordered Sklar to produce electronic time records in "native format."

Sklar produced hard copies of her time records and Microsoft Word files of the records, but not electronic, searchable copies in their "native form" with associated metadata, as sought by Toshiba. Sklar claimed those records no longer existed because she used a program called "Wipe and Delete" to scrub her computer daily and eliminate metadata.[4]

In June 2007, Toshiba filed a motion for sanctions, alleging that Sklar had deleted or destroyed responsive records. On August 15, 2007, Sklar appeared at a hearing on Toshiba's motion when the judge ruled from the bench. The judge declined to order sanctions for spoliation of evidence; instead, he ordered the parties to select a neutral expert to, within 30 days after being selected, conduct a search of Sklar's computer backup files and produce anything that was not privileged. The judge's oral ruling was confirmed in an August 15, 2007 minute order.

Sklar disagreed with the way the court-ordered inspection was to take place, including, among other things, the expert's possible access to confidential/privileged information on her computer. She filed a motion for reconsideration and an ex parte application for a stay, both of which were denied. Eventually, the court entered a stipulated protective order providing that the production of any electronic information did not waive Sklar's claims of privacy, confidentiality, or privilege.

Nearly a year later, the inspection still had not occurred. At a June 24, 2008 status conference, which Sklar attended, the judge expressed frustration with the lack of progress and ordered the computer inspection to take place on July 22 and 23, 2008.[5] The minute order from this conference reflects the court's oral ruling. Again, Sklar unsuccessfully challenged the court's order; she filed a writ petition with the Court of Appeal, which was denied.

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[4] She testified in these proceedings that her malpractice carrier recommended this as a best practice: "[My] malpractice carrier had provided a CLE, continuing legal education, seminar that I attended, and they had indicated that . . . when providing anything to opposing counsel, that you are to scrub your metadata."

[5] Sklar resides in Minnesota. To accommodate her, the judge ordered that the inspection take place there.

On the eve of the court-ordered inspection, Sklar indicated she would not allow it to proceed. She objected to the expert "imaging" her hard drive, she raised issues over a lack of protocol, and she again asserted concerns over access to confidential/privileged information. The inspection never happened.

On September 10, 2008, the court held an Order to Show Cause hearing as to why Sklar should not be sanctioned for failing to comply with its August 27, 2007 and June 24, 2008 orders about the computer inspection. The court found Sklar had violated its orders and informed Toshiba that it could seek sanctions, which Toshiba did. On August 31, 2009, the court imposed $165,000 in sanctions against Sklar for misuse of the discovery process. Sklar appealed and the matter was consolidated with her pending appeal on the fee petition.

On August 7, 2013, the Court of Appeal issued its opinion upholding the $165,000 sanction against Sklar and the denial of her petition for her own fees. With respect to the fee petition, the Court of Appeal found that Sklar's initial fee request was for $24 million, and agreed with the trial court that "Sklar's requested fee amount was a moving target, casting doubt on her entitlement to fees." (*Ellis, supra,* 218 Cal.App.4th at p. 885.) As to the discovery sanctions, the court held: "There is no question that [Sklar] disobeyed the court's August 15, 2007 order that she allow Toshiba's expert to search her hard drive, and its further order on June 24, 2008 setting the inspection for July 22 and 23, 2008." (*Id.* at p. 878.)

Sklar filed a petition for review with the California Supreme Court, which was denied on November 26, 2013. (*Ellis, supra,* 218 Cal.App.4th 853, review den. Nov. 26, 2013, S214178.)

III. CULPABILITY

A. Standard of Review

We independently review the record, giving great weight to the factual findings of the hearing judge. (Rules Proc. of State Bar, rule 5.155(A).)

We also rely on the findings of the civil courts, which bear a strong presumption of validity and prima facie weight. (*Maltaman v. State Bar* (1987) 43 Cal.3d 924, 947 [findings of other tribunals made under preponderance of evidence standard given strong presumption of validity in State Bar proceedings if supported by substantial evidence]; *In the Matter of Lais* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112, 117-118 [court of appeal opinion to which attorney was party is, at minimum, considered prima facie determination of matters bearing strong similarity, if not identity, to charged disciplinary conduct].)[6]

B. Count One: Section 6068, Subdivision (d) (Seeking to Mislead Judge)[7]

The hearing judge found that Sklar violated section 6068, subdivision (d), by falsely and intentionally representing to the superior court judge that she had never sought fees in excess of $12 million. We agree and affirm. The record is replete with examples of Sklar requesting more than $12 million in fees, including her own February 1, 2008 fee petition, which offered the superior court the options of ordering $7 million (under a lodestar approach) or $24 million (as a percentage of the overall class settlement).

