PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed December 28, 2022

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	SBC-19-C-30278; SBC-19-C-30311; SBC-21-O-30512 (Consolidated)
	)	
ALISON M. MADDEN,	)	
	)	OPINION
State Bar No. 172846.	)	
	)	

Alison M. Madden was convicted of driving under the influence (DUI) causing injury, a felony, in violation of Vehicle Code section 23153, subdivision (a). A hearing judge found that the conviction did not involve moral turpitude, but involved other misconduct warranting discipline. The judge recommended discipline including a one-year actual suspension with credit for time spent on interim suspension. (SBC-19-C-30278.) In a separate disciplinary matter, Madden was charged with failing to obey a court order requiring her to comply with rule 9.20 of the California Rules of Court, the unauthorized practice of law (UPL), moral turpitude, and failure to comply with conditions attached to an Agreement in Lieu of Discipline (ALD), which related to a misdemeanor assault conviction in violation of Penal Code section 240. For this misconduct, the judge recommended an 18-month actual suspension continuing until Madden provides proof of her rehabilitation, fitness to practice, and present learning and ability in the general law. (SBC-19-C-30311; SBC-21-O-30512 (Consolidated).)

We consolidated all of these matters on review. Both Madden and the Office of Chief Trial Counsel of the State Bar (OCTC) appeal the decisions of the hearing judge. Madden asserts she should not be found culpable of the charges related to rule 9.20, UPL, and the ALD violations due to her good faith mistakes. She also argues for dismissal of the conviction

matters. She asserts that 90 days, at most, is appropriate discipline here. OCTC seeks disbarment of Madden considering the totality of her misconduct.

Upon our independent review (Cal. Rules of Court, rule 9.12), we affirm most of the hearing judge's findings regarding the circumstances of the convictions and culpability. We do not find, as the hearing judge did, that Madden's UPL violation constituted moral turpitude. Considering the totality of Madden's misconduct and the aggravating and mitigating circumstances, we find that a three-year period of suspension covering all the alleged misconduct is necessary here to protect the public and impress upon Madden the importance of complying with her professional responsibilities. We also recommend that Madden be given credit for the time she spent on interim suspension, approximately 29 months. Finally, we find that Madden's suspension should continue until she proves her rehabilitation, fitness to practice, and present learning and ability in the general law pursuant to standard 1.2(c)(1) of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.[1]

I. PROCEDURAL BACKGROUND IN THE STATE BAR COURT

A. DUI Conviction Matter (SBC-19-C-30278)

On June 10, 2019, OCTC filed a transmittal of the record of Madden's DUI conviction. On May 10, 2021, Madden filed a notice of finality of the conviction; on that same date, OCTC filed a status report indicating the finality of Madden's felony DUI conviction. (SBC-19-C-30278.) We referred the matter to the Hearing Department on May 14 to determine whether the facts and circumstances surrounding the conviction involved moral turpitude or other misconduct warranting discipline. (Rules Proc. of State Bar, rule 5.344.) On September 13, the parties filed a stipulation as to facts and the admission of documents. A two-day trial was held September 14 and 15. Following the disciplinary trial and posttrial briefing,

[1] All further references to standards are to this source.

the hearing judge issued her decision on December 16. The judge issued an amended decision on January 27, 2022.

B. Assault Conviction, UPL, and ALD Matters (SBC-19-C-30311; SBC-21-O-30512)

On June 27, 2019, OCTC filed a transmittal of the record of Madden's assault conviction. On July 30, OCTC transmitted evidence of finality of Madden's misdemeanor assault conviction to this court in State Bar Court No. SBC-19-C-30311. We referred the matter to the Hearing Department on August 20 to determine whether the facts and circumstances surrounding the conviction involved moral turpitude or other misconduct warranting discipline. (Rules Proc. of State Bar, rule 5.344.) Madden then entered into the ALD. On October 21, the proceeding was dismissed without prejudice to OCTC refiling, if Madden failed to comply with the ALD. On July 8, 2021, the proceeding was reopened.

On July 22, 2021, OCTC filed a Notice of Disciplinary Charges (NDC) in State Bar Court No. SBC-21-O-30512, which was amended on July 30, charging Madden with (1) failing to obey a court order in violation of Business and Professions Code section 6103;[2] (2) UPL in violation of section 6068, subdivision (a); (3) UPL involving moral turpitude in violation of section 6106; and (4) failing to comply with the conditions of the ALD in violation of section 6068, subdivision (l).

On September 2, 2021, the Hearing Department consolidated State Bar Court Nos. SBC-19-C-30311 and SBC-21-O-30512.[3] On November 5, the parties filed a stipulation as to facts and to the admission of documents. Trial was held November 8, 9, and 10. Following the

[2] All further references to sections are to the Business and Professions Code unless otherwise noted.

[3] Upon Madden's request, the court did not consolidate the felony DUI conviction matter (SBC-19-C-30278).

disciplinary trial and posttrial briefing, the hearing judge issued her decision on February 18, 2022.

C. Consolidation on Review

We consolidated all three matters on April 1, 2022, and heard oral argument on September 29.

II. FACTUAL BACKGROUND[4]

A. Assault Conviction (SBC-19-C-30311) and Violation of ALD (SBC-21-O-30512)

1. Madden Convicted of Misdemeanor Assault

On November 12, 2005, Madden went to the Redwood City Post Office, hoping that someone had found her lost wallet and mailed it to her. At this time, Madden was experiencing a multitude of stressors;[5] she was upset when she walked into the post office. A supervisor at the post office refused to check Madden's mailbox because she could not provide identification. After a discussion with the supervisor, Madden slapped him and left the post office. Madden testified that she was under an extreme amount of stress and was desperate and upset that the supervisor would not help her.

A local police officer investigated the incident. The supervisor was not injured. Madden cooperated with the officer and came to the police station to discuss the incident. The officer asked Madden if she had slapped the supervisor, she responded "yes" and then said, "It was a tap!" On March 1, 2006, Madden entered a nolo contendere plea to a charge of misdemeanor

[4] The facts in this opinion are based on the stipulations, trial testimony, documentary evidence, and the hearing judge's factual findings, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).) Madden was admitted to practice law on December 9, 1994. Besides the underlying proceedings, Madden has not been disciplined before.

[5] Madden was a single mother with two young children, including one with special needs. A tenant in her home refused to leave and was stalking her. She moved four times that year and put her belongings in storage.

assault. (Pen. Code, § 240.) Madden completed a two-year probation and the conviction was later expunged.[6]

2. Madden Enters into ALD

The assault conviction was transmitted to the State Bar Court in 2019. On October 2, 2019, Madden and OCTC entered into an ALD to resolve the matter. (§ 6092.5, subd. (i) [OCTC may make agreements in lieu of disciplinary proceedings].) She understood she was bound by the terms and conditions of the ALD, including filing quarterly reports. On October 9, OCTC sent Madden a reminder that she must comply with the terms and conditions of the ALD.

Her first quarterly report was due January 10, 2020, but it was not mailed until January 27, as she was serving her sentence in county jail for a felony DUI conviction, discussed *post*. Madden apologized for the delay in her report. She was released from jail on April 18. On August 3, OCTC notified Madden that the quarterly reports for April 10 and July 10 had not been filed and that she was not in compliance with the ALD. Despite this prompt, she did not file any subsequent reports until June 27, 2021, when she filed three reports due from 2020 (April 10, July 10, and October 10) and a final report.

