PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

May 12, 2020

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	17-C-01402
	)	
MARC LAWRENCE TERBEEK,	)	OPINION AND ORDER
	)	
State Bar No. 166098.	)	
	)	

After 17 years as an attorney, Marc Lawrence TerBeek[1] engaged in extensive criminal conduct to preserve a lucrative relationship with Daniel Rush, a union organizer. From 2010 to 2015, he paid kickbacks to Rush in exchange for a steady stream of referral business. He also restructured and laundered money, drafted fraudulent documents, and engaged in tax fraud to maintain the relationship. After federal agents targeted TerBeek in 2015, he cooperated in a lengthy criminal investigation. On February 16, 2017, he pled guilty to violating two counts of federal law: title 29 United States Code section 186(a)(2) (payments to a union employee—kickbacks), a felony; and title 12 United States Code section 1956 (willful violation of anti-structuring regulation—money laundering), a misdemeanor.

The hearing judge found moral turpitude in the facts and circumstances surrounding TerBeek's misdemeanor conviction, but not his felony conviction. The judge also found compelling mitigation and recommended discipline that includes a two-year actual suspension, continuing until TerBeek proves his rehabilitation.

The Office of Chief Trial Counsel of the State Bar (OCTC) appeals. It argues that the facts and circumstances surrounding both convictions involve moral turpitude. It also argues that

[1] Although State Bar official records spell TerBeek's name as Terbeek, he spells it TerBeek in his testimony and other records in this case, as we do in this opinion.

TerBeek failed to prove compelling mitigation and that he should be disbarred. TerBeek does not appeal; he acknowledges that discipline is warranted. Upon independent review of the record (Cal. Rules of Court, rule 9.12), we find that (1) the facts and circumstances surrounding both convictions involve moral turpitude, (2) the mitigation is not compelling, and (3) disbarment is necessary due to TerBeek's serious misconduct.

I. FACTUAL BACKGROUND[2]

A. TerBeek Meets and Works with Daniel Rush

TerBeek first met Daniel Rush at an Instituto Laboral de la Raza (Instituto) dinner in late 2002 or early 2003. The Instituto is an organization that protects the rights of workers with little or no access to legal services. Rush was on the Board of the Instituto, was affiliated with the United Food and Commercial Workers Union (UFCW), and had a private investigation business. TerBeek had just become a partner in the law firm of Mehlman and TerBeek, where he focused on real estate matters. Over the next few years, TerBeek became friends with Rush, who took an interest in TerBeek's personal and professional life. They saw each other socially a few times a month at Instituto dinners as well as at political and union events. As it turned out, this relationship marked the beginning of TerBeek's path to serious criminal activities and unethical conduct.

In 2004, Rush began raising the idea of TerBeek acquiring a workers' compensation practice. By 2006, TerBeek became interested, and Rush introduced him to a lawyer who handled a large volume of workers' compensation case referrals from the Instituto. TerBeek acquired this practice. Rush facilitated a steady stream of workers' compensation referrals

[2] The facts are mostly undisputed. They are based on the parties' extensive pretrial written stipulation, TerBeek's declarations and other documents submitted in his criminal case and admitted at trial in this proceeding, the trial testimony below, documentary evidence, and the hearing judge's factual findings, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).)

through the Instituto to TerBeek. Between 2003 and 2006, TerBeek made a number of personal loans to Rush, which Rush paid back with interest.

By 2007, TerBeek's 20-year marriage was ending and he had a drinking problem. Rush encouraged him to join Alcoholics Anonymous (AA), which TerBeek did on September 1, 2008. TerBeek began his sobriety that day, and Rush was his AA sponsor.

In 2009, TerBeek and Rush began working together to develop business in the emerging medical marijuana industry. TerBeek familiarized himself with local and state cannabis laws. In 2010, Rush began pitching the idea of unionizing medical marijuana workers through the UFCW. Rush helped marijuana business owners set up their businesses and obtain necessary permits. In approximately February 2010, TerBeek entered into a business relationship with Rush to refer those business owners to him in exchange for a portion of the money he earned.