While Sklar may have modified her request during the course of the decade-long civil litigation, the plain fact is that she did request $24 million on several occasions. Thus, she was not being truthful when she told the superior court judge that she never requested more than $12 million.

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[6] While Sklar was not a named party in the *Ellis* civil case, she was counsel of record, and her fee petition and sanctions order were the subjects of the superior court and Court of Appeal rulings. For purposes of our analysis, we find that Sklar was equivalent to a party for the determination of issues related to attorney fees. Her misconduct bears a strong similarity to the charged disciplinary misconduct in this proceeding, and the civil court decisions are supported by substantial evidence, including documentary and testimonial evidence. (See *In the Matter of Lais, supra,* 4 Cal. State Bar Ct. Rptr. at p. 117.)

[7] Section 6068, subdivision (d), provides that an attorney has a duty "[t]o employ . . . those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of law or fact."

C. Count Two: Section 6106 (Moral Turpitude—Misrepresentation)[8]

The hearing judge dismissed this count as duplicative of Count One, finding that the matter was more aptly characterized as an attempt to mislead a judge. Where the same misconduct underlies a violation of both section 6068, subdivision (d), and section 6106, we have typically treated it as a single offense involving moral turpitude. (*Bach v. State Bar* (1987) 43 Cal.3d 848, 855 [attorney has duty never to seek to mislead judge and as matter of law "[a]cting otherwise constitutes moral turpitude"]; *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211, 221.) OCTC does not challenge the dismissal, and we adopt it on the facts of this case. Little, if any, purpose is served by duplicate allegations of misconduct in State Bar proceedings. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1060.)

D. Count Three: Section 6103 (Failure to Obey Court Order)[9]

We also agree with the hearing judge's section 6103 culpability finding. As the Court of Appeal stated, "there is no question" that Sklar disobeyed the superior court's August 15, 2007 and June 24, 2008 orders regarding the inspection of her computer. Sklar admits she intentionally did not allow the inspection, but raises a host of arguments as justification. She primarily claims the judge's orders were never properly signed or served, and no protocols were in place to protect confidential/privileged information. Like the superior court, the Court of Appeal, and the hearing judge, we find no merit to these arguments for the reasons detailed below.

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[8] Section 6106 states: "The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension."

[9] Section 6103 provides, in pertinent part, that a willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the attorney's profession, which an attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment.

To begin, the record shows that Sklar was present in court on August 15, 2007, and again on June 24, 2008, when the superior court judge ordered the inspection of her computer. These rulings were also reduced to written minute orders, which became part of the trial record.[10] Moreover, Sklar treated the rulings as valid orders by challenging them through a motion for reconsideration, an application for a stay, and an appellate writ. And Sklar's confidentiality/ privilege concerns were addressed when the court entered a stipulated protective order.

Sklar cannot disregard court orders because she believes they are invalid, even if she has a personal good faith reason to do so. (*In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar. Ct. Rptr. 1, 9, fn. 3 ["[r]espondent's belief as to the validity of the order is irrelevant to the section 6103 charge"]; *Maltaman v. State Bar, supra,* 43 Cal.3d at pp. 951-952 ["no plausible belief in the right to ignore final, unchallengeable orders one personally considers invalid"].) The essential elements of a willful violation of section 6103 are: (1) knowledge of a binding court order; (2) knowledge of what the attorney was doing or not doing; and (3) intent to commit acts or abstain from committing acts that violate the court order. (*In the Matter of Maloney and Virsik* (2005) 4 Cal. State Bar Ct. Rptr. 774, 787.) As noted, all three of these elements have been established by clear and convincing evidence.[11]

IV. SKLAR'S CHALLENGES ON REVIEW

A. Sklar's Evidentiary Challenges

Sklar raises a host of evidentiary challenges, including that Exhibit 1 (Class Notice), Exhibit 3 (Superior Court's August 15, 2007 Minute Order), and Exhibit 5 (Superior Court's June 24, 2008 Minute Order) were altered; that Exhibit 8 (Superior Court's Ruling) and Exhibit 9

[10] Sklar testified that she was able to obtain a copy of the June 24, 2008 minute order from the superior court clerk's office.