Madden testified that she did not timely file the reports because she was unsure if she was required to report past misdemeanor convictions and did not want to attest that she was fully compliant when she had not reported these convictions. Madden did not ask OCTC or anyone at the State Bar for clarification about self-reporting or an extension. She claims she wanted to research the issue at the law library after she was released from jail, but she was delayed from going to the law library as it was temporarily closed during the COVID-19 pandemic. After

[6] Madden testified she was unable to contact the supervisor after the incident due to a restraining order prohibiting her from returning to that post office. She left a voicemail for him before the disciplinary trial regarding whether he would appear, and also apologized.

doing research, Madden determined that she had no obligation to report the convictions after all. Therefore, she felt comfortable signing the reports under penalty of perjury.

B. DUI Conviction (SBC-19-C-30278)

1. Madden Convicted of Felony DUI

On the morning of May 31, 2018, Madden drank "moonshine,"[7] as she had not planned on leaving the house. Madden allowed her boyfriend to borrow her rental car to pick up his medications. The boyfriend drove and Madden accompanied him as passenger—only she was on the rental car contract. While on the drive, they began to argue and the boyfriend eventually parked the car in a strip mall parking lot and walked away. Madden testified that the boyfriend had yelled at her and she felt abandoned when he left. She walked to a coffee shop and accidentally dropped her phone into a toilet. With no working phone, she decided to drive to a store to get a new one.

While driving, Madden testified that she began to feel the effects of the moonshine and decided she should turn around at the San Francisco International Airport (SFO) and go home. In the arrival lanes at SFO, Madden collided with a parked town car, owned and driven by Harbans Hunjan. Hunjan was outside the vehicle after loading his passenger's luggage. The collision caused the town car to hit Hunjan, throwing him several feet into the street. He hit his head and lost consciousness. The passenger exited the town car to assist Hunjan. Madden remained in the rental car. Hunjan was transported to the hospital in an ambulance. He was hospitalized for three days, had three spinal fractures, bruising on his leg, and neck injuries, which required wearing a neck brace.[8]

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[7] We understand the term "moonshine" in its common meaning, that is, a homemade distilled alcoholic beverage.

[8] Hunjan was unable to walk and needed assistance after being released from the hospital. He could not work for several months, and, when he returned to work, he could no longer assist his passengers with their luggage. He remains in pain, has difficulty sitting and lifting, and can

Police responded to the scene. An officer escorted Madden from her car to the curb. She initially stated she had drunk alcohol the day before, but then admitted she had drunk moonshine that day. At the scene, Madden's breath tests indicated a blood-alcohol level of 0.202 percent and 0.201 percent. A later blood sample returned a blood-alcohol level of 0.191 percent.

In March 2019, Madden pleaded nolo contendere to a felony conviction of Vehicle Code section 23153, subdivision (a) (DUI causing injury), with an admitted enhancement under Penal Code section 12022.7, subdivision (a) (special allegation—great bodily injury). At the July 12 sentencing hearing, Madden was ordered to serve one year in jail. At a September 27 restitution hearing, Madden was ordered to pay $2,091 in restitution to Hunjan.[9] She reported to jail on October 26, 2019, and was released on April 18, 2020. This was not Madden's first DUI conviction, as she had been previously convicted for a DUI related to an incident in 2004 when she ran a red light.[10]

2. Interim Suspension Resulting from DUI Conviction

On July 5, 2019, we ordered Madden suspended, effective July 29, due to her DUI conviction. The order also stated that Madden was to "comply with California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40

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no longer do household activities like yard work and grocery shopping. He uses a cane to walk and attends physical therapy, which was paused during the COVID-19 pandemic. He testified that the accident has affected him emotionally. As a result of the collision, his car was totaled, and he had to buy a new car for work. Thereafter, his insurance premium increased.

[9] Madden made some $100 payments to Hunjan, but the restitution was later waived as part of a civil settlement. Hunjan's civil suit against Madden was settled by Madden's insurance for the limits of Madden's policy as she was at fault.

[10] Her blood-alcohol level for the 2004 incident was 0.17 percent, yet Madden had told a police officer she had only had two beers. She completed a first offender program and the conviction was expunged in 2008. Despite having a prior DUI, Madden believes the 2018 DUI was aberrational due to the length of time between her DUIs.

days, respectively, after the effective date of this suspension." The interim suspension went into effect on July 29.

On August 9, 2019, Madden filed a motion to vacate, temporarily stay, or delay the effective date of her interim suspension. On August 29, we granted the motion with modifications, and ordered Madden returned to active status until December 1, when her interim suspension would resume. The August 29 order stated:

> In the interests of justice, pursuant to Business and Professions Code section 6102, subdivision (a), respondent's motion to stay and temporarily delay the interim suspension is granted, with modifications. The interim suspension ordered on July 5, 2019, is vacated, effective upon the filing of this order, and respondent is ordered placed on interim suspension effective December 1, 2019. (Rules Proc. of State Bar, rule 5.342(D).)

The interim suspension went into effect on December 1, 2019, while Madden was serving her sentence in county jail and concluded on March 24, 2022, when we vacated the interim suspension imposed on August 29, 2019.[11]

C. Failure to Comply with California Rules of Court, Rule 9.20[12] (SBC-21-O-30512)

Prior to learning of our August 29, 2019 order, Madden attempted to file a document with the Supreme Court related to her rule 9.20 obligations, which had been ordered in our July 5 order. She testified that the document was a notice of her interim suspension for a pending Supreme Court case where she was listed as counsel, *Stancil v. Superior Court, et al.* (*Stancil*).[13]

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[11] Madden was on interim suspension for her DUI conviction from July 29, 2019, until August 29, 2019, and from December 1, 2019, until March 24, 2022. In total, she spent approximately 29 months, almost two and a half years, on interim suspension.

[12] All further references to rules are to the California Rules of Court unless otherwise noted.

[13] Madden produced a copy of such a notice at trial, which included the Supreme Court's stamp. Two Supreme Court clerks testified that the produced document was not the one Madden attempted to file on August 29, because the document Madden attempted to file did not have a Supreme Court case number on it, which was why it was rejected for filing. However, they verified that the notice produced at trial included a valid Supreme Court stamp. We agree with

(See rule 9.20(a)(4) [requirement to notify opposing counsel in pending litigation that attorney is disqualified to act after effective date of attorney's suspension and to file copy of notice with court where litigation is pending].) The Supreme Court clerks rejected Madden's filing. She left the court on August 29, knowing she had not succeeded in filing the required rule 9.20(a)(4) notice. She did not make any subsequent efforts to file a rule 9.20(a)(4) notice in *Stancil*.

On September 27, 2019, the Office of Probation of the State Bar (Probation) informed Madden that it would continue monitoring her requirement to file a rule 9.20 compliance declaration by January 10, 2020, unless there was a court order stating otherwise.[14] Madden responded that she would be seeking such an order. Madden reported to jail on October 26, 2019, to serve her sentence for the 2018 DUI. While incarcerated, her sisters read Madden's emails to her and assisted with her correspondence.