In late 2009 or early 2010, Rush began making aggressive demands for "resources" from TerBeek. Rush insisted TerBeek owed him because he was responsible for TerBeek's successful practice and his sobriety, and for facilitating referrals of Instituto workers' compensation cases. Rush and Instituto referrals to TerBeek totaled 1.3 million dollars in attorney fees as of November 2013. TerBeek testified that to pressure him for money, Rush eventually became abusive and threatened to reveal personal information TerBeek had told him as part of the AA process.

B. TerBeek Pays Rush Kickbacks for Referral Business

Between 2010 and 2014, TerBeek paid at least $418,618.71 either to Rush or on Rush's behalf. TerBeek wrote checks to Rush or to Rush's family trust. He made notations on the checks such as "H-Cut," "H/C," or "H/Cut," code words for "haircut," or the share of fees he gave Rush for referrals. On two checks, TerBeek falsely stated that the payment was for professional services. At Rush's request, TerBeek did not issue 1099 tax forms for these

payments so Rush's income would not be reported to the Internal Revenue Service. TerBeek also paid the monthly balance on a credit card he had provided to Rush. TerBeek testified in federal court that he shared legal fees with Rush until 2015.

C. TerBeek Drafts Sham Agreement for Rush Family Trust and Launders Money

In 2007, Rush's uncle died intestate, leaving several heirs, including Rush and his cousins. Rush retained Mehlman and TerBeek to represent his uncle's trust during the probate process. TerBeek concluded the representation on his own after his law firm dissolved in 2009. At the conclusion of the probate process in January 2010, the probate court approved the creation of the 472 Rush Family Trust (the Trust), of which Rush was trustee. The deeds for several parcels of real property, including 472 West MacArthur Boulevard in Oakland (the property), were transferred into the Trust at its creation.

In early December 2009, TerBeek learned that Rush had encumbered the property with a $420,000 loan, which was due in March 2010. Rush was anxious to pay off the loan because he did not want to lose the property that had been in his family since the Civil War.

Around the same time, in late 2009, Martin Kaufman retained TerBeek to represent him. Kaufman had significant personal assets, including revenue unlawfully obtained from the medical marijuana industry. Kaufman told TerBeek he wanted to invest those funds. TerBeek drafted a sham consulting agreement between Kaufman and the Trust to facilitate Rush's ability to pay off the loan on the property. The agreement, signed by Kaufman and Rush as trustee, provided that the Trust would pay $500,000 to Kaufman for consulting services. The $500,000 was payable in monthly installments of $3,000, with a lump sum payment of $220,000 due at the termination of the agreement. In fact, Kaufman did not provide any consulting and gave the $500,000 to Rush and the Trust as a loan.

Kaufman delivered the $500,000 in cash, in a shopping bag, to TerBeek's office in January 2010. Rush took $80,000 and instructed TerBeek to use the rest to pay off the $420,000 loan on the property. TerBeek deposited the cash at Wells Fargo and Bank of America, intentionally making deposits of less than $10,000 to avoid regulatory detection by the banks. He testified that, in this process, he used his client trust account for deposits. TerBeek then obtained a cashier's check for $420,000 and paid off the loan. Early on, Rush told TerBeek that he could not make the monthly $3,000 payments to Kaufman, so TerBeek made them, writing checks to the Trust, which then paid Kaufman. TerBeek was not happy about covering Rush's payments and told him to consider them his split of the fees TerBeek made from the Instituto referrals.

D. TerBeek Gives Bad Legal Advice to Client to Benefit Kaufman

From 2010 to 2012, TerBeek provided legal advice to Carl Anderson, a medical marijuana dispensary owner affiliated with a dispensary on West Grand Avenue in Oakland. Anderson's company was initially approved to operate a dispensary at the highly sought-after location. Anderson told TerBeek that the City of Oakland wanted an explanation for the exceptionally high electric power usage at the location, which indicated that cannabis was being grown and would require payment of taxes. He told TerBeek that he did not want to pay the taxes. After consulting with TerBeek, Anderson decided to blame the high power usage on commercial refrigerators he claimed had leaky seals.

In a surreptitiously recorded statement the Federal Bureau of Investigation (FBI) obtained, TerBeek stated that he "threw Anderson to the wolves" by feeding him the unbelievable explanation for the high power usage. TerBeek also said he concocted a conflict so that he could stop representing Anderson and encourage him to leave the dispensary. This

ultimately allowed Kaufman's wife to move her dispensary into the West Grand Avenue location after Anderson's license was disqualified.