[11] 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.)

(Court of Appeal's Opinion) do not meet the clear and convincing standard; that Exhibit 12 (Chart of Sklar's Fee Demand) is demonstrative and argumentative, not evidence; and that Exhibit 13 (Declaration of William B. Rubenstein) and Exhibit 15 (Declaration of Sklar) should have been excluded as hearsay.

First, Exhibits 1, 3, and 5 are certified copies of court filings and orders that were properly admitted into evidence. (*Caldwell v. State Bar* (1975) 13 Cal.3d 488, 497.) Sklar's allegation that these court documents were altered has no merit, and we reject this contention as wholly unsubstantiated.

Exhibits 8 and 9 are civil court rulings, made under a preponderance of the evidence standard. They come to us with a strong presumption of validity and are corroborated by substantial evidence, including documentary evidence and the credible testimony of Zipser. (*Maltaman v. State Bar, supra,* 43 Cal.3d at p. 947 [civil findings bear strong presumption of validity if supported by substantial evidence].) We exercise our independent judgment and find that the record supports the hearing judge's culpability determinations by clear and convincing evidence.

Next, Exhibit 12 is a demonstrative chart prepared by Zipser for use in the civil trial to highlight for the superior court judge all of the instances when Sklar represented that she was seeking $24 million in fees. The hearing judge admitted it into evidence over Sklar's objection. However, Sklar introduced Exhibit 1077, a chart she prepared for the civil proceedings to controvert Zipser's chart. The hearing judge also admitted this exhibit into evidence, explaining it was "a demonstrative exhibit that aids the court, like Exhibit 12" and pointing out that Exhibits 12 and 1077 cross-reference with other exhibits in evidence. Sklar's counsel acknowledged that he "understood" the evidentiary purpose of these exhibits. "Trial courts have broad discretion to admit demonstrative evidence such as maps, charts, and diagrams to illustrate

a witness's testimony" (*People v. Mills* (2010) 48 Cal.4th 158, 207), and we see no abuse of discretion in allowing both sides to submit similar aids. (*In the Matter of Aulakh* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690, 695 [abuse of discretion standard applies to procedural rulings]; *H.D. Arnaiz, Ltd. v. County of San Joaquin* (2002) 96 Cal.App.4th 1357, 1368 ["appropriate test of abuse of discretion is whether or not the trial court exceeded the bounds of reason, all of the circumstances before it being considered"].)

As to Exhibits 13 and 15, the hearing judge did not err in admitting these declarations. Under our evidentiary rules, "[a]ny relevant evidence must be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions." (Rules Proc. of State Bar, rule 5.104(C).) It follows that even hearsay evidence must be admitted so long as it is relevant and reliable. However, it may only be "used for the purpose of supplementing or explaining other evidence, but over timely objection will not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions." (Rules Proc. of State Bar, rule 5.104(D).) Admitting Exhibits 13 and 15 was proper under rule 5.104(C) because the statements are relevant, and declarations are the type of evidence relied on in serious matters.[12] Moreover, Exhibit 15 is Sklar's own declaration—*a fortiori* a party admission—and she was clearly available to testify and explain her own out-of-court statement.

Accordingly, we find no abuse of discretion by the hearing judge in admitting into evidence Exhibits 1, 3, 5, 8, 9, 12, 13, and 15.

[12] For example, motions are typically supported solely based on declarations or affidavits. (See *Crocker Citizens Nat. Bank v. Knapp* (1967) 251 Cal.App.2d 875, 880; see also *McDonald v. Superior Court* (1994) 22 Cal.App.4th 364, 370.)

B. Sklar's Disputed Findings of Fact

Sklar disputes almost every factual finding made in the civil case as well as in these proceedings. She devotes nearly seven pages of her opening brief to detailing approximately 40 disputed facts. For example, she disputes "the finding that [she] appealed the [superior] court's fee award," even though she incontrovertibly did appeal it—all the way to the California Supreme Court. We have reviewed each of her factual challenges, and without itemizing them here, we reject and dismiss all of them as meritless.

C. Sklar's Equal Protection Claim

We also reject and dismiss Sklar's equal protection claim. She contends that she and Zipser are similarly situated, but that she was "selectively prosecuted" by OCTC while he was not. She claims this alleged "double standard" violates her constitutional rights.

