PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed April 6, 2022

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	16-C-17054; 18-O-10807
	)	(Consolidated)
DARRYL WAYNE GENIS,	)	
	)	
State Bar No. 93806.	)	OPINION
	)	

Darryl Wayne Genis was convicted of three federal misdemeanor counts of willful failure to file income tax returns for tax years 2009, 2010, and 2011, in violation of title 26 United States Code section 7203. His conviction referral matter was consolidated with an original disciplinary matter charging Genis with holding himself out as entitled to practice law while he was suspended, in violation of Business and Professions Code section 6068, subdivision (a).[1] A hearing judge found that Genis was not culpable of the section 6068 violation, and recommended discipline including a two-year actual suspension based on Genis's criminal convictions.

Both Genis and the Office of Chief Trial Counsel of the State Bar (OCTC) appeal. Genis asserts that the recommended discipline is excessive and argues for an actual suspension of no more than six months. OCTC disputes the hearing judge's dismissal of the section 6068 charge and argues that Genis should be disbarred because his misconduct involved moral turpitude, spanned 10 years, and because there are serious aggravating factors including Genis's two previous discipline records.

[1] Further references to sections are to this source unless otherwise noted.

Upon our independent review (Cal. Rules of Court, rule 9.12), we affirm the hearing judge's dismissal of the section 6068 charge. Considering the aggravating and mitigating circumstances, we agree with the hearing judge's discipline recommendation including a two-year actual suspension, continuing until Genis proves his fitness to practice before the State Bar Court. This discipline is supported by the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct[2] and the decisional law, and it is significantly progressive compared to Genis's other discipline cases.

I. FACTUAL BACKGROUND

The facts of this case are largely undisputed.[3] Genis was admitted to the State Bar in 1980. He is a sole proprietor in Santa Barbara and limits his practice to the defense of driving under the influence cases. He was financially successful, but failed to pay all of his taxes for tax years 2005 through 2012. Yet, he was able to make payments on a second mortgage. Admittedly, Genis lived above his means, having purchased other realty, a small boat, and a modest athletic club membership. He also spent a substantial amount of his earnings supporting a severe gambling addiction.

His criminal charges relate to tax years 2009, 2010, and 2011. During this time, Genis earned substantial income from his law practice and was required to report and pay taxes on those earnings to the Internal Revenue Service (IRS).[4] He willfully chose not to file his tax returns and paid no taxes for those three years. On July 26, 2016, the United States Attorney's

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

[3] The facts are based on the parties' stipulation, the documents submitted in Genis's criminal case and admitted at trial in this proceeding, 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).)

[4] In 2009, he earned $792,121, and owed the IRS approximately $112,773 in taxes. In 2010, he earned $1,021,549, and owed the IRS approximately $45,035 in taxes. In 2011, he earned $976,879, and owed the IRS approximately $131,399 in taxes.

Office for the Central District of California filed an Information against Genis in the United States District Court for the Central District of California. (*United States v. Genis*, case no. CR16-0509.) The Information charged three counts of willful failure to file tax returns for 2009, 2010, and 2011, in violation of title 26 United States Code (U.S.C.) section 7203. On October 24, 2016, Genis appeared in court and pleaded guilty to these counts as misdemeanors. On February 13, 2017, a federal judge sentenced him to 24 months in prison and one year of supervised release.

At the time of sentencing, Genis owed the IRS $679,958 in civil tax liabilities for tax years 2005 through 2012. The $679,958 is comprised of the amounts owed relating to his convictions (tax years 2009, 2010, and 2011) and for tax years 2005 through 2012. He owed $10,853 for 2005; $50,533 for 2006; $102,509 for 2007; $129,269 for 2008; and $97,587 for 2012. Though not criminally convicted, Genis also failed to file tax returns in 2003, 2004, and 2012. The federal judge ordered that Genis pay the $679,958 to the IRS.[5] The balance was to be paid within three months after commencement of his supervised release "subject to his ability to pay."

Genis continued gambling after sentencing and did not stop until he entered prison on May 15, 2017. He was released on February 7, 2019, returned to Santa Barbara, and resumed practicing law under his active license.

Genis ended his supervised release on February 6, 2020. He has paid approximately $82,356 in restitution of the $679,958 owed, and continues to make payments according to his ability to pay.

[5] The judge ordered Genis to make an immediate $5,000 payment, which he did, and to apply all funds not required for the necessities of life, for himself and his dependents, to the outstanding court-ordered obligation, but not less than $25 per quarter.

II. STATE BAR COURT PROCEEDINGS

On May 18, 2017, OCTC transmitted evidence to us that Genis's conviction was final. On July 13, we transferred the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed if it found that the facts and circumstances surrounding the misdemeanor convictions involved moral turpitude or other misconduct warranting discipline. (State Bar Court No. 16-C-17054.) The Hearing Department abated the conviction referral due to Genis's incarceration. On July 13, 2018, OCTC filed the disciplinary proceeding alleging Genis failed to remove his name from his law firm's winyourdui.com website before his suspension on his second discipline went into effect, thereby violating section 6068, subdivision (a), a form of the unauthorized practice of law (UPL). (State Bar Court Case No. 18-O-10807.)

On March 28, 2019, the Hearing Department terminated the abatement and the consolidated case proceeded to trial. On June 3, 2019, the parties filed a stipulation as to facts and admission of documents. The hearing judge appeared to have accepted the parties' stipulation that the facts and circumstances surrounding Genis's tax conviction did not involve moral turpitude, but only misconduct warranting discipline, without making her independent analysis of this primary legal question which we referred to the Hearing Department. Trial was held on June 3, 4, and 5, 2019. After considering closing argument briefs, the hearing judge issued her decision on September 3, 2019. Genis and OCTC appealed the decision. We heard oral argument on July 15, 2020, and the case was submitted to us. However, we vacated the July 15, 2020 submission to permit the parties to file supplemental briefs regarding whether the facts and circumstances surrounding Genis's conviction involved moral turpitude. We resubmitted the matter after the parties filed their briefs on September 25, 2020. OCTC argued in its brief, for the first time, that the circumstances of the convictions involved moral turpitude.