E. TerBeek Facilitates Agreement for Kaufman to Forgive $500,000 Loan

By 2014, TerBeek discovered that Rush did not have the money to repay Kaufman the $220,000 balloon payment on the $500,000 loan and that Rush had borrowed an additional $100,000 from Kaufman. TerBeek was concerned about what would happen when Kaufman discovered that Rush could not repay the loans. He began working with Derek Peterson, a business associate of Kaufman, to develop a plan to convince Kaufman to forgive the loans. Between January and October 2014, TerBeek had a series of meetings with Peterson and Kaufman. Rush attended some of the meetings where he and TerBeek highlighted the benefits they had provided Kaufman since 2010—making political introductions, lobbying, and facilitating the opening of the dispensary run by Kaufman's wife and Peterson in Oakland.

On November 26, 2014, Kaufman signed a settlement agreement forgiving most of the loans. TerBeek paid Kaufman $50,000 as part of the settlement and agreed to prepare the necessary paperwork to structure Kaufman's loan loss as a business loss. Kaufman told TerBeek that some of the loan money had come from Michael Steele, a drug dealer, who was not happy about the loss.[3] As a result, TerBeek drafted a fraudulent promissory note between Steele and Rush to avoid taxes, and backdated it to 2010. TerBeek referenced this as the "Kaufman-Steele tax fraud scheme" in a declaration he provided in federal court.

II. THE CRIMINAL PROCEEDINGS

On January 7, 2015, TerBeek learned he was the target of a federal criminal investigation when FBI agents came to his home. On the same day, the FBI executed a search warrant at his law office. Shortly thereafter, TerBeek began cooperating in the investigation. He told agents

[3] Unbeknownst to TerBeek, Steele was an undercover FBI agent.

that he was relieved to be out from under the pressure he felt from Rush. According to the United States Attorney's Office's sentencing memorandum, TerBeek cooperated for two and one-half years by "covertly recording his interactions with Rush and then assisting the government with trial preparation." Though no promises were made, his cooperation was considered at the time of sentencing.

On February 15, 2017, the United States Attorney's Office filed an Information in the United States District Court, Northern District of California, in *United States v. Marc TerBeek*, Case No. CR17-00087. The Information charged TerBeek in count one of violating title 29 United States Code section 186(a)(2), for making payments to a union employee, a felony. Count two charged TerBeek with violating title 12 United States Code section 1956, for structuring currency transactions with financial institutions (money laundering), causing those institutions not to file required Currency Transaction Reports, a misdemeanor. On February 16, 2017, TerBeek pled guilty to both counts pursuant to a plea agreement.

TerBeek's plea agreement stated the factual basis of his convictions. As to the felony charge, Rush referred marijuana business owners to TerBeek and "in exchange, he [Rush] demanded that I [TerBeek] provide him with a portion of the money I earned . . . and I did so." TerBeek paid Rush over $10,000. As to the misdemeanor charge, TerBeek admitted that in January and February 2010, he deposited $500,000 in cash in two banks in a series of $10,000 deposits designed to preclude the banks from filing Currency Transactions Reports.

Under the plea agreement, the government could decide whether to file a motion to reduce TerBeek's sentence, and ultimately did so, emphasizing his extensive cooperation. On November 27, 2017, TerBeek was sentenced to three years' probation and three months of home monitoring. He was also fined $7,500. On December 2, 2019, TerBeek was released early from

supervised probation. Based on TerBeek's cooperation, Rush was prosecuted and served time in prison.

III. STATE BAR COURT PROCEEDINGS

After OCTC transmitted the conviction records to this court, we placed TerBeek on interim suspension from the practice of law effective September 5, 2017, pending final disposition of this proceeding. (Bus. & Prof. Code §§ 6101, 6102; Cal. Rules of Court, rule 9.10; Rules Proc. of State Bar, rules 5.341, 5.342.) TerBeek waived evidence of finality. We referred the matter to the Hearing Department for further proceedings, including a hearing and decision as to whether the facts and circumstances surrounding the conviction involved moral turpitude or other misconduct warranting discipline, and the recommended discipline to be imposed. (Bus. & Prof. Code § 6102, subd. (e); Rules Proc. of State Bar, rule 5.344.) In December 2015, before his disciplinary trial, TerBeek enrolled in the Lawyer Assistance Program (LAP), which he successfully completed in February 2019.