Sklar and Zipser are not similarly situated. There is no evidence whatsoever that Zipser engaged in any misconduct while Sklar sought to mislead a judge and disobeyed court orders. (See *In re Hallinan* (1954) 43 Cal.2d 243, 246-247 [for selective prosecution claims, respondent must show that others demonstrably guilty of violating section have not been prosecuted, or that section is administered discriminatorily against class to which respondent belongs].)

D. Sklar's Claims of Bias and Other Unethical Conduct

Sklar levies numerous claims of bias, perjury, evidence tampering, and other unethical behavior against Zipser and other participants in the *Ellis* matter, including the superior court judge. We reject her allegations as conclusory and devoid of any factual basis. We also note that the civil courts previously considered and rejected the same accusations, finding them baseless and "inappropriate and unprofessional" on Sklar's part. (*Ellis, supra,* 218 Cal.App.4th at p. 872.) This is true of most of Sklar's challenges on appeal. When OCTC asked her at trial if

she was simply "rehashing the same arguments . . . made in Superior Court," she eventually admitted that basically she was.

V. AGGRAVATION AND MITIGATION

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

A. Aggravation

1. Multiple Acts

Sklar attempted to mislead a superior court judge and disobeyed two court orders. We agree with the hearing judge that these multiple acts merit some aggravation. (Std. 1.5(b); *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646-647 [three instances of misconduct considered multiple acts].)

2. Lack of Insight

We also agree that some aggravation is warranted for Sklar's lack of insight and recognition of her wrongdoing. (Std. 1.5(k).) The hearing judge found:

> [Sklar] refuses to accept any responsibility . . . instead blaming everyone else. [She] testified that she did everything in her power to comply with the Superior Court's orders; however, the credible evidence before this court demonstrates that the opposite is true. The Superior Court bent over backwards to accommodate [her] stated confidentiality and privilege concerns. Despite these efforts, [she] still refused to comply with the court-ordered inspection.

We adopt these findings and further note Sklar's ongoing recalcitrance regarding the veracity of the civil court proceedings. She testified that the Court of Appeal opinion was "absolutely not [accurate]," "it does not comport with the record whatsoever," and "reading . . . it was beyond disturbing." (See *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511

["The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility . . . and come to grips with [her] culpability. [Citation.]"].)[13]

B. Mitigation

1. Lack of Prior Discipline

The absence of any prior record of discipline over many years of practice, coupled with present misconduct that is not likely to recur, is a mitigating circumstance. (Std. 1.6(a).) The hearing judge found that Sklar's 14-years of discipline-free practice is entitled to significant consideration in mitigation. Given her recalcitrance and lack of insight, however, we cannot say that her misconduct is aberrational or unlikely to recur. (See *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [when misconduct is serious, long record without discipline is most relevant when misconduct is aberrational].) Accordingly, we assign some, but not significant, weight in mitigation for Sklar's lack of prior discipline. (See *In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206, 218 [no mitigation for 13-year discipline-free record where attorney engaged in 10-year pattern of dishonesty and serious misconduct, did not prove significant mitigation or demonstrate rehabilitation, and failed to accept responsibility for wrongdoing].)

2. Good Character

Sklar demonstrated good character, attested to by 14 character witnesses (attorneys, former co-counsel, friends, and relatives), who were fully aware of her misconduct and who represent "a wide range of references in the legal and general communities," as called for in standard 1.6(f). We assign significant weight to this evidence of good character.

[13] We note that OCTC requested additional aggravation at trial for Sklar's intentional acts of misconduct, lack of candor, harm to the civil courts and to Toshiba, and for other uncharged misconduct. However, on appeal, OCTC does not affirmatively seek to revise its trial request and asks only that we adopt the hearing judge's findings.