Because Genis did not have adequate notice that this was an issue to be litigated, we remanded this case to the Hearing Department on October 9, 2020, for a new trial and decision.

The new trial occurred in the Hearing Department on February 16 and 17, 2021. The parties filed another stipulation. Closing argument briefs were filed on March 3, 2021. The hearing judge filed her decision on May 18, 2021. Both parties requested review. We heard oral argument on February 16, 2022.

III. GENIS IS NOT CULPABLE OF SECTION 6068, SUBD. (a), VIOLATION

A. Factual Background

For many years, Genis maintained two law firm websites for advertisement: exclusiveduidefense.com and winyourdui.com. He chose to keep his law practice open during his incarceration because he did not have the money to refund the clients. He arranged for another attorney to handle his pending cases and to take on any new cases that came into the office through the website or otherwise. Before he entered prison on May 15, 2017, he directed Kiley Clevenger, his office assistant, to remove his name from the law firm websites and replace it with the new attorney's name.[6] Clevenger testified that she contacted Peter Otte, the website manager, to accomplish Genis's request. Otte agreed and promptly removed Genis's name from the exclusiveduidefense.com website. Managing the winyourdui.com website presented several challenges.

In July 2017, Clevenger told Otte that the winyourdui.com website still showed "The Law Office of Darryl Genis." Otte replied that the old manager, Bill Elgin, still had control of the website. On September 1, 2017, Elgin took the website winyourdui.com offline, informing

[6] Genis testified that Clevenger was a trusted employee who had served as his office assistant for 10 years and had recently become an attorney.

Clevenger that Genis owed him $720 for past due services. Clevenger agreed to make the $720 payment. On September 7, Elgin emailed Clevenger that the domain access password for winyourdui.com had been reset and included new login information. She forwarded the email to Otte. Genis had little, if any, ability to communicate with his office during his incarceration and he had no access to the internet.

In November 2017, the California Supreme Court imposed a 60-day actual suspension in Genis's second disciplinary case. The suspension became effective on December 29, 2017, and ended on February 27, 2018. On January 31, 2018, a State Bar investigator visited the winyourdui.com website, and found that it continued to list "The Law Office of Darryl Genis." Otte had not removed Genis's name from this website. On February 12, 2018, Otte informed Clevenger that he had finally done so and added information for the new attorney.

Otte testified at trial that the delay in removing Genis's name from the website was essentially his oversight. He stated that he could have removed the name as early as September 7, 2017, when Elgin reset it. But he candidly admitted that he took a long time because he gave priority to other clients who were current on their bills and he "might have honestly just forgotten about the whole issue of this suspension during that time." He concluded in hindsight that he could have moved faster.

B. Culpability

The Notice of Disciplinary Charges (NDC) in the disciplinary matter charged that Genis held himself out as entitled to practice law between December 29, 2017, and January 31, 2018, when he was not an active member of the State Bar, by listing himself as the attorney on

winyourdui.com, in violation of section 6068, subdivision (a).[7] The hearing judge found Genis not culpable because he properly directed Clevenger to remove his name from the websites. The judge found Genis reasonably relied on Clevenger, who made diligent, repeated, and documented efforts to accomplish his directives. The judge further found that it was Otte's independent failure to make the change that is at fault for Genis's name remaining on the winyourdui.com website during his 60-day suspension from December 2017 to February 2018.

OCTC argues that Genis is culpable, reasoning that he was required to ensure his name was removed from the website before entering prison, particularly since Otte was an independent contractor and not his employee. We reject this argument and agree with the hearing judge that Genis acted reasonably in directing Clevenger to arrange for the changes.

Clevenger had competently managed such office tasks in the past over her 10-year tenure as office assistant. Further, Genis's directive was reasonable and relatively simple to handle without further supervision. (*Vaughn v. State Bar* (1972) 6 Cal.3d 847, 857 [attorney has duty to reasonably supervise staff].) Genis gave the directive in April 2017, eight months before his suspension took effect. If Otte had done as he agreed to, Genis's name could have been removed as early as September 2017—four months before the suspension took effect.

Under these circumstances, Genis did not commit disciplinable misconduct. (See *In the Matter of Fonte* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 752, 757 [single instance of negligence in filing answers to interrogatories that resulted from staff calendaring error complicated by computer change did not amount to disciplinable offense of failure to perform

[7] Section 6068, subdivision (a), requires an attorney "[t]o support the Constitution and laws of the United States and of this state." A violation of this section is established when an attorney violates section 6126. (*In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229, 236-237.) Section 6126 prohibits holding oneself out as entitled to practice law while on suspension. An appropriate method of charging a section 6126 violation is by charging a violation of section 6068, subdivision (a). (*In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 495, 506.)

competently].) We dismiss this charge with prejudice. (*In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 839 [dismissal of charges for want of proof after trial on merits is with prejudice].)