On January 16, 2019, the parties filed a lengthy stipulation as to facts and admission of documents. Following a four-day trial and posttrial briefing, the hearing judge issued her decision on July 11, 2019.

IV. THE FACTS AND CIRCUMSTANCES SURROUNDING BOTH CONVICTIONS INVOLVE MORAL TURPITUDE

In attorney disciplinary proceedings, "the record of [an attorney's] conviction [is] conclusive evidence of guilt of the crime of which he or she has been convicted." (Bus. & Prof. Code, § 6101, subd. (a); *In re Gross* (1983) 33 Cal.3d 561, 567.) However, TerBeek's convictions do not establish moral turpitude per se. Any finding of moral turpitude must be made after considering the facts and circumstances of the criminal conviction. (Bus. & Prof. Code, § 6102, subd. (e).)

Since moral turpitude "cannot be defined with precision" (*Baker v. State Bar* (1989) 49 Cal.3d 804, 815, fn. 3), we look to the California Supreme Court for guidance. "Criminal conduct not committed in the practice of law or against a client reveals moral turpitude if it shows a deficiency in any character trait necessary for the practice of law (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) or if it involves such a serious breach of a duty owed to another or to society, or such a flagrant disrespect for the law or for societal norms, that knowledge of the attorney's conduct would be likely to undermine public confidence in and respect for the legal profession." (*In re Lesansky* (2001) 25 Cal.4th 11, 16.)

We must determine whether the facts and circumstances surrounding TerBeek's criminal convictions involve moral turpitude. In doing so, we are not restricted to examining elements of the crimes but must look at the whole course of misconduct. (*In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 935.) The misconduct, not the conviction, warrants discipline. (*In re Gross*, *supra*, 33 Cal.3d at p. 566.) The facts and circumstances here are intertwined, involve moral turpitude, and surround both convictions. TerBeek engaged in a complex course of misconduct for the purpose of keeping Rush happy so he could maintain his profitable relationship with him.

As to the felony referral payments to Rush, the hearing judge found that the facts and circumstances do not involve moral turpitude. We disagree. TerBeek's plea agreement recites the factual basis to be his payment of over $10,000 for referrals of marijuana business owners. But other facts surrounding this crime involve moral turpitude and dishonesty.

First, TerBeek paid Rush kickbacks for workers' compensation referrals that Rush facilitated through the Instituto. In fact, he paid over $418,618.71 to Rush. The attorney fees from referrals totaled 1.3 million dollars. Second, TerBeek disguised, misrepresented, and concealed the nature of his referral payments. He noted on several checks that they were for

"haircuts," his code term for payments to Rush. TerBeek also issued two checks, one for $6,000 and the other for $1,000, falsely indicating in the memo line that they were for professional services; he testified he knew Rush provided none. (*In the Matter of Oheb*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 936 [falsely recording nature of payments in bank and financial records constitutes moral turpitude].) Next, TerBeek purposefully did not issue a 1099 tax form to Rush because Rush made it clear that he could not or would not pay taxes on the referral payments. (See *In the Matter of Nelson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178, 187–189 [attorney's sharing of fees with non-attorney involved corruption, in violation of Bus. & Prof. Code § 6106 (moral turpitude)].) And finally, TerBeek considered the $3,000 interest payments on Rush's loan from Kaufman to be payments for referral fees.

The hearing judge found that TerBeek made these referral payments because he feared Rush. OCTC challenges this factual finding. We find the record supports this challenge—TerBeek did not act out of fear. Though his relationship with Rush became strained as Rush made erratic demands for money, TerBeek admitted that he acted freely when he committed criminal and unethical acts. In 2017, he wrote in a letter to the federal sentencing judge that he willingly participated in the crimes and in 2019, at his disciplinary hearing, he testified:

> Let me make clear I am no victim. I decline and despise the concept of victimhood. I had my own agency in this matter. It was leveraged. I was targeted, I believe, but I am no victim, and the responsibility for these choices, particularly my most grievous choice of not seeking help and not seeking aid at the moment that the relationship became predatory, that's on me. You know, my conduct, my choices were mine.