3. No Mitigation for Other Factors

We disagree with Sklar's contention that she is entitled to mitigation for other factors.

a. Good Faith Belief

Sklar is not entitled to mitigation for her good faith belief in her "explanations" for her misconduct, which she claims were honestly held, objectively reasonable, and not intended to deceive anyone. (Std. 1.6(b).) Neither the hearing judge nor the civil courts found her explanations credible or reasonable, and neither do we.

b. Lack of Harm

Sklar is also not entitled to mitigation for lack of harm. (Std. 1.6(c).) Although OCTC does not seek aggravation for harm, Sklar certainly misused discovery and contributed heavily to the length and cost of the *Ellis* litigation. As Zipser testified: "I can tell you from personal knowledge it has cost many millions of dollars . . . [and] it's still going."

c. Candor and Cooperation

Nor is Sklar entitled to mitigation for candor and cooperation. (Std. 1.6(e).) She entered into a pretrial stipulation where she stipulated to a mere three facts, and throughout these proceedings, she has failed to acknowledge culpability for any of her misconduct. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [significant weight in mitigation appropriate when culpability as well as facts admitted].)

d. Remoteness in Time and Excessive Delay

Finally, Sklar is not entitled to mitigation based on her claim of the remoteness in time of the misconduct and prejudicial delay by the State Bar in conducting the disciplinary proceeding. (Stds. 1.6(h) & (i).)

Sklar's fee litigation in *Ellis* began in 2006 and was ongoing as of the date of trial in this matter. The Court of Appeal referred Sklar's misconduct to the State Bar in August 2013, OCTC

filed the NDC on December 22, 2014, and trial commenced seven months later in August 2015. A two-year period from referral to trial is not excessive; cases recognizing undue delay involve much longer periods of time. (See *In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1, 9 [over four-year delay in filing charges excessive]; *In the Matter of Klein*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 12 [five-year delay excessive]; and *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 361 [seven-year delay excessive].)

Moreover, Sklar has shown no legally cognizable prejudice. (*In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735, 749 [delay not mitigating where respondent failed to show specific, legally cognizable prejudice].) The record does not support her claim that a trial continuance "doubled the costs to [her] and her witnesses" and "eliminated her ability to call witnesses unavailable for the scheduled trial date." To the contrary, the record demonstrates that Sklar and her counsel requested additional days of testimony to finish their case. At the end of the second day of trial on August 19, 2015, Sklar's counsel raised a timing and scheduling issue to the hearing judge:

> Your honor, it's a few minutes before 4:30, and . . . I'd like to stop our testimony there and raise one issue . . . if I might. [¶] I have some more documents to go through. I suspect that I may have another hour and a half or two hours, at most, at this point, with Ms. Sklar. Then we're going to have [several primary witnesses] and then the character witnesses. [¶] I would ask the Court, if possible, because it's a great burden on [Sklar] to come from Minnesota time and time again, could we possibly find a date, or two dates, so that we can reserve enough time to finish this?

The judge responded: "How about September 10th and 11th?" After negotiation about the start time, Sklar's counsel and OCTC agreed to the proposed dates. The record shows no indication that Sklar or her witnesses would be unavailable on those dates. And, in fact, the hearing judge allowed three of Sklar's witnesses (Eileen Bergmann, John McIntosh, and Anthony Waldera) to appear by telephone on September 11, 2015, and permitted 12 witnesses to submit character declarations.

VI. A 30-DAY ACTUAL SUSPENSION IS APPROPRIATE DISCIPLINE

Our analysis begins with the standards, which "promote the consistent and uniform application of disciplinary measures," and are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 91 [Supreme Court will not reject recommendation arising from standards unless grave doubts as to propriety of recommended discipline].) While not strictly bound by the standards, we recommend sanctions falling within the range they provide unless the net effect of the aggravating and mitigating circumstances demonstrates that a greater or lesser sanction is needed to fulfill the primary purposes of discipline.[14] (Std. 1.7.) If we depart from the standards, we must articulate our reasons for doing so. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5 [stating clear reasons for departing from standards helpful to Supreme Court and member being disciplined].)

Standard 2.12(a) is directly on point and provides that disbarment or *actual suspension* is the presumed sanction for disobedience of a court order or violation of an attorney's duty under section 6068, subdivision (d), to never mislead a judge.[15] Moreover, section 6103 itself calls for disbarment or suspension for disobedience of a court order or violation of duties, and Supreme Court precedent makes it clear that such misconduct is considered serious. (*Barnum v. State Bar* (1990) 52 Cal.3d 104, 112 [discussing violation of court order and holding: "Other than outright

[14] Standard 1.7(b) provides: "On balance, a greater sanction is appropriate in cases where there is serious harm to the client, the public, the legal system, or the profession and where the record demonstrates that the member is unwilling or unable to confirm to ethical responsibilities." Standard 1.7(c) provides that "a lesser sanction is appropriate in cases of minor misconduct, where there is little or no injury to a client, the public, the legal system, or the profession and where the record demonstrates that the member is willing and has the ability to conform to ethical responsibilities in the future."