On January 22, 2020, Probation emailed Madden to notify her that her rule 9.20 compliance declaration was overdue. Madden responded from jail, with assistance from her sister:

> I made a full compliance with rule 9.20 on or before August 29, 2019, and then the Review Department of the State Bar Court vacated [its] order at 5:00 PM, August 29, 2019, which is why I did not file with the State Bar Court the Compliance Notice. However, I did fully comply, by notifying all clients, co-counsel, opposing counsel, and [the] Superior Court and Supreme Court. I have a case in the Supreme Court, and the clerk there advised me that he would not take my filing, because "the Supreme Court is not bound by State Bar orders[."] Although my suspension was re-calendared to December 1, 2019[,] the State Bar

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the hearing judge that it is unclear what document or documents Madden attempted to file on August 29. Whatever documents she attempted to file, she knew they had not been filed.

[14] January 10, 2020 was 40 days after the effective date of Madden's interim suspension, which was modified to begin on December 1, 2019, by our August 29, 2019 order. The July 5, 2019 order required Madden to file a rule 9.20(c) compliance declaration within 40 days after the effective date of her interim suspension. The August 29, 2019 order did not reiterate that Madden was still required to comply with rule 9.20 under the July 5, 2019 order.

> Court made my status Involuntary Inactive Status, superseding [its] suspension order prior to my compliance filing deadline.[15]

Probation replied that the interim suspension order remained in effect, and Madden was required to file a rule 9.20 compliance declaration by January 10, 2020.[16] Probation added: "If the original declaration is sent to the Office of Probation, it has not been filed with the State Bar Court and it will not be filed on your behalf." (Emphasis omitted.)

On January 27, 2020, Madden emailed Probation stating that a Supreme Court clerk told her "that State Bar Court orders do not pertain to the Supreme Court," which was the only venue where she currently represented a client. Madden also sent a handwritten letter, which was received by Probation on January 31, that stated she was certifying her rule 9.20 compliance with the court's August and December 2019 orders. On February 4, Probation emailed Madden that it had received a rule 9.20 declaration from her and reminded her that Probation is separate from the State Bar Court and OCTC, and that the declaration she sent to Probation would not be filed with the State Bar Court on her behalf. Probation referred Madden to her attorney profile page where a rule 9.20 compliance declaration form had been uploaded. Madden responded on February 8, that she intended the declaration to go only to Probation. She added, "So I am fine with [the declaration] not being filed with the court . . . ." Madden requested another copy of the rule 9.20 compliance declaration form.

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[15] Madden's statement that our involuntary inactive status order superseded the suspension order was incorrect. Madden was on interim suspension from July 29 to August 29, 2019, and then again starting December 1, pursuant to the July 5 and August 29 orders. On December 20, we also ordered Madden on involuntary inactive status after we learned that she had been sentenced to incarceration. (§ 6007, subd. (c)(5) [involuntary inactive enrollment for sentence to incarceration of 90 days or more].) We stated in the December 20 order, "Our previous interim suspension order remains in effect." Madden was on involuntary inactive status from January 13, 2020, until September 25, 2020.

[16] Probation referred Madden to a letter that was uploaded to her private State Bar licensee profile on July 12, 2019.

On February 11, 2020, Probation responded to Madden's email, expressing confusion as to why Madden chose to send her rule 9.20 declaration only to Probation, rather than to State Bar Court. Probation again informed Madden that she was not in compliance as she had not filed a rule 9.20 compliance declaration by January 10, and they provided her with another rule 9.20 compliance declaration form.

Several months later, on May 29, 2020, Madden sent an email to OCTC stating that she "believed" she had sent a handwritten rule 9.20 compliance letter while she was in custody to both Probation and the State Bar Court. She testified that she sent the letter to placate Probation, as she did not believe rule 9.20 applied to her. There is no evidence that Madden ever filed a rule 9.20 compliance declaration in the State Bar Court. Madden also testified that after she received our August 29, 2019 order modifying her interim suspension, she did not further attempt to file a notice of suspension with the Supreme Court because she believed she was no longer required to comply with rule 9.20. The hearing judge found this testimony suspect because Madden made later efforts to comply with rule 9.20, and, despite reminders from Probation to Madden to file a rule 9.20 compliance declaration, she did not seek clarification from the Review Department.

D. Unauthorized Practice of Law (SBC-21-O-30512)

Stancil v. Superior Court, et al. was a multiparty unlawful detainer action in the Supreme Court where Madden was co-counsel and also a plaintiff along with several other tenants. On March 27, 2019, the court granted review and made *Stancil* the lead case, deferring the others, including Madden's own case where she represented herself.

Madden was placed on interim suspension on December 1, 2019. On January 24, 2020, Madden filed in *Stancil* an Advisement of Custody, Request for Oral Argument (Advisement). Madden stated in the Advisement that she had tried to file a notice of her suspension on

August 29, 2019, with the Supreme Court, which rejected it for filing, and the clerk told her "the Supreme Court is not affected by State Bar Court orders." Madden also disclosed that she was in custody and did not expect to be released until April 18, 2020. Madden requested that the court (1) "confirm" that she may continue as attorney of record, even though she was on interim suspension and had been enrolled as involuntary inactive in the State Bar case relating to her DUI; (2) delay oral argument until at least May 30, 2020 (after her expected release date); and (3) stay the proceedings until then.

Madden did not wait for a response from the Supreme Court. Instead, in February 2020, she filed a pleading in *Stancil*, making arguments on behalf of the petitioners, referring to herself as "Counsel Madden," and using her State Bar number. She wrote, "Madden is the sole lead [unlawful detainer] counsel, always has been, and shall continue to be, before this court, until otherwise advised by this [c]ourt, as relayed by the Court Clerk on Aug[ust] 29 [and] 30, 2019."[17]

In June 2020, the Supreme Court Clerk sent Madden a letter listing the 14 *Stancil* cases on which she was listed as counsel, including her own case, and stating that she was suspended effective December 1, 2019, and it had not received any notice of change of counsel. The letter further stated, "it is unclear if you have complied with the requirements of rule 9.20 of the California Rules of Court." Madden replied to the clerk, explaining that she had not withdrawn because she had attempted to comply with rule 9.20 by filing a notice of her suspension with the Supreme Court on August 29, 2019, which was rejected for filing. Madden stated she had "fully complied" with rule 9.20 by 4:00 p.m. on August 29, 2019, and subsequently the Review Department vacated the July 5, 2019 interim suspension order. She explained that her interim

[17] In August 2020, the Supreme Court construed Madden's February 2020 pleading as a motion filed in her own case, not in *Stancil*.

suspension began again on December 1, 2019, and that she had done nothing in these cases "except ask the court to confirm I may remain as counsel."

III. MISCONDUCT WARRANTING DISCIPLINE IN CONVICTION MATTERS

A. Facts and Circumstances Surrounding the Assault Conviction Involve Misconduct Warranting Discipline (SBC-19-C-30311)

For the purposes of attorney discipline, Madden's assault conviction is conclusive proof of the elements of her crime. (§ 6101, subds. (a) & (e).) Thus, her misdemeanor conviction in 2006 establishes that she committed assault. (Pen. Code, § 240.) Madden stipulated in the ALD that the facts and circumstances surrounding the assault conviction did not involve moral turpitude, but constituted other misconduct warranting discipline. (See § 6092.5, subd. (i) [agreement in lieu of disciplinary proceeding may be used by State Bar in subsequent proceeding].) The hearing judge agreed with the parties' stipulation as it was an isolated incident, spontaneous, and did not cause serious injury. Further, Madden cooperated with the police afterwards. The judge expressed concern that an attorney would strike a government employee who was engaged in his duties and found that the misconduct warranted discipline. (See *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52 [misdemeanor battery of police offer constitutes misconduct warranting discipline].)