As to the misdemeanor money laundering, the hearing judge found that the facts and circumstances surrounding it involve moral turpitude because it "included elements of corruption, deception, greed and dishonesty." We agree. TerBeek drafted a sham consulting agreement between Kaufman and Rush to disguise the $500,000 money he laundered. He created a fraudulent backdated loan between Rush and Steele as a further attempt to make illegal financial

transactions look legitimate. And he gave bad advice to Anderson to ultimately benefit Rush.[4] TerBeek's multiple acts of deceit were contrary to honesty and good morals, and involved moral turpitude. (See *Stanford v. State Bar* (1940) 15 Cal.2d 721, 727–728 ["act of an attorney which is contrary to honesty and good morals is conduct involving moral turpitude"].)

In sum, we find that all of TerBeek's misconduct stems from his relationship with Rush. TerBeek paid kickbacks to Rush through 2015. He laundered money to protect and please Rush. He paid Rush's debts as referral payments. And he lied to Anderson to protect Rush's and Kaufman's interests. TerBeek's entire course of conduct was designed to maintain a financially beneficial relationship with Rush and constitutes facts and circumstances involving moral turpitude that surround both convictions. (*In the Matter of Miller* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 110, 115 ["wide ambit of facts surrounding the commission of a crime is appropriate to consider in a conviction referral proceeding"].)

V. AGGRAVATION AND MITIGATION

OCTC must establish aggravating circumstances by clear and convincing evidence.[5] TerBeek has the same burden to prove mitigation.

A. Aggravation

1. Multiple Acts (Std. 1.5(b)) / Pattern of Misconduct (Std. 1.5(c)) [6]

The hearing judge assigned significant aggravation for TerBeek's multiple acts of misconduct. Neither party challenges this finding. We affirm and assign substantial weight.

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[4] We reject TerBeek's argument that evidence of the Anderson matter should not have been admitted. This evidence relates to TerBeek's ongoing course of misconduct surrounding the convictions.

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

[6] All further references to standards are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

OCTC seeks aggravation for a pattern of misconduct, which the hearing judge did not find. Like the hearing judge, we also do not find a pattern of misconduct for TerBeek's misconduct that resulted in two criminal convictions. (*Young v. State Bar* (1990) 50 Cal.3d 1204, 1217 [only serious instances of repeated misconduct over prolonged period of time evidence pattern of misconduct].)

2. No Aggravation for Harm to Client (Std. 1.5(j))

Standard 1.5(j) provides aggravation for significant harm to a client. The hearing judge found such harm based on TerBeek's bad legal advice to Anderson. The judge reasoned that it predictably contributed to Anderson's company losing its license for a dispensary. We find that OCTC did not prove by clear and convincing evidence that TerBeek's bad advice actually caused Anderson to lose his license. And we have already considered that advice in our moral turpitude analysis. (*In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 133.)

3. No Aggravation for Lack of Candor (Std. 1.5(l))

OCTC requests aggravation, arguing that TerBeek's testimony lacked candor. But the hearing judge, who saw and heard the testimony, did not make a lack of candor finding. Instead, the judge assigned mitigation for candor and cooperation under standard 1.6(e), based largely on TerBeek's cooperation with law enforcement and his extensive stipulation. In this case, we do not find aggravation for lack of candor absent such a finding by the hearing judge.

B. Mitigation

1. No Prior Record (Std. 1.6(a))

TerBeek was admitted to practice law in 1993, and has no prior record of discipline. He practiced law for 17 years without discipline before his misconduct began in 2010. Standard 1.6(a) provides that the "absence of any prior record of discipline over many years of practice coupled with present misconduct, which is not likely to recur" is a mitigating

circumstance. The hearing judge assigned significant mitigating weight to TerBeek's discipline-free career, but did not address whether the misconduct was likely to recur, as provided in the standard.