[15] Standard 2.11 also applies; it addresses acts of moral turpitude generally, and states: "Disbarment or actual suspension is the presumed sanction for an act of moral turpitude. . . . The degree of sanction depends of the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator, the impact on the administrative of justice, if any; and the extent to which the misconduct related to the member's practice of law." Notably, standards 2.11 and 2.12(a) provide for the same disciplinary range—disbarment or actual suspension.

deceit, it is difficult to imagine conduct in the course of legal representation more unbefitting an attorney"].)

The 30-day actual suspension recommended by the hearing judge is within the disciplinary range specified in standard 2.12(a), and, we note, at the lowest end of the scale. (Std. 1.2(c)(1) ["Actual suspension is generally for a period of thirty days, sixty days, ninety days, six months, one year, eighteen months, two years, or three years"].)

OCTC urges us to affirm the recommendation while Sklar asks that we vacate the hearing judge's decision and dismiss the charges altogether, or, at most, impose a private reproval. She cites no case law supporting dismissal, but claims the recommended discipline is "excessive" and "unwarranted" and labels it a "death penalty" that "would not further the objectives of attorney discipline." In support of a private reproval, she relies on *In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592 and *In re Chira* (1986) 42 Cal.3d 904.

These cases are inapposite. In the former, we privately reproved an attorney for a single unaggravated instance of violating a court order—much less serious than Sklar's three aggravated acts of misconduct. In the latter, the California Supreme Court imposed a one-year *stayed* suspension on an attorney who was convicted of conspiring to impede the Internal Revenue Service by backdating the lease of his vehicle as part of a tax shelter. *Chira* involved misconduct that occurred in an attorney's personal capacity, where compelling mitigation was found. The facts and circumstances of *Chira* do not apply to this matter where Sklar's misconduct is directly related to her law practice.

The hearing judge found some guidance in two pre-standard 2.12 cases: *Bach v. State Bar, supra,* 43 Cal.3d 848 (60-day actual suspension for intentionally misleading judge; attorney had prior private reproval and no mitigation); and *In the Matter of Jeffers, supra,* 3 Cal. State Bar Ct. Rptr. 211 (one-year stayed suspension for failing to appear at mandatory settlement

conference and intentionally misleading judge; no aggravation, but compelling mitigation). Sklar's misconduct is deserving of greater discipline than in *Jeffers* because her misconduct is aggravated.

Sklar's suggested sanction of a private reproval is a downward departure from standard 2.12(a), which calls for a period of actual suspension at a minimum. In considering whether such a deviation is warranted, we take into account the seriousness of the misconduct and the factors in mitigation (no prior discipline and good character) and aggravation (multiple acts and lack of insight). We find that the net effect of the mitigating and aggravating factors does not justify a departure from the standards. The hearing judge's recommendation is within the range provided for in the standards, and OCTC does not seek increased discipline. For these reasons and because a 30-day actual suspension, together with our recommended conditions, serve to protect the public, the courts, and the legal profession, we affirm the hearing judge's recommended discipline.

VII. RECOMMENDATION

For the foregoing reasons, we recommend that Lori Jo Sklar be suspended from the practice of law for one year, that execution of that suspension be stayed, and that she be placed on probation for two years on the following conditions:

1. She must be suspended from the practice of law for the first 30 days of the period of her probation.

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

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

4. Within 30 days after the effective date of discipline, she must contact the Office of Probation and schedule a meeting with her assigned probation deputy to discuss the terms

and conditions of probation. Upon the direction of the Office of Probation, she must meet with the probation deputy either in person or by telephone. During the period of probation, she must promptly meet with the probation deputy as directed and upon request.

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

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

7. Within one year after the effective date of the discipline herein, she must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and she shall not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)[16]

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the period of probation, if she has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

VIII. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Lori Jo Sklar 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).)

[16] Since Sklar lives in Minnesota, she may, in the alternative and upon prior approval of the Office of Probation of the State Bar of California, attend six hours of in-person continuing legal education classes on the subject of ethics. Sklar would still have to complete this condition within one year after the effective date of the discipline herein.

IX. COSTS

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

HONN, J.

WE CONCUR:

PURCELL, P. J.

STOVITZ, J.*

* Retired Presiding Judge of the State Bar Court, serving as Review Judge Pro Tem by appointment of the California Supreme Court.