IV. FACTS AND CIRCUMSTANCES SURROUNDING THE CONVICTIONS DO NOT INVOLVE MORAL TURPITUDE BUT CONSTITUTE MISCONDUCT WARRANTING DISCIPLINE

In attorney disciplinary proceedings that involve conviction referral matters, "the record of [an attorney's] conviction [is] conclusive evidence of guilt of the crime of which he or she has been convicted." (§ 6101, subd. (a); *In re Gross* (1983) 33 Cal.3d 561, 567.) As such, Genis's misdemeanor convictions under title 26 U.S.C. section 7203 establish that he willfully failed to file his tax returns for the tax years 2009, 2010, and 2011.[8] The Supreme Court has held that such a conviction does not involve per se moral turpitude. (*In re Rohan* (1978) 21 Cal.3d 195, 200-201 [26 U.S.C. § 7203 for failure to file federal income tax return does not establish moral turpitude on its face].) Therefore, we must examine whether the facts and circumstances surrounding Genis's convictions involved moral turpitude or other misconduct warranting discipline. The hearing judge found that the facts and circumstances of Genis's convictions did not involve moral turpitude based on *Rohan* and another case involving a conviction under title 26 U.S.C. section 7203, *In re Fahey* (1973) 8 Cal.3d 842. On review, OCTC challenges this finding because Genis's misconduct spanned 10 years, involved a substantial amount of money, and was motivated by personal financial gain.

[8] Title 26 U.S.C. section 7203 provides that it is a misdemeanor crime to willfully fail to file a tax return.

In *Fahey*, the attorney was convicted of willfully failing to file his federal taxes for three years.[9] At the criminal trial, Fahey testified he did not file the returns due to personal and professional difficulties; a psychiatrist testified that his actions were caused by an "obsessive compulsive reaction" preventing him from taking care of his own affairs even though he knew they were wrong. The federal trial judge stated that Fahey did not intend to "cheat" the government out of paying his taxes. However, he found that Fahey was aware there were no reasonable or justifiable grounds for failure to timely file his tax returns. Fahey's actions did not involve clients or the practice of law, and he had no prior State Bar disciplinary record.

The *Fahey* court found that a conviction under title 26 U.S.C. section 7203 did not involve moral turpitude on its face. Therefore, the court looked to the circumstances surrounding the conviction and concluded they did not involve moral turpitude because the failure to file was not done for the purpose of "personal financial gain" or with intent to avoid ultimate payment of his taxes and there were no acts of deception or disregard of professional standards in his practice of law. (*In re Fahey*, *supra*, 8 Cal.3d at p. 845-846.) Fahey did not act with a purpose towards personal financial gain because he intended to eventually file the returns, but postponed doing so because of inadequate records and demands in his personal and professional life. The court also found it relevant that Fahey was not dishonest with the IRS and did not attempt to conceal the truth. His vagueness and inaccuracies were attributed to his inability to keep up with his personal affairs. The court disagreed with the disciplinary board's conclusion that a failure to file and pay over a period of several years established moral turpitude. (*Id*. at p. 851.) The court held, "There must be more than mere repetition of the same acts to differentiate the offending attorney who is guilty of moral turpitude from the one who is not." (*Ibid*.) The court opined that

[9] Like Genis, Fahey had additional misconduct beyond the conviction. Fahey owed federal taxes for 1960 through 1970. Fahey entered into an arrangement with the IRS and made monthly payments towards his tax obligations.

moral turpitude is not based on popular impressions or the degree to which an offense is known to the public, but on "the violator's own motivation as it relates to his moral fitness to practice." (*Id*. at p. 854.) The court dismissed the proceeding.[10]

Five years later, the court dealt with another title 26 U.S.C. section 7203 conviction in *Rohan*. Rohan was convicted of failing to file his federal taxes for the 1969 tax year. The court again stated that such a conviction does not establish the involvement of moral turpitude on its face. (*In re Rohan*, *supra*, 21 Cal.3d at p. 200.) The *Rohan* record showed failure to file taxes for the years 1964 through 1970, but Rohan was only convicted of failure to file for 1969. Rohan knew that his conduct was criminal and attributed his actions to marital problems. However, before he was aware the IRS was investigating him, he hired a certified public account (CPA) to prepare his delinquent tax returns in 1968.[11] The court concluded that Rohan's misconduct did not involve moral turpitude, dishonesty, or corruption. (*Id*. at p. 198.) There was no evidence that Rohan misrepresented the facts or falsified records or that he sought to achieve personal financial gain by not filing his returns. (*Id*. at p. 201.) Therefore, there was no basis to find moral turpitude. The court acknowledged that tax law violations by attorneys are a matter of serious concern and that it is incumbent on attorneys to set an example for others in observing the law. (*Id*. at p. 203.) The court determined that Rohan's misconduct did not involve moral turpitude but did deserve discipline. There were no mitigating circumstances and Rohan's previous private reproval was noted. The court stated that Rohan's "reasons for failing to file

[10] The court did not address whether discipline could be warranted for criminal conduct not involving moral turpitude or the practice of law until *Rohan*. (*In re Rohan*, *supra*, 21 Cal.3d at p. 202.)

[11] The 1964 through 1967 returns were prepared, but not filed because Rohan wanted to wait until the 1968 return was completed first. The 1968 and 1969 returns were prepared in 1970, but not completed until 1971, and not filed on advice of counsel. The 1964 through 1969 files were filed in 1971; the 1970 return was filed in 1972.

over a prolonged period of years raise problems differing little in kind or degree from those confronting many a harried taxpayer." (*Id.* at 204.) He was suspended for two years, stayed, and placed on probation for two years, which included an actual suspension of 60 days.

In addition to *Rohan* and *Fahey*, we look to *In re Lesansky* (2001) 25 Cal.4th 11 for its guidance on defining moral turpitude:

> "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. [Citations.]"

(*In re Lesansky*, *supra*, 25 Cal.4th at p. 16.)

Genis did not pay taxes for tax years 2005, 2006, 2007, 2008, and 2012, which amounts due were included in the federal judge's $679,958 restitution order. Genis also failed to file his tax returns for 2003, 2004, and 2012.