Madden argues on review that the assault conviction matter should be dismissed pursuant to section 6102, subdivision (e), because moral turpitude was not involved in the crime or the circumstances of its commission. This argument ignores Supreme Court precedent holding that the "court possesses inherent powers to discipline a wayward attorney whether or not [the] misconduct involves moral turpitude." (*In re Rohan* (1978) 21 Cal.3d 195, 202 [State Bar Act does not limit or alter powers of court to discipline members].) Attorneys may be disciplined even if misconduct does not involve moral turpitude or the performance of their professional

duties. (*Id*. at p. 204.) Accordingly, we have authority to consider Madden's assault conviction in this disciplinary matter, even though it did not involve moral turpitude or the practice of law.

Madden also asserts that the assault conviction should not be considered because "there is no proceeding for revoking ALD" and due process prohibits its consideration due to the age of a conviction from 2006, which was expunged. Madden offered no authority in support of this argument. We agree with OCTC that we may consider the assault conviction as Madden violated the ALD, which specifically stated that if Madden failed to comply with the conditions of the agreement, the stipulated facts may be admitted as evidence and Madden may be prosecuted for a violation of section 6068, subdivision (l), and the underlying allegations. Disciplinary weight of the assault conviction is discussed *post* in section VI.[18]

B. Facts and Circumstances Surrounding the DUI Conviction Involve Misconduct Warranting Discipline (SBC-19-C-30278)

As discussed *ante*, Madden's assault conviction is conclusive proof of the elements of her crime. (§ 6101, subds. (a) & (e).) Thus, her felony conviction in 2019 establishes that she drove under the influence of alcohol and caused bodily injury. (Veh. Code, § 23153, subd. (a).) The issue before us is whether the facts and circumstances surrounding Madden's DUI conviction involve moral turpitude or other misconduct warranting discipline. Drunk driving convictions do not establish per se moral turpitude. However, moral turpitude can be established based on the particular circumstances surrounding such convictions. (*In re Kelley* (1990) 52 Cal.3d 487, 493.)

The hearing judge did not find sufficient evidence of moral turpitude, but found other misconduct warranting discipline. (See *In re Carr* (1988) 46 Cal.3d 1089; *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208.) The judge noted that Madden

[18] Madden's arguments regarding the assault conviction as it relates to the ALD violation in SBC-21-O-30512 are discussed *post* in section IV.

should have been aware of the dangers of drinking and driving because she had a prior DUI and had previously taken DUI education classes.

Madden asserts the same argument for her DUI conviction as she did for the assault conviction—that dismissal is mandated under section 6102, subdivision (e). As discussed *ante*, this argument is without merit. (*In re Rohan*, *supra*, 21 Cal.3d 195.) Case law holds that we have authority to consider Madden's DUI conviction.[19] (See, e.g., *In re Kelley*, *supra*, 52 Cal.3d 487.)

Madden also argues on review that OCTC engaged in misconduct with "impunity." Further, she believes she was "egregiously harmed" by the State Bar, OCTC, and the State Bar Court. None of these arguments is supported.

IV. CULPABILITY (SBC-21-O-30512)

OCTC must prove culpability by clear and convincing evidence. (Rules Proc. of State Bar, rule 5.103; *Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552 [clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command unhesitating assent of every reasonable mind].) We have independently reviewed all of Madden's arguments; any not specifically addressed here have been considered and rejected as without merit.

A. Count One: Failure to Obey a Court Order – Rule 9.20 (§ 6103)

Count one alleged that Madden violated section 6103 by failing to obey our July and August 2019 orders regarding her interim suspension and the requirement that she comply with rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of her suspension. Section 6103 provides, in

[19] Madden asserts her DUI conviction warrants no more than a public reproval. (See *In the Matter of Herich* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 820 [public reproval for two misdemeanor DUI convictions].) Her argument regarding the level of discipline is analyzed *post* in section VI.

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 the attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment. An attorney willfully violates section 6103 when, despite being aware of a final, binding court order, he or she knowingly chooses to violate the order. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 787.)

The hearing judge found that our August 2019 order did not vacate the part of the July 2019 order requiring Madden to comply with rule 9.20. The August 2019 order allowed for a temporary delay of Madden's interim suspension for her DUI, with interim suspension resuming on December 1, 2019. The judge rejected Madden's assertion that she believed the rule 9.20 obligation was vacated by the August 2019 order. Probation informed Madden of her rule 9.20 obligations. She sent them a compliance letter and purposefully did not send one to the court. When Probation informed her that she was not compliant, she failed to take any action in the State Bar Court to remedy this.

The hearing judge found that Madden failed to (1) file a notice of suspension in pending matters where she was counsel by January 1, 2020, and (2) file a rule 9.20 compliance declaration by January 10, 2020. Accordingly, the judge found that Madden violated section 6103.[20]

Madden reasserts her argument from trial: that there was no rule 9.20 obligation after our August 2019 order delaying her interim suspension until December 1. She asserts that the

[20] The judge did not find culpability for the allegation in count one of the NDC that Madden violated section 6103 by failing to withdraw from the matters where she was counsel before December 1, 2019.

ambiguities in the order must be resolved in her favor as she has a constitutionally protected property right in her license.[21]

We agree with the hearing judge that our August 2019 order did not vacate Madden's obligation to comply with rule 9.20. Probation reminded Madden of her obligations—she had knowledge of them—and she chose not to continue attempting rule 9.20 compliance. Instead of asking for clarification from the court, Madden decided that she no longer had to comply with rule 9.20. By failing to comply with rule 9.20, Madden is culpable under count one.

B. Count Two: Failure to Comply with Laws – UPL (§ 6068, subd. (a))

Count two alleged that Madden engaged in the unauthorized practice of law in *Stancil* (1) by filing a pleading in February 2020; (2) by representing in the pleading that she was counsel for all petitioners, referring to herself as "Counsel Madden," including her State Bar number, identifying herself with the email address maddenlaw94062@gmail.com, and identifying herself as "sole lead [unlawful detainer] counsel, always has been, and shall continue to be;" and (3) failing to withdraw when she was suspended on December 1, 2019.

Section 6068, subdivision (a), provides that an attorney has a duty to support the Constitution and laws of the United States and California. Section 6125 states, "No person shall practice law in California unless the person is an active licensee of the State Bar." Section 6126, subdivision (b), provides that a person who has been involuntarily enrolled inactive or suspended and who thereafter practices law, attempts to practice law, advertises, or holds himself or herself out as practicing or otherwise entitled to practice law is guilty of a crime.

UPL includes the holding out by an attorney that he or she is entitled to practice law during a suspension period. (*Crawford v. State Bar* (1960) 54 Cal.2d 659, 666 [citing § 6126].)