TerBeek argues that his misconduct will not recur, as evidenced by his completion of LAP and his severance of ties with Rush. We note these positive steps toward rehabilitation. But when misconduct is serious, a prior record of discipline-free practice is most relevant for mitigation where the misconduct is aberrational. (*Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029.) TerBeek's misconduct was serious and was not aberrational. He engaged in criminal conduct for five years and stopped only when he discovered he was being investigated. Further, his early release from supervised probation on December 2, 2019, is insufficient time to evaluate his unsupervised conduct. On the other hand, he completed the three-year LAP program in 2019. Under these circumstances, we assign moderate weight for TerBeek's prior lack of discipline in 17 years.

2. Extreme Emotional Difficulties or Physical or Mental Disabilities (Std. 1.6(d))

Standard 1.6(d) provides that mitigation may be assigned for extreme emotional difficulties or physical or mental disabilities if (1) the attorney suffered from them at the time of the misconduct, (2) they are established by expert testimony as being directly responsible for the misconduct, and (3) they no longer pose a risk that the attorney will commit future misconduct. The hearing judge assigned mitigation credit for TerBeek's alcoholism and his effort to overcome it by attending AA and completing LAP. The judge also afforded mitigation for emotional difficulties TerBeek suffered due to pressure from Rush. OCTC argues that TerBeek is not entitled to mitigation because he achieved sobriety before his misconduct began and did not establish a nexus between any emotional distress and his misconduct. TerBeek argues that completion of LAP in February 2019 "ought to amply satisfy the requirements of this Standard."

We find TerBeek is not entitled to mitigation for physical or emotional difficulties. He began a period of sobriety in September 2008, when he started to attend AA—nearly two years before his criminal conduct began. Thus, there is no nexus between TerBeek's substance abuse and his misconduct; completing LAP does not establish one. As to pressure by Rush, we assign no mitigation credit. As noted, TerBeek made clear to the federal court and to the hearing judge that he acted freely despite Rush's conduct toward him. (See *In re Distefano* (1975) 13 Cal.3d 476, 481–482 [financial and relationship pressures on attorney who filed fraudulent income tax returns do not justify criminal acts or exonerate attorney].)

3. Candor and Cooperation (Std. 1.6(e))

The hearing judge assigned substantial mitigation for TerBeek's stipulation with OCTC and for his cooperation with the FBI. (Std. 1.6(e) [mitigation credit permitted for spontaneous candor and cooperation displayed to State Bar or victims of misconduct].) OCTC submits that TerBeek should receive minimal mitigation because his stipulation in this proceeding contained easily provable facts and he did not admit culpability. We agree, but note his stipulation was extensive and he waived finality of his criminal conviction. (See *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive mitigation for admission of culpability and facts].) We therefore assign limited weight in mitigation.

As to TerBeek's cooperation with the FBI, OCTC submits that he is not entitled to mitigation because it benefitted him in the criminal proceeding. We do not assign mitigation for cooperation with the FBI under this standard because the standard references cooperation displayed to the State Bar or victims in a disciplinary proceeding. Instead, we assign moderate mitigation for his cooperation with the FBI under standard 1.6(g), which addresses remorse, as discussed below.

4. Good Character (Std. 1.6(f)) / Community Service

TerBeek is entitled to mitigation if he establishes extraordinary good character attested to by a wide range of references in the legal and general communities who are aware of the full extent of his misconduct. (Std. 1.6(f).) The hearing judge assigned substantial mitigation for TerBeek's good character evidence. TerBeek presented testimony from two attorneys, a retired businesswoman, a retired chemist, a school teacher, a consultant for the Other Bar, a sustainability activist, and family members. OCTC argues TerBeek is entitled to less mitigation primarily because the witnesses did not know the full extent of his misconduct.

TerBeek is also entitled to mitigation if he proves he engaged in community service. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) He testified that he has volunteered for recovery-related commitments for years. For example, he served as secretary for the Oakland Other Bar for a year, offered ongoing speaker presentations, and coordinated setup and breakdown at candlelight sobriety meetings. Though the hearing judge did not assign mitigation for community service, we find that TerBeek is entitled to substantial mitigation for his combined good character and community service. (*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 591–592 [significant mitigation for good character for three witnesses, two attorneys and fire chief, who had long-standing familiarity with attorney and broad knowledge of good character, work habits, and professional skills]; *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [serious consideration for attorneys' testimony due to their "strong interest in maintaining the honest administration of justice"].)