OCTC argues that Genis evaded his tax liabilities for personal gain because he maintained an immoderate lifestyle: he owned several expensive properties in the Santa Barbara area and gambled his money instead of paying his taxes. OCTC notes that none of his properties were foreclosed upon, nor was he evicted from a property. In addition, OCTC believes Genis's efforts to correct his tax obligations were not done to "correct his errant ways," but done because he was unable to refinance his mortgage on the Via Sinuosa property.[12] Further, OCTC notes Genis's failure to use the proceeds of the sale of the Hollister Ranch property in 2014 to pay back taxes. Instead, he used the proceeds to pay 2013 taxes and to pay off a second mortgage on the Cambria Way house. However, a portion of the proceeds of the sale of the Via Sinuosa

[12] Genis owned a house in Hollister Ranch, purchased in 1993; a house on Cambria Way, purchased in 2002; and a house on Via Sinuosa, purchased in 2007.

house in 2018 (while Genis was in prison) was paid to the IRS. OCTC also notes that Genis owned a boat and maintained a membership at an athletic club costing $300 per month.

OCTC also argues that we should find moral turpitude here based on the enormous tax liability Genis amassed for 2005 through 2012—$679,958. OCTC adds that as of the time of trial, Genis had only paid back $82,356.04.

OCTC argues that the analysis of moral turpitude should center around *Lesansky*, which was decided after *Fahey*, *Rohan*, and *Morales v. State Bar* (1983) 35 Cal.3d 1.[13] OCTC asserts that Genis's actions amount to a "flagrant disrespect for the law" under *Lesansky* where knowledge of his conduct "would be likely to undermine public confidence in and respect for the legal profession." (*In re Lesansky*, *supra*, 25 Cal.4th at p. 16.) OCTC points to language in *Rohan* and *Morales* discussing the seriousness of tax law violations, especially when committed by attorneys because attorneys are supposed to set an example and give advice regarding following the law. The failure to pay such a large amount of taxes, OCTC argues, does not set an example. Instead, it shows flagrant disrespect for the law and suggests Genis placed himself above the law for personal gain by gambling and maintaining expensive properties without paying taxes. OCTC asserts that these facts go beyond those in *Fahey* and *Rohan* and, therefore, establish moral turpitude here. OCTC argues that Genis only started paying taxes so he could refinance a property, not because he intended to correct his misdeeds. In addition, OCTC asserts the "sheer length" of Genis's misconduct, 10 years, demonstrates his intent to avoid ultimately paying his taxes.

[13] Morales was convicted of 27 misdemeanor offenses involving the failure to withhold or pay certain state payroll taxes and unemployment insurance contributions. The Supreme Court held his conduct constituted other misconduct warranting discipline rather than moral turpitude.

We have reflected carefully on OCTC's advocacy that moral turpitude was involved in the surrounding facts of Genis's conviction but have also weighed heavily Genis's strong opposition to OCTC's points as well as the hearing judge's resolution of this issue based on the record here. While we have found initially in our consideration of this issue that some of the facts reach closely the Supreme Court's definitions of moral turpitude, we have concluded that the correct decision, applying the clear-and-convincing standard and the previous relevant cases, is to affirm the hearing judge's conclusion that the facts and circumstances surrounding Genis's conviction involve misconduct warranting discipline, but do not involve moral turpitude.[14]

OCTC failed to demonstrate clearly and convincingly that the facts and circumstances rise to the level of moral turpitude here. Like in *Fahey* and *Rohan*, there was no evidence that Genis attempted to hide or conceal his assets or falsify documents to avoid tax liabilities. Moreover, at oral argument before us in February 2022, OCTC conceded that its position that Genis's resumption in paying taxes was to effect refinancing his home, rather than correcting his misdeeds, rested only on an inference, and not on clear or convincing evidence.

Further, OCTC argues that Genis's 2005 through 2008 returns understated his tax liability but fails to demonstrate exactly how the returns were understated or show specific misrepresentations that would support a moral turpitude finding. Instead, the record shows that the returns claimed deductions related to mortgage interest in excess of what was allowed. While this raises questions, it does not alone demonstrate moral turpitude by clear and convincing evidence. Further, those returns were prepared by the CPA whom Genis later fired. He hired a new CPA who prepared subsequent returns that do not suggest further reports of understated tax liabilities.

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[14] 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.)

As part of his plea agreement, Genis agreed to civil fraud penalties with the IRS.[15] OCTC attempts to argue that this is evidence of an intent to defraud or shows dishonesty for personal gain amounting to moral turpitude under *Lesansky*. This is not clear and convincing evidence that Genis's action amounted to fraud, a specific intent crime. There were no criminal fraud charges brought and the mere fact that the IRS assessed civil fraud penalties as part of the plea agreement does not demonstrate Genis had an intent to defraud. (See *In re Rohan*, *supra*, 21 Cal.3d at p. 200, fn. 2 [civil fraud penalties assessed but no moral turpitude finding].)

Genis did not timely file his tax returns for 10 years, from 2003 through 2012. Yet, he hired a CPA and belatedly filed the 2005, 2006, 2007, and 2008 returns. We agree with the hearing judge that Genis was making an effort to begin filing his delinquent returns, with full knowledge he was likely to be audited. He began this effort before he was aware of an IRS investigation, like the attorney in *Rohan*. Genis's efforts evidence an intention to comply with his tax obligations and are consistent with his testimony that he always knew he had to pay his taxes and intended to do so, but did not do so, due to his serious gambling addiction. These facts are also consistent with those in *Fahey* and *Rohan*, where both attorneys disobeyed taxes laws for several years, but no moral turpitude was found because there was no intent to avoid ultimate payment of taxes. In addition, Genis partially paid his tax obligations for 2005, 2006, and 2008, which further corroborates an intent to ultimately pay his taxes. Also, after IRS investigators raised issues with his 2006, 2007, and 2008 returns, he sought legal advice and the help of a different CPA. He then began filing regular tax returns in 2013.