[21] She asserts she complied with rule 9.20 "in all other respects" and discipline for any violation should be minimal.

"Both express and implied representations of ability to practice are prohibited." (*In re Naney* (1990) 51 Cal.3d 186, 195.)

The hearing judge found that Madden practiced law and made representations holding herself out as entitled to practice law when she filed a pleading in *Stancil* in February 2020. Accordingly, the judge determined that Madden violated sections 6125 and 6126, and failed to support the laws of California, in willful violation of section 6068, subdivision (a). The judge assigned no additional disciplinary weight as this misconduct was based on the same facts underlying count three, discussed *post*. (See *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127 [no additional disciplinary weight because violation duplicative of moral turpitude violation].)

Madden asserts there was no UPL because the Supreme Court construed the February 2020 pleading as a filing in her in propria persona matter and because she was told by Supreme Court clerks that the Supreme Court was not bound by State Bar Court orders. She points to the fact that she filed the Advisement in *Stancil*, requesting to continue as attorney of record while she was on interim suspension for her DUI conviction. She argues for no culpability due to her "good faith conduct."[22] She also argues that the February 2020 filing should not be considered UPL because she was replying to the response to her Advisement asking for clarity regarding her State Bar status.

The practice of law includes performing services in a court of justice "in any matter," and giving legal advice and counsel. (*Baron v. City of Los Angeles* (1970) 2 Cal.3d 535, 542.) Madden practiced law when she filed the February 2020 pleading in *Stancil* and made substantive legal arguments on behalf of parties other than herself. The Supreme Court's later

[22] We reject her argument that OCTC should not have brought this charge; she again shifts blame to the Supreme Court clerks for her failures to comply with rule 9.20.

decision to construe Madden's pleading as only filed in her own case does not change the fact that she practiced law when she filed it. Further, the classification of the pleading as a reply to the response to the Advisement is irrelevant; she made legal arguments on behalf of someone else in a case where she was listed as counsel and referred to herself as counsel. Good faith is only a defense to a section 6068, subdivision (a), charge if it relates to a mistake of law. Madden was aware of the law that she could not practice as an attorney while suspended. She also knew she was suspended when she filed the pleading in *Stancil*. OCTC has proven that Madden's misconduct was willful and she intended the act itself. (See *In the Matter of Burke* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448, 455 [purposeful actions, not intent, relevant to UPL culpability].) Because Madden willfully practiced law while suspended, we affirm culpability for count two.

C. Count Three: Moral Turpitude – UPL (§ 6106)

Count three alleged that Madden's UPL was also a section 6106 violation, which provides, in pertinent part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. The hearing judge found that Madden's engagement in UPL was "grossly negligent, if not reckless, and constituted a willful violation of section 6106 by committing an act involving moral turpitude, dishonesty, or corruption." (*In the Matter of Mason* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639, 641-642 [moral turpitude where attorney appeared in court knowing he was suspended]; *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 384 [intentional violation of court order involves moral turpitude].)

OCTC challenges the hearing judge's finding that Madden's actions were grossly negligent, instead arguing that Madden knowingly and intentionally violated section 6106 by engaging in UPL. Upon our independent review of the record, we find that Madden's actions

came very close to constituting moral turpitude, but her attempt to file a notice of her suspension and her subsequent disclosures to the Supreme Court save her from a moral turpitude finding. Madden (1) went to the Supreme Court on August 29, 2019, to file documents related to her suspension, but nothing was filed; (2) requested permission in the January 2020 Advisement to remain attorney of record in *Stancil* and disclosed that she was on interim suspension and had been enrolled as involuntary active due to her incarceration; (3) also requested in the Advisement a stay of the proceedings until after her expected release from incarceration; and (4) filed the reply to the response to the Advisement, before receiving any response from the Supreme Court regarding whether she could continue to remain as attorney of record. The pleading clearly constitutes UPL as discussed under count two, but Madden's actions do not rise to the level of gross negligence as found in other moral turpitude UPL cases. (See, e.g., *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83 [moral turpitude UPL committed by gross negligence where attorney, by omission, gave false impression that he was entitled to practice law].) She was forthright about her suspension and revealed it in her filings in *Stancil*. We find that these were good faith attempts to alert the court of her status, even though her actions constituted the practice of law. We dismiss count three with prejudice as Madden's actions did not involve moral turpitude, dishonesty, or deception. (Compare *In the Matter of Tishgart* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 338, 343-344 [UPL involved moral turpitude because attorney concealed his suspension and left false impression he was entitled to practice law] with *In the Matter of Hazelkorn* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 602, 606 [UPL did not involve moral turpitude where attorney honestly believed entitled to practice]; *In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 843 [dismissal of charges for want of proof after trial on merits is with prejudice].)

D. Count Four: Failure to Comply with Conditions of ALD (§ 6068, subd. (l))

Count four alleged that Madden failed to comply with the conditions attached to her ALD related to the assault conviction (SBC-19-C-30311) in violation of section 6068, subdivision (l), by (1) filing a quarterly report due on January 10, 2020, on January 30, 2020; (2) filing quarterly reports due on April 10, July 10, and October 10, 2020, on June 28, 2021; and (3) filing the final report, also due on October 10, 2020, on June 28, 2021. Section 6068, subdivision (l), provides that an attorney has a duty to keep all agreements made in lieu of disciplinary prosecution. The hearing judge found Madden willfully violated section 6068, subdivision (l), by failing to timely file four quarterly reports and a final report, as required under the ALD.

On review, Madden asserts the ALD was "fully performed" and explains there was a "good faith and justified basis for the delay" in filing the reports because she was concerned about perjury and verifying her legal reporting obligations. She states she needed access to the law library, which was closed for some time during the pandemic, to verify that she had not made any mistakes in failing to report her 2006 assault conviction. She also asserts that her ALD should not be revoked as there is no ALD revocation proceeding in the "Rules."

Clearly, Madden violated the conditions of the ALD when she did not timely file her reports. They were not "fully performed" as Madden argues. Her reasons for not filing the reports are not relevant to culpability, but they may be assessed under mitigation. Madden's argument regarding an ALD revocation is also meritless as section 6068, subdivision (l), provides a clear duty to abide by an ALD, and such violations of the State Bar Act are disciplinable. Her arguments are rejected and we affirm culpability under count four.

V. AGGRAVATION AND MITIGATION

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

mitigation. Because we have consolidated these proceedings on review, we consider aggravation and mitigation from the totality of the misconduct and do not divide it by the separate trials.

A. Aggravation

1. Multiple Acts (Std. 1.5(b))

Aggravation for multiple acts is warranted where the underlying misconduct involves multiple and distinct acts of wrongdoing. (See *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646-647 [three instances of misconduct considered multiple acts].) Madden failed to comply with a rule 9.20 order, engaged in UPL, failed to timely file ALD reports, and has two criminal convictions. This misconduct sufficiently establishes multiple acts of misconduct under standard 1.5(b), and we assign moderate aggravation.

2. Significant Harm (Std. 1.5(j))

The hearing judge assigned substantial aggravating weight for the harm caused by Madden's felony DUI. Hunjan was severely injured and continued to experience pain even three years after the accident. He was unable to work for several months and is unable to perform at work as he had before the accident. Driving causes him pain, he had to purchase a new car, and he continues to pay for medical care. He testified that the accident causes him emotional difficulties. We reject Madden's argument that significant harm to Hunjan was not proved. Hunjan's credible testimony established significant harm to him. We affirm a finding of substantial aggravation.