5. Remorse and Recognition of Wrongdoing (Std. 1.6(g))

Standard 1.6(g) provides mitigation for "prompt objective steps, demonstrating spontaneous remorse and recognition of . . . wrongdoing and timely atonement." The hearing judge assigned substantial mitigation for TerBeek's expression of remorse to friends, family, the

FBI, and the State Bar Court and for his cooperation with the FBI. (*In re Higbie* (1972) 6 Cal.3d 562, 567–568 [mitigation given for cooperation with law enforcement in discipline cases].)

We acknowledge TerBeek's expression of remorse and his cooperation with law enforcement. Though he cooperated only after he was targeted, his overall cooperation was extensive. The United States Attorney's sentencing memorandum states that TerBeek was "honest and reliable" throughout two-and-a-half years, and there were "no limits" on what the government could ask of him. His cooperation led to Rush's conviction. Considering the extent of TerBeek's cooperation, we assign moderate weight in mitigation for remorse. (See *In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469, 478 [slight mitigation given for delayed cooperation with government, which was motivated by desire to obtain lighter sentence].)

6. No Mitigation for Remoteness in Time of Misconduct and Subsequent Rehabilitation (Std. 1.6(h))

Though he did not appeal, TerBeek seeks mitigation for the two years and seven months he practiced law without misconduct between the time he began working with the FBI in 2015, and his conviction and interim suspension in 2017. The standard requires a showing of subsequent rehabilitation in addition to remoteness. (Std. 1.6(h) [remoteness in time of misconduct *and* subsequent rehabilitation can be mitigating].) TerBeek argues his rehabilitation is proved by his participation in AA and completion of LAP. We do not assign mitigation under this standard because TerBeek has not demonstrated his complete rehabilitation given the serious nature of his misconduct and his recent release from supervised probation in 2019. (See *In the Matter of Rech* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310, 317 [attorney must prove rehabilitation from serious criminal record even where he practiced law without misconduct for four years following criminal conviction]; Cf. *Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 939 ["It is not enough that petitioner kept out of trouble while being watched on [criminal] probation; he must affirmatively demonstrate over a prolonged period his sincere regret and rehabilitation"].)

VI. DISBARMENT IS THE NECESSARY DISCIPLINE

Our role is not to punish TerBeek for his crimes—the federal court has done so by sentencing him in the criminal proceeding. Instead, our purpose is to recommend appropriate professional discipline, considering the goals of the discipline system. (*In re Brown* (1995) 12 Cal.4th 205, 217 ["the aim of attorney discipline is not punishment or retribution; rather, attorney discipline is imposed to protect the public, to promote confidence in the legal system, and to maintain high professional standards"].) Our discipline standards guide us whenever possible, and we balance all relevant factors, including mitigating and aggravating circumstances, on a case-by-case basis, to ensure that the discipline imposed is consistent with the purposes of discipline. (*In re Young* (1989) 49 Cal.3d 257, 266–267 & fn. 11.) We also look to comparable case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310–1311.)

When an attorney commits two or more acts of misconduct, and different standards apply, the most severe sanction must be imposed. (Std. 1.7(a).) The hearing judge found no moral turpitude surrounding TerBeek's felony conviction. However, we found moral turpitude in the facts and circumstances surrounding *both* the felony and misdemeanor convictions. Accordingly, we apply the version of standard 2.15(b) in effect at the time of the disciplinary trial. This standard calls for disbarment as the presumed sanction for a felony conviction in which the surrounding facts and circumstances involve moral turpitude, unless the most compelling mitigating circumstances clearly predominate.[7]

[7] The standards were revised in 2019. Current standard 2.15(a) provides that summary disbarment is the sanction when a hearing judge finds that the facts and circumstances surrounding a felony conviction involve moral turpitude. We reject OCTC's argument that this new standard should apply here. The standard mirrors the new mandate of Business and Professions Code section 6102, subdivision (c)(2), which became effective on January 1, 2019. Section 6102 is not retroactive and therefore applies only where the crime underlying the conviction occurred after the statute's effective date. TerBeek's crimes occurred before January 1, 2019. (*In the Matter of Jebbia* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 51, 54 [summary disbarment statute not applied retroactively].)