Genis failed to file the 2009, 2010, 2011, or 2012 returns or make any payments toward his delinquent taxes from 2005 through 2012 until after he was convicted, and restitution was ordered. We agree with the hearing judge that this does not evidence moral turpitude as there

[15] Genis appealed the civil fraud penalties in federal court and lost.

was no evidence presented of attempts to hide or conceal assets or any other acts of deceit. The record does not show Genis disobeyed tax laws in order to achieve personal financial gain or that he intended to avoid ultimate payment of his taxes. There is also no clear and convincing evidence that he sought to deceive. While he repeatedly violated tax laws for a prolonged period of time, there must be other evidence than "mere repetition" to demonstrate moral turpitude. (*In re Fahey*, *supra*, 8 Cal.3d at p. 851.) OCTC has failed to present such evidence or provide legal authority for other criteria that would establish Genis's actions constituted moral turpitude. The facts of Genis's case are very similar to those in *Fahey* and *Rohan*. But here, Genis has mitigation not found in those cases—a diagnosed gambling addiction that contributed to his criminal activity. Therefore, we find that the facts and circumstances of Genis's convictions do not demonstrate moral turpitude.

We agree with the hearing judge's summary that Genis was aware of his legal obligation to pay his taxes but struggled with an addiction that contributed to prioritizing his lifestyle and gambling over his personal legal responsibilities. He took steps to remedy the tax issues before he was aware of an IRS investigation, demonstrating a lack of intent to ultimately avoid his tax obligations. While there is not clear and convincing evidence of moral turpitude here, Genis's violations of federal law were many, and committed over an extended time. They are a serious concern given his role as an attorney. (See *In re Rohan*, *supra*, 21 Cal.3d at p. 203.) Therefore, we conclude that the facts and circumstances surrounding Genis's convictions constitute other misconduct warranting discipline.

V. AGGRAVATION AND MITIGATION

In determining the appropriate discipline to recommend in the conviction referral matter, we consider the aggravating and mitigating factors. The offering party bears the burden of proof for aggravation and mitigation. OCTC must establish aggravating circumstances by clear and

convincing evidence. (Std. 1.5.) Genis has the same burden to prove mitigating circumstances. (Std. 1.6.)

A. Aggravation

1. Prior Record of Discipline (Std. 1.5(a))

Genis has two records of discipline.

Genis I. On July 9, 2013, OCTC filed the NDC in State Bar Court No. 11-O-18966 (12-O-14873), which was amended on October 22, 2013. A hearing judge found Genis culpable of violating two court orders, as follows: (1) in April 2011, he willfully disobeyed a court order by failing to appear at trial readiness conferences; and (2) in June 2012, he failed to obey a superior court's order not to discuss certain matters in the presence of the jury. Genis appealed. On October 1, 2015, the Supreme Court adopted our recommended discipline, including a 30-day actual suspension. (Supreme Court No. S226117.) Multiple acts, bad faith, and harm to the administration of justice were aggravating. Genis also displayed indifference and lack of insight, particularly at an appellate court oral argument where that court found his behavior and tone, despite admonishment, to be "confrontational, accusatory and disdainful." Mitigation included no prior record of discipline in 30 years, good character, and pro bono and community service.

Genis II. On March 10, 2016, OCTC filed the NDC in State Bar Court No. 14-O-04213. A hearing judge found that Genis sought to mislead a judge by falsely denying, on four occasions, that he had rearranged the prosecuting attorney's desk materials during a break from trial.[16] Genis appealed. On November 29, 2017, the Supreme Court adopted our recommended discipline, including a 60-day actual suspension. (Supreme Court No. S243943.) In aggravation, Genis had a recent prior record of discipline (*Genis I*) where we noted that his "bullying of other

[16] The misconduct occurred in July 2014, just five months after a hearing judge issued his decision in *Genis I*.

officers of the court appears to be a common thread" of misconduct in his two discipline cases. Genis also caused significant harm to the administration of justice as an aggravating factor. Mitigation was assigned for pro bono and community service.

The hearing judge assigned moderate aggravating weight given the timing of the misconduct at issue here and the timing of his past disciplinary proceedings. We agree. Merely citing a disciplinary history does not adequately guide us in determining the aggravating weight to be assigned. Rather, "we must examine the nature and chronology of [Genis's] record of discipline." (*In the Matter of Miller* (Review Dept. 1990) 1 Cal State Bar Ct. Rptr. 131, 136.) In Genis's "prior" discipline matters, the NDCs were filed in 2013 and 2016, which was *after* the misconduct in the present case. Genis therefore "did not have an opportunity to appreciate or heed the import of the earlier discipline[s]." (*In the Matter of Seltzer* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263, 269.) In these circumstances, we diminish the weight of Genis's prior discipline record. (*Id*.; see *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646 [aggravating force of "prior" disciplinary record diluted where misconduct in present case occurred before service of notice to show cause in prior case].)[17]

OCTC argues that Genis should be found culpable of holding himself out as entitled to practice law while on suspension, which occurred after the discipline in *Genis II* was imposed. As we do not find culpability for that charge, we reject OCTC's argument. Accordingly, we assign moderate aggravating weight under standard 1.5(a).

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

We assign substantial aggravating weight to Genis's multiple acts of misconduct. (Std. 1.5(b) [multiple acts of wrongdoing are aggravating].) Though Genis was convicted of three

[17] Genis's present misconduct for his criminal convictions (from October 2010 to October 2012) also occurred at the same time as his misconduct in *Genis I* (violations of court orders in April 2011 and June 2012).

misdemeanor counts for failing to pay taxes in 2009, 2010, and 2011, he committed additional similar misconduct by failing to pay his taxes in 2005, 2006, 2007, 2008, and 2012. He also failed to file his tax returns in 2003, 2004, and 2012. (*In the Matter of Bach*, *supra*, 1 Cal. State Bar Ct. Rptr. at pp. 646-647 [three instances of misconduct considered multiple acts].)