3. Indifference (Std 1.5(k))

"Indifference toward rectification or atonement for the consequences of the misconduct" is an aggravating factor. (Std. 1.5(k).) The hearing judge found substantial aggravation for Madden's indifference regarding the assault conviction, the ALD violations, and the UPL. Madden blamed the postal worker and referred to the slap as a "tap." As for the ALD, Madden

regarded her late filings as harmless, never acknowledging she could have sought guidance from the State Bar regarding her obligations or could have asked for an extension. But for her repeated failures to comply with the ALD, the misconduct relating to the underlying assault conviction would have been dismissed—Madden fails to acknowledge that her own actions led to the introduction of the assault conviction. Further, she blamed a superior court judge for her failure to timely file the ALD reports, claiming that he misadvised her regarding reporting obligations. Regarding the UPL, Madden places blame on a court clerk who she says told her State Bar Court orders are not binding in the Supreme Court, instead of accepting it was her duty as an attorney to determine if she had authority to practice law. In addition, Madden accused OCTC of suborning perjury and influencing witnesses without any credible evidence to support these accusations. She also contacted a witness after trial in the DUI disciplinary matter, asking her to change her testimony. These facts are quite concerning and clear evidence that Madden has failed to atone for her misconduct and continues to exhibit indifference.

Madden also displayed a lack of insight into her DUI conviction. (See *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366, 380 [lack of insight into misconduct causes concern that attorney will repeat misdeeds and is substantial factor in discipline recommendation].) Instead of taking full responsibility for the accident, Madden accused Hunjan of operating an illegal business, which was false; blamed Hunjan's injuries on the way he parked his car; blamed SFO traffic policies; and stated the accident would have happened regardless of her alcohol consumption, even though she stated it was a contributing factor. She also considered the DUI aberrational, even though she had committed a DUI 14 years earlier. An attorney who does not accept responsibility for her actions and instead seeks to shift it to others demonstrates indifference and lack of remorse. (*In the Matter of Wolff* (Review Dept.

2006) 5 Cal. State Bar Ct. Rptr. 1, 14.) Madden presented no evidence that she has made efforts to avoid drinking and driving in the future, which is further cause for concern.

Madden demonstrated indifference in both of the underlying proceedings. For the reasons discussed *ante* and considering all of the facts and circumstances, we assign substantial weight in aggravation under standard 1.5(k).

B. Mitigation

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

Mitigation includes "absence of any prior record of discipline over many years coupled with present misconduct, which is not likely to recur." (Std. 1.6(a).) Besides the misconduct at issue in this consolidated proceeding, Madden has not been previously disciplined. She has been an attorney in California since December 1994, which is 10 years before her first DUI and 11 years before she assaulted a postal worker. This length of time satisfies the first prong of the standard: no prior record of discipline over many years of practice. And from 2006 through 2018, there were no other incidents of misconduct. However, due to Madden's indifference and lack of insight, we hesitate to find that her misconduct is entirely aberrational. Therefore, we assign moderate weight in mitigation for her lack of a prior record. (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].)

2. Extreme Emotional Difficulties (Std. 1.6(d))

Standard 1.6(d) provides that mitigation may be assigned for extreme emotional difficulties 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 found that Madden's assault conviction was mitigated somewhat by her personal difficulties at the time.

However, the hearing judge assigned only minimal mitigating weight as there was no evidence that Madden's challenges impacted her more recent misconduct, which constituted the bulk of the pending charges. Madden credibly testified that she had to move several times in a year and was being stalked; the testimony was corroborated by her character witnesses. We agree that this evidence establishes mitigation related to Madden's assault. (See *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47, 60 [some mitigation assigned to personal stress factors established by lay testimony]; *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332, 341 [lay testimony regarding family concerns mitigating].) We consider the emotional difficulties she faced as extensive and serious in nature, and assign moderate weight for this mitigating factor as it relates to the assault conviction.

3. Cooperation with OCTC (Std. 1.6(e))

In both underlying trials, the hearing judge assigned limited mitigation for cooperation because Madden entered into factual and evidentiary stipulations. The stipulations contained easily proven facts and did not admit to culpability. We agree that the stipulations only warrant limited mitigation. (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].)

4. Extraordinary Good Character (Std. 1.6(f))

Madden may obtain mitigation for "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 the misconduct." (Std. 1.6(f).) In the DUI proceeding, eight witnesses, including one attorney, testified on Madden's behalf, and all but one also submitted character letters. The witnesses were aware of Madden's DUI convictions, but none knew of the extensive injuries Hunjan experienced. Madden also presented character letters in the other disciplinary proceeding, along with the testimony of three witnesses. None of the letters referenced the charges in the NDC.

Madden's witnesses described her as a dedicated single parent, hardworking, professional, and honest. They stated she was a good attorney. As the witnesses were not aware of the full extent of Madden's misconduct, we find that Madden is entitled to only limited weight in mitigation under standard 1.6(f). (*In re Brown* (1995) 12 Cal.4th 205, 223 [mitigation considered for attorney's good character when witnesses aware of misconduct]; *In re Aquino* (1989) 49 Cal.3d 1122, 1131 [testimony of witnesses unfamiliar with details of misconduct not significant in determining mitigation].)

5. Community Service

An attorney's community service can be a mitigating circumstance. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) Madden testified about her volunteer activities, particularly with Little League Baseball. However, this community service was done decades ago and it is unclear exactly how much time she spent on volunteer work. We find that she has not proven she deserves more than limited weight in mitigation credit. (See *Rose v. State Bar* (1989) 49 Cal.3d 646, 667 [mitigation for legal abilities, dedication, and zeal in pro bono work]; *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 840 [limited weight given for community service where evidence based solely on attorney's testimony making extent of service unclear].)

6. Good Faith Belief (Std. 1.6(b))

Madden asserts that her conduct under the ALD was made in good faith. Mitigation is available if there was a "good faith belief that is honestly held and objectively reasonable." (Std. 1.6(b).) Even if she believed she acted in good faith by waiting to file her ALD reports, it was not objectively reasonable for her to do so because she did not seek clarification from the State Bar about self-reporting. Accordingly, we do not assign any mitigating credit under standard 1.6(b).

VI. THREE YEARS' SUSPENSION IS APPROPRIATE DISCIPLINE FOR THE TOTALITY OF THE MISCONDUCT

A. Appropriate Standards

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys. (Std. 1.1.) Our disciplinary analysis begins with the standards. While they are guidelines for discipline and are not mandatory, we give them great weight to promote consistency. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.) The Supreme Court has instructed us to follow the standards "whenever possible." (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) We also look to comparable case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.) We agree with the parties that in determining our discipline recommendation, we will consider all the misconduct in both underlying decisions as a single proceeding.