OCTC argues that TerBeek should be disbarred. TerBeek argues that the hearing judge's recommendation is correct considering the pressure and fear he faced, his efforts to offset his misconduct by cooperating with law enforcement, his mitigation, and his rehabilitation. The hearing judge found compelling mitigation and recommended discipline including a two-year actual suspension. We find disbarment is proper under standard 2.15(b). TerBeek's misconduct was serious, it spanned five years, and it did not stop until law enforcement became involved.

Our disagreement with the hearing judge's discipline recommendation is based on our findings that (1) *both* convictions were surrounded by facts and circumstances involving moral turpitude and (2) the mitigation evidence was *not* compelling. While TerBeek established mitigation for no prior discipline (moderate), cooperation (limited), good character and community service (substantial), and remorse (moderate), the total weight of these factors is not compelling.[8] Nor does the mitigation clearly predominate over TerBeek's misconduct and the aggravating factor of multiple acts of wrongdoing, to which we assigned substantial weight.

The reasons TerBeek engaged with Rush may be many and complicated, but they boil down to his desire for money and power. By associating with Rush, he became wealthy and enjoyed increased status and power. At some point in TerBeek's unblemished career, he chose to become Rush's criminal accomplice. He used his legal skills to draft fraudulent documents and his attorney trust account to help facilitate his money laundering. TerBeek acted freely and any pressure he felt from Rush does not make his dishonest misconduct less serious or excusable. In the practice of law, honesty is absolutely fundamental. Without it, "the profession is worse than valueless in the place it holds in the administration of justice." (*Tatlow v. State Bar* (1936)

[8] Cf. *In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171, 185 (compelling mitigation in non-conviction case where attorney provided extraordinary demonstration of good character, consisting of 36 character witnesses, including judges, attorneys, public officials, law enforcement personnel, community leaders, and friends, and an impressive record of participation in pro bono and community service activities).

5 Cal.2d 520, 524; see *Kim v. Westmoore Partners, Inc.* (2011) 201 Cal.App.4th 267, 292 ["It is critical to both the bench and the bar that we be able to rely on the honesty of counsel"].) Disbarments have been the rule rather than the exception in disciplinary matters for serious crimes where the facts and circumstances involve moral turpitude. (*In re Crooks* (1990) 51 Cal.3d 1090, 1101.) TerBeek's case is no exception.[9]

A discipline less than disbarment would not protect the public and would undermine confidence in the legal profession. (*In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406, 416 [discipline system is responsible for preserving integrity of legal profession as well as protection of public].) Following disbarment, TerBeek will be required to demonstrate in a reinstatement proceeding that he is rehabilitated before he is entitled to resume practicing law.

VII. RECOMMENDATION

For the foregoing reasons, we recommend that Marc Lawrence TerBeek be disbarred from the practice of law and that his name be stricken from the roll of attorneys admitted to practice law in California.

We further recommend that he comply with rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule, within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this matter.

We further recommend that costs be awarded to the State Bar in accordance with section 6086.10, such costs being enforceable as provided in section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to

[9] Case law supports disbarment for criminal acts involving moral turpitude for fraud and deceit if the mitigation is not sufficiently compelling. (*In the Matter of Kreitenberg*, *supra*, 4 Cal. State Bar Ct. Rptr. 469 [disbarment for tax fraud scheme that continued for three years]; *In the Matter of Rech*, *supra*, 3 Cal. State Bar Ct. Rptr. 310 [disbarment for conviction involving four-year conspiracy disguising client's drug proceeds and loaning client money to support illegal drug business].)

subdivision (c) of section 6086.10, costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

VIII. ORDER

Pursuant to section 6007, subdivision (c)(4), and rule 5.111(D)(1) of the Rules of Procedure of the State Bar, Marc Lawrence TerBeek is ordered enrolled inactive. The order of inactive enrollment is effective three days after service of this opinion. (Rules Proc. of State Bar, rule 5.111(D)(1).)

PURCELL, P. J.

WE CONCUR:

McGILL, J.

HONN, J.