3. Pattern of Misconduct (Std. 1.5(c))

The hearing judge found that Genis demonstrated a pattern of serious misconduct by failing to file income tax returns and/or failing to pay taxes from 2003 to 2012—a continuous period of 10 years. (Std. 1.5(c); *Levin v. State Bar* (1989) 47 Cal. 3d 1140, 1149, fn. 14, citing *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1367 [most serious instances of repeated misconduct over prolonged period of time characterized as pattern of misconduct].) We agree.

Genis argues his misconduct is not a pattern because his present conviction referral involves non-moral turpitude misdemeanors that are unrelated to the practice of law and none of his misconduct involved clients. He also argues that the Supreme Court did not make such a finding in *In re Rohan*, *supra*, 21 Cal.3d 195, where the attorney was convicted under the same federal statute of failing to file tax returns for seven years. We reject his arguments. Genis's misconduct is more serious than in *Rohan* because it involved 10 years of failing to file tax returns (three resulting in criminal convictions) and/or failing to pay taxes, resulting in a $679,958 debt to the IRS. (*In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708 [pattern not limited to consideration of counts pleaded].)[18] Further, Genis provides no authority that prohibits us from finding a pattern of misconduct in a misdemeanor conviction referral absent moral turpitude.

[18] If we consider *Genis I* and *II*, the pattern period of misconduct increases to 13 years. But we have already assigned aggravation for Genis's discipline record under standard 1.5(a).

Genis's repeated, significant failure to comply with federal tax laws is serious misconduct. As an officer of the court, his disobedience to our tax laws demeans the integrity of the profession and encourages violations of the law. (*In re Rohan*, *supra*, 21 Cal.3d at p. 203.) By intentionally failing to file income tax returns in 2003, 2004, 2009, 2010, 2011, and 2012, Genis displayed an attitude of placing himself above the law. (*Ibid*.) We find that his misconduct over 10 years clearly satisfies the severity and temporal requirements to constitute a pattern and assign substantial aggravation. (See, e.g., *In the Matter of Kinney* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360, 368 [pattern where attorney repeatedly engaged in vexatious litigation over six-year period]; *In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206 [pattern where attorney engaged in deception for personal gain or to cover up mismanagement of client cases over 10-year period]; *In the Matter of Lenard* (Review Dept. 2013) 5 Cal. State Bar. Ct. Rptr. 250 [pattern where attorney committed 12 acts of UPL in nine states during 2008 and 2009]; *In the Matter of Romano* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391 [pattern where 82 fraudulent bankruptcy petitions filed in just over three years].)

4. Significant Harm to Client, Public, or Administration of Justice (Std. 1.5(j))

The hearing judge found substantial aggravation because Genis significantly harmed the public by withholding $679,958 from the IRS. Genis does not challenge this finding on review. We assign moderate aggravating weight because OCTC did not present evidence of the specific harmful impact of the unpaid liability.[19]

[19] Genis argues he is entitled to mitigation for lack of harm to clients under standard 1.6(c) (mitigation for lack of harm "to the client, the public, or the administration of justice"). We decline to assign mitigation for lack of client harm since we found Genis significantly harmed the administration of justice in aggravation. (See *In the Matter of Mason* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639, 642 [no mitigation for lack of client harm where attorney harmed administration of justice].)

5. Failure to Make Restitution (Std. 1.5(m))

The hearing judge did not assign aggravation for Genis's failure to fully repay the $679,958 to the IRS. We agree. Genis was ordered to pay restitution subject to his ability to pay. He complied during his criminal probation, which he successfully completed. From May 3, 2017, through June 22, 2020, Genis made $82,356.04 in restitution payments.

OCTC argues for significant aggravation under standard 1.5(m) because Genis has only paid a portion of the restitution owed, citing to *In the Matter of Golden* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574, 588. In *Golden*, we assigned significant aggravation because Golden collected over $283,000 in illegal advance fees and had only refunded $7,500. In addition, OCTC asserts that Genis could have used the sale of the Hollister Ranch property to pay a significant portion of what was owed, but instead used it to pay off a second mortgage on the Cambria Way property. OCTC ignores that Genis's restitution was ordered by the federal court and based on his ability to pay, which is different from the repayment of fees in *Golden*. OCTC has failed to carry its burden that Genis has failed to make restitution in light of the federal court order and his compliance with the required payments.

B. Mitigation

1. Extreme Emotional Difficulties and Physical and 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 moderate mitigation credit because Genis's criminal conduct was partly caused by his gambling disorder and noted that Genis has made steady progress towards rehabilitation, including four years without gambling. OCTC argues Genis is not entitled to any

credit because the nexus between Genis's gambling disorder and his criminal misconduct is "weak" and because he has not shown a sufficient, sustained period of recovery. Genis argues he should receive substantial mitigation because the gambling disorder was the ultimate cause of his criminal misconduct, and he has shown a dedication to recovery.

Dr. Timothy Fong, professor of addiction psychiatry at University of California, Los Angeles (UCLA) and co-director of the UCLA Gambling Studies Program, testified as Genis's expert witness at trial. Dr. Fong also testified at the 2019 trial. Dr. Fong was not Genis's treating physician, but he conducted an initial forensic evaluation in May 2019 and diagnosed Genis with severe gambling addiction in remission. Dr. Fong found that between 1999 and 2017, Genis met the diagnostic criteria for an active and severe gambling disorder. Dr. Fong conducted a second evaluation in January 2021. During both evaluations, Genis maintained that he stopped gambling just before entering federal custody in May 2017.