In analyzing the applicable standards, we first determine which standard specifies the most severe sanction for the at-issue misconduct. (Std. 1.7(a) [most severe sanction shall be imposed where multiple sanctions apply].) Several standards are applicable here, but the most severe is under standard 2.12(a), which calls for disbarment or actual suspension for Madden's rule 9.20 and UPL violations. Standard 2.10(a) also presumes disbarment or actual suspension for UPL, with the degree of sanction depending on whether the attorney knew she was entitled to practice law. For Madden's felony DUI conviction, standard 2.16(a) provides that actual suspension is the presumed sanction for a final conviction of a felony not involving moral turpitude, but involving other misconduct warranting discipline. The misdemeanor assault conviction warrants suspension or reproval under standard 2.16(b). Madden's ALD violation calls for reproval under standard 2.12(b).

B. Relevant Surrounding Circumstances

Madden's incidents of misconduct represent several failings of her professional duties, each of which is at least partially explained or minimized by the circumstances surrounding the misconduct.

1. The Rule 9.20 Charge

Madden's failure to comply with rule 9.20 as ordered is serious misconduct. In fact, rule 9.20(d) provides that willful failure to comply with this rule is cause for disbarment or suspension and may be punished as a contempt or a crime. But in examining each case and the relevant factors, we may impose discipline less than disbarment. (See *Shapiro v. State Bar* (1990) 51 Cal.3d 251, 255-260.)

The surrounding facts and circumstances of Madden's rule 9.20 violation do not excuse her misconduct, but they offer important context. Our August 29, 2019 order did not explicitly repeat the rule 9.20 directive from the earlier July 5 order. Also, the August 29 order stated that the *interim suspension* ordered on July 5 was "vacated." But *the rule 9.20 directive* was *not* vacated, which was understood by Probation, who alerted Madden several times that she was to file rule 9.20 compliance before January 10, 2020. But Madden asserts that after the August 29 order, she believed she no longer had any rule 9.20 obligations, which is conceivable considering we stated the July 5 interim suspension order was vacated. She reported to jail on October 26, 2019, went on interim suspension on December 1, 2019, and remained incarcerated when she was required to file the rule 9.20 compliance declaration on January 10, 2020. She eventually sent a rule 9.20 declaration to Probation, but never filed one with the State Bar Court or verified with the court her obligations. We acknowledge that our August 29 order was not as clear as it could have been, and that Madden was incarcerated when compliance was due. Further, she

attempted to file documents with the Supreme Court on August 29, before she was aware of the August 29 order.

2. The UPL Charge

Madden's UPL violation also evidences important extenuating circumstances. She practiced law in *Stancil*, but was forthright in alerting the Supreme Court that she was in custody and had been enrolled as involuntary inactive, that she had tried to file a notice of her suspension with the Supreme Court on August 29, and that she remained on interim suspension. She sought confirmation that she could remain as an attorney on the case and asked for the case to be stayed until after her release from jail.

3. The ALD and the Assault Conviction

We must also factor into the discipline analysis Madden's violation of her ALD and her misdemeanor assault conviction. She first violated the ALD when she failed to timely file her January 10, 2020 quarterly report. However, she did file it later that month, even though she was in jail. When she left jail, the law library was closed due to the pandemic, and she asserted that she wanted to research whether she had to report earlier convictions. She stated she did not file the reports until she had verified her reporting obligations. Because Madden violated the ALD, OCTC filed the record of Madden's misdemeanor assault conviction in our court. Her assault of a postal worker was serious misconduct, but did not constitute a crime involving moral turpitude, nor did it result in any appreciable harm to the victim. Her actions were moderately mitigated by personal stress in her life.

4. The DUI Conviction

Finally, like her other misconduct, there are important circumstances surrounding her felony DUI conviction. The facts of this crime are somewhat unique. As noted *ante*, on May 31, 2018, she drank moonshine and was not planning on leaving her home. Her boyfriend needed to

pick up some medication, so Madden loaned him her rental car and accompanied him as a passenger because only she was on the rental contract. They began to argue, and the boyfriend parked the car in a strip mall and walked away. She went into a coffee shop and then accidentally dropped her cell phone into the toilet. The phone no longer worked, so she decided to drive to buy a new phone. *Thereafter*, while driving, she started to feel the effects of the moonshine, and realized she should turn around at SFO and go home. In doing so, she collided with a town car, which hit the driver, causing him serious injuries.

Madden was arrested and later pleaded nolo contendere to the felony charge and was convicted of Vehicle Code section 23153 subdivision (a) (DUI causing injury). The crime was enhanced by Penal Code section 12022.7 subdivision (a) (great bodily injury). She was sentenced to one year in jail and ordered to pay the victim $2,091 in restitution. She was released after serving almost six months in jail.

Clearly, Madden should not have driven the car when she had been drinking. But the facts do not represent the typical situation of a driver who knows she is drunk and gets behind the wheel and drives. She never intended to drive, but events occurred that caused her to drive, and thereafter, she started to feel the effects of the alcohol.

C. Case Law Supporting Recommended Discipline, Including Credit for Interim Suspension

Four different charges and two conviction matters, with two separate disciplinary trials, were consolidated on review. The hearing judge decided each case individually because they were presented to her individually. Because the instant matter was presented as a consolidated case, we do not assign individual disciplines for the separate matters. Rather, we consider all the misconduct together to determine an appropriate discipline as though they were brought in a single proceeding. The combination of Madden's professional violations with her criminal

convictions is unique and no single case authority is comparable enough to provide definitive guidance.

Three years of actual suspension is the highest length of suspension considered under the Standards; the next step is disbarment. (Std. 1.2(c)(1) [actual suspension generally for 30 days, 60 days, 90 days, 6 months, 1 year, 18 months, 2 years, 3 years, or until specific conditions are met].) Also, three years' actual suspension is not a common discipline ordered by the Supreme Court. (*In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139, 160 [three years' actual suspension not commonly ordered by Supreme Court for any offense].) When misconduct appears to be serious, but also aberrational or involving circumstances qualifying the misconduct, the Supreme Court has determined that disbarment was not necessary, and imposed an actual suspension of three years. (See *Friedman v. State Bar* (1990) 50 Cal.3d 235, 245.) Due to Madden's many professional missteps, we cannot say that her misconduct is entirely aberrational. However, Madden's serious and varied misconduct does not warrant disbarment due to the extenuating circumstances present here. While Madden did not live up to the professional standards required of her, her misconduct did not involve moral turpitude. She attempted to comply with the rule 9.20 order and she was forthright with the Supreme Court regarding her ability to practice. Therefore, we find that a three-year actual suspension is appropriate.

We also find that Madden should receive credit for the time she spent on interim suspension. (See *In re Young*, *supra*, 49 Cal.3d 257, 270 [credit for interim suspension appropriate given relevant evidence].) Such credit recognizes that it would often be unfair to both remove a licensee from practice on an interim basis and then impose the full amount of suspension anew, resulting in a very large suspension unrelated to the gravity of the misconduct. As the Supreme Court noted in *In re Leardo* (1991) 53 Cal.3d 1, 18, "Whether a suspension be

called interim or actual, of course, the effect on the attorney is the same—he is denied the right to practice his profession for the duration of the suspension." When a licensee, as here, has completed a lengthy interim suspension, "the appropriate consideration in determining whether prospective suspension is necessary is whether the facts and circumstances of a particular matter require a further period of actual suspension for the protection of the public, the profession, or the courts." (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 515, citing *In re Leardo*, *supra*, 53 Cal.3d at p. 18.)