Dr. Fong testified that Genis's failure to file his federal income taxes was due, in part, to his gambling addiction because Genis believed gambling would enable him to pay his taxes. He explained that compulsive gamblers are consumed by the immediate pressure of debt and experience changes in their cognitive and problem-solving skills. Therefore, Dr. Fong was not surprised that Genis committed a crime in light of his gambling disorder. Now that Genis has received his diagnosis and proper treatment, Dr. Fong believes that Genis's likelihood of committing further criminal acts is low. Genis sought treatment with a therapist, Jonathan Eymann, from May 2019 through August 2019, through a state treatment program for gambling, California Gambling Education and Treatment Services (CalGETS).

In addition, Dr. Fong stated that Genis is in remission and is actively pursuing successful recovery by participating in Gambler's Anonymous (GA). Both Dr. Fong and Eymann believe that Genis's participation in GA is critical for his recovery and note that he is active in GA and

also sponsors someone in the group. Dr. Fong and Eymann concede that there is always a chance of relapse with addiction, but both see the risk as minimal given Genis's commitment to recovery and his support structure.

The evidence presented, including Dr. Fong's expert testimony, clearly shows that Genis's gambling disorder contributed to his criminal misconduct. (See *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552, 560-561 [drug and alcohol abuse contributed to criminal conduct and considered mitigating]; *Howard v. State Bar* (1990) 51 Cal.3d 215, 222-223 [drug and alcohol abuse entitled to reduction in discipline].) Genis has shown a commitment to recovery, has received therapy, and is active in GA. He has not gambled in four years and has acknowledged that gambling has all but ruined his life. Dr. Fong testified that Genis is currently in remission. Genis has vowed to refrain from gambling for good because he considers it a "death sentence" for him. Because this is not Genis's first time before our court—it is the third—we hesitate to declare that there is no longer a risk that he will commit other future misconduct. Further, his supervised release ended recently, in February 2020. A longer period of rehabilitation, especially post-court supervision, is needed to show that Genis no longer poses a risk of future misconduct. (See *In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459, 464; *Rosenthal v. State Bar* (1987) 43 Cal.3d 658, 664 [meaningful and sustained period of rehabilitation mitigating].) For these reasons, we are unable to give full mitigation for his gambling disorder. Instead, we agree with the hearing judge that moderate weight in mitigation is appropriate.

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

Genis is entitled to mitigation if he proves 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).) Genis presented live testimony from four character witnesses, all

of whom he knows from GA. He also presented character witness declarations from 17 others, including 11 attorneys, three former clients, a former employee who is now a Deputy Sheriff for Ventura County, another member of GA, and one friend. (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [serious consideration given to attorneys' testimony due to their "strong interest in maintaining the honest administration of justice"].) The witnesses were all made aware of the full extent of his misconduct, and many have known Genis for over 10 years. In general, they declared that Genis is trustworthy, dedicated to his clients, and a talented lawyer. Several witnesses stated Genis demonstrated humility and expressed remorse for his misconduct, that he changed for the better in prison, and that he is dedicated to his recovery from his gambling disorder and unlikely to reoffend. The hearing judge assigned substantial mitigation for Genis's good character evidence.

OCTC argues that Genis is entitled to limited or minimal mitigation because it was unclear as to whether eight of the witnesses who wrote declarations were aware of Genis's full discipline history with the State Bar. We reject this argument. Genis sent an email to all potential witnesses with computer links to his prior discipline cases and the allegations in the present case. He also provided a position statement about the criminal conviction referral and the disciplinary case, which included a discussion of his gambling addiction. Several witnesses mentioned these materials and credited Genis with providing such detailed and forthright information; others were already aware of these circumstances. The detailed information Genis provided, and the declarations overall establish that the witnesses were aware of the extent of Genis's misconduct. OCTC did not prove otherwise. We assign substantial mitigation for the wide range of witnesses in the legal and general community who attested to Genis's extraordinary good character.

3. Candor and Cooperation with State Bar (Std. 1.6(e))

The hearing judge assigned mitigation for cooperation because Genis entered into a stipulation as to facts and admission of documents and admitted culpability for other misconduct warranting discipline in the conviction referral matter. Because the facts were easily provable, the judge assigned moderate weight in mitigation. Neither party challenges this finding. We agree with the hearing judge. (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].)

VI. A TWO-YEAR ACTUAL SUSPENSION, CONTINUING UNTIL GENIS'S SUCCESSFUL REHABILITATION AND FITNESS HEARING, IS APPROPRIATE

Our role is not to punish Genis 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. (Std. 1.1; *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 disciplinary analysis begins with the standards, which are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.) Ultimately, 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 its purpose. (*In re Young* (1989) 49 Cal.3d 257, 266.) The hearing judge recommended a two-year actual suspension. OCTC requests culpability for the UPL charge and asks that Genis be disbarred. Genis urges no more than a six-month actual suspension.[20]

We begin our discipline analysis by identifying which standard presents the most severe sanction for the misconduct. (Std. 1.7(a) [most severe sanction must be imposed where multiple

[20] Genis's briefs advocate for a 90-day suspension, but at oral argument on February 16, 2022, Genis's counsel stated that a six-month actual suspension would be warranted.

sanctions apply].) Due to Genis's two prior disciplinary matters, we look to standard 1.8(b). This standard states that disbarment is appropriate where an attorney has two or more prior records of discipline if (1) an actual suspension was ordered in any prior disciplinary matter, (2) the prior and current disciplinary matters demonstrate a pattern of misconduct, or (3) the prior and current disciplinary matters demonstrate the attorney's unwillingness or inability to conform to ethical responsibilities. However, the standard states that disbarment is not appropriate if (1) the most compelling mitigating circumstances clearly predominate, or (2) the misconduct underlying the prior discipline occurred during the same time period as the current misconduct.