While Madden's misconduct was very serious, she was on interim suspension for a long time: from July 29, 2019, until August 29, 2019, and from December 1, 2019, until March 24, 2022.[23] To protect the public, she will not be relieved of actual suspension until she demonstrates her rehabilitation, fitness to practice, and present learning and ability in the general law. (Std. 1.2(c)(1); *In the Matter of Luis* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 737, 742-743 [standard 1.2(c)(1) condition provides public protection by ensuring moral fitness and legal learning before attorney who has been suspended for lengthy amount of time may be permitted to return to practice of law].) A three-year suspension including this showing under standard 1.2(c)(1) will further the principal interest of State Bar discipline—to protect the public and prevent future misconduct. (*In re Dedman* (1976) 17 Cal.3d 229, 234-235 [three years' actual suspension proper due to extrinsic circumstances].) During these disciplinary proceedings, Madden has not completely demonstrated sufficient rehabilitation, as evidenced by our findings of her indifference to her misconduct.[24] Credit for interim suspension will give

[23] We do not recommend credit for the time Madden spent on inactive enrollment, because that period occurred while she was also on interim suspension.

[24] Madden's indifference included her inability to admit that she has a problem with alcohol as demonstrated by having a record of two DUI convictions, one a felony. Accordingly, her conditions of probation include special conditions to address the court's concerns with Madden's record of driving after drinking.

Madden at least six months of suspension beyond her interim suspension. This additional time will give her the ability to compile evidence regarding rehabilitation and the other required showings under standard 1.2(c)(1) in a scaled-down proceeding similar to a reinstatement proceeding. (See *Matter of Katz*, *supra*, 1 Cal. State Bar Ct. Rptr. at pp. 515-516 [some prospective suspension appropriate to allow for opportunity to prove rehabilitation].)

VII. RECOMMENDATIONS

We recommend that Alison M. Madden, State Bar Number 172846, be suspended from the practice of law for three years, that execution of that suspension be stayed, and that she be placed on probation for three years with the following conditions:

1. **Actual Suspension with Credit for Interim Suspension and Until Rehabilitation.** Alison M. Madden is suspended from the practice of law for a minimum of the first three years of her probation (with credit given for the periods of interim suspension) and until Madden provides proof to the State Bar Court of her rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

2. **Review Rules of Professional Conduct.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Madden must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to her compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Madden's first quarterly report.

3. **Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions.** Madden must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of probation.

4. **Maintain Valid Official State Bar Record Address and Other Required Contact Information.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Madden must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has her current office address, email address, and telephone number. If she does not maintain an office, she must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Madden must report, in writing, any change in the above information to ARCR, within 10 days after such change, in the manner required by that office.

5. **Meet and Cooperate with Office of Probation.** Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Madden must schedule a meeting with her assigned probation case specialist to discuss the terms and conditions of her discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Madden may meet with the probation case specialist in person or by telephone. During the probation period, Madden must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.

6. **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court.** During Madden's probation period, the State Bar Court retains jurisdiction over her to address issues concerning compliance with probation conditions. During this period, Madden must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to her official State Bar record address, as provided above. Subject to the assertion of applicable privileges, Madden must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

7. **Quarterly and Final Reports.**
    a. **Deadlines for Reports.** Madden must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Madden must submit a final report no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.

    b. **Contents of Reports.** Madden must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether she has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.

    c. **Submission of Reports.** All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).

d. Proof of Compliance. Madden is directed to maintain proof of compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of actual suspension has ended, whichever is longer. Madden is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

8. **State Bar Ethics School.** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Madden must submit to the Office of Probation satisfactory evidence of completion of the State Bar 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 will not receive MCLE credit for attending this session. If she provides satisfactory evidence of completion of the Ethics School after the date of this opinion but before the effective date of the Supreme Court's order in this matter, Madden will nonetheless receive credit for such evidence toward her duty to comply with this condition.

9. **Abstinence Program Meetings.** Madden must attend a minimum of two meetings per month of an abstinence-based self-help group approved by the Office of Probation. Programs that are not abstinence-based and allow the participant to continue consuming alcohol are not acceptable. Madden must contact the Office of Probation and obtain written approval for the program she wishes to select prior to receiving credit for compliance with this condition for attending meetings of such group. She must provide to the Office of Probation satisfactory proof of attendance at such group meetings with each quarterly and final report; however, in providing such proof, Madden may not sign as the verifier of such attendance.

10. **Criminal Probation.** Madden must comply with all probation conditions imposed in the underlying criminal matter(s) and must report such compliance under penalty of perjury in all quarterly and final reports submitted to the Office of Probation covering any portion of the period of the criminal probation. In each quarterly and final report, if Madden has an assigned criminal probation officer, she must provide the name and current contact information for that criminal probation officer. If the criminal probation was successfully completed during the period covered by a quarterly or final report, that fact must be reported by Madden in such report and satisfactory evidence of such fact must be provided with it. If, at any time before or during the period of probation, Madden's criminal probation is revoked, she is sanctioned by the criminal court, or her status is otherwise changed due to any alleged violation of the criminal probation conditions by her, Madden must submit the criminal court records regarding any such action with her next quarterly or final report.

11. **Commencement of Probation/Compliance with Probation Conditions.** 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 probation period, if Madden has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

12. Proof of Compliance with Rule 9.20 Obligation. Madden is directed to maintain, for a minimum of one year after commencement of probation, proof of compliance with the Supreme Court's order that she comply with the requirements of California Rules of Court, rule 9.20, subdivisions (a) and (c), as recommended below. Such proof must include: the names and addresses of all individuals and entities to whom Madden sent notification pursuant to rule 9.20; a copy of each notification letter sent to each recipient; the original receipt or postal authority tracking document for each notification sent; the originals of all returned receipts and notifications of non-delivery; and a copy of the completed compliance affidavit filed by her with the State Bar Court. She is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

VIII. MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Alison M. Madden be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).) If Madden provides satisfactory evidence of the taking and passage of the above examination after the date of this opinion but before the effective date of the Supreme Court's order in this matter, she will nonetheless receive credit for such evidence toward her duty to comply with this requirement.

IX. CALIFORNIA RULES OF COURT, RULE 9.20

We further recommend that Alison M. Madden be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter.[25] Failure to do so may result in disbarment or suspension.

[25] For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982)

X. COSTS

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment, and may be collected by the State Bar through any means permitted by law. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against an attorney who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

XI. MONETARY SANCTIONS

Madden's conviction matters were commenced prior to April 1, 2020. Therefore, monetary sanctions do not apply for that misconduct. (Rules Proc. of State Bar, rule 5.137(H).) For the proceedings that commenced after April 1, 2020, monetary sanctions may be ordered. (Bus. & Prof. Code, § 6086.13.) The hearing judge found good cause to waive monetary sanctions in whole based on a finding of financial hardship. (Rules Proc. of State Bar, rule 5.137(E)(4).) The parties do not challenge this finding. On review of the record, we affirm the hearing judge and do not recommend the imposition of monetary sanctions.

HONN, P.J.

WE CONCUR:

McGILL, J.
STOVITZ, J.*

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

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32 Cal.3d 38, 45.) Further, Madden is required to file a rule 9.20(c) affidavit even if she has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)