Standard 1.8(b) does not apply here. Genis's misconduct underlying *Genis I* occurred during the same time as the current misconduct and the misconduct underlying *Genis II* occurred after the current misconduct. In addition, the NDCs in both prior disciplinary cases were filed after Genis committed his present conduct. Therefore, disbarment under standard 1.8(b) is not appropriate because the timing of the prior discipline cases does not establish that Genis is a recidivist attorney who failed to learn from his "prior" discipline cases. (*In the Matter of Hansen* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464 [std. 1.8(b) not applicable because two prior disciplinary matters occurred after misconduct in present case].) However, we do consider the principle of progressive discipline underlying standard 1.8.

The hearing judge properly relied on standard 2.16(b), which applies directly to Genis's criminal misconduct. The standard calls for suspension or reproval as the presumed sanction for final convictions of misdemeanors not involving moral turpitude but involving other misconduct warranting discipline. Given the broad range of discipline suggested in this standard, we consult case law for guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310–1311.)

No case law directly compares to Genis's case. However, as we discussed *ante*, regarding culpability, both Fahey and Rohan were also convicted of violations of title 26 U.S.C.

section 7203.[21] The attorney in *Rohan* failed to file tax returns from 1964 to 1970, which resulted in a misdemeanor conviction. He received a suspended one-year prison sentence and criminal probation. The Supreme Court concluded that the conviction did not involve moral turpitude but involved other misconduct warranting discipline.

Rohan is an important disciplinary case in that it was the first to consider whether discipline is warranted for criminal conduct when not committed in the practice of law and without involving moral turpitude. *(In re Rohan*, *supra*, 21 Cal.3d at p. 202.) The Supreme Court determined that discipline was appropriate as willful failure to file income tax returns demeans the integrity of the legal profession and constitutes a breach of the attorney's responsibility to society. (*Id*. at p. 204.) There were no mitigating circumstances and Rohan had one prior private reproval for failure to notify clients of a default judgment. The Supreme Court imposed a 60-day actual suspension. The hearing judge determined that Genis's case was more serious given the aggravation, particularly Genis's two prior records of discipline resulting in suspension, and also noted that *Rohan* was decided pre-Standards.

Genis cites *Rohan* and other cases that involve tax-related criminal violations to support his request for only a modest actual suspension. In particular, he relies on *In the Matter of Bouyer* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 888. The attorney in *Bouyer* received a 90-day actual suspension for a single misdemeanor conviction of failing to file reports of his employment taxes with the State of California with three records of discipline. We found that Bouyer's misconduct was minor as compared to other cases involving tax-related convictions. (See *In re Brown*, *supra*, 12 Cal.4th 205 [60-day actual suspension; one count of failing to pay $36,000 in wages over two-year period; no record of discipline and significant other mitigation];

[21] In *Fahey*, the Supreme Court only evaluated the case on whether there was moral turpitude. Finding none, the case was dismissed. Not until *Rohan* did the court determine that criminal conduct could be disciplinable even when not committed in the practice of law.

Morales v. State Bar, *supra*, 35 Cal.3d 1 [stayed 18 months' suspension; 27 misdemeanors for failing to pay payroll and unemployment insurance levies over five quarters; past prior private reproval].) We declined to recommend disbarment because Bouyer's second and third disciplines did not result in actual suspensions and all three priors differed from the conviction offense. Bouyer received mitigation for his good character evidence, pro bono work, and cooperation with the State Bar for stipulating to the facts and circumstances surrounding the conviction.

Genis admits that Bouyer's conviction matter was "less serious" than his own but contends the overall case is similar enough to support a six-month actual suspension. OCTC argues that the cases Genis offers are distinguishable because they do not include the aggravation present in Genis's case, which seriously escalates the need for a lengthy actual suspension.

OCTC urges disbarment even if we find that standard 1.8(b) did not apply. It cites *In the Matter of Wittenberg* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 418 in support. This case is distinguishable because that attorney was disbarred in his second disciplinary matter after being found culpable of engaging in UPL in 300 to 400 trademark matters before the United States Patents and Trademark Office with a prior discipline for insider trading.

We have also looked to other jurisdictions for persuasive guidance as to the appropriate discipline. In general, there is no consistent pattern for discipline for failure to file tax returns. The cases seem to turn on an analysis of aggravation and mitigation and range from several months' suspension to an indefinite suspension, with the right to reapply in one year. A sampling of these out-of-state cases involve attorneys with one or no past records of discipline,

fewer convictions or acts of misconduct than Genis, and a less than 10-year period of misconduct.[22]

Finally, we examine factors specific to Genis's misconduct in analyzing the proper discipline to recommend. (*In re Severo* (1986) 41 Cal.3d 493, 502-503 [purpose of disciplinary proceedings is intended to ascertain fitness to practice law].) We find that Genis's primary failing, as an attorney and an officer of the court, is that he has repeatedly disobeyed orders of the court and of the general tax laws that apply to every citizen. For a decade, he has placed himself above the law by ignoring his obligations to file tax returns and pay total taxes of $679,958. (*In re Rohan*, *supra*, 21 Cal.3d at p. 204.) The State Bar has been required to intervene three times in the past decade to ensure that Genis adheres to the professional standards required of those who are licensed to practice law in California. Genis's past and current misconduct all involved significant harm to the administration of justice. Looking at his misconduct as a whole, we cannot ignore the danger signs and the character traits Genis has displayed, including in his second prior proceeding, his dishonesty toward a court. These are not finite matters but reveal a collective that causes us great concern that Genis may be unable to serve adequately the duties of an attorney to the fair and effective administration of justice if we were to recommend only a modest actual suspension with no further scrutiny of his rehabilitation and fitness beyond the call of our standard probation conditions.

[22] See, e.g., *Attorney Grievance Comm'n. of Maryland v. Giannetti* (Md. 2017) 175 A.3d 119 (indefinite suspension with right to apply for reinstatement after one year for failure to file federal and state income tax returns for seven years with at least $150,107 in tax liability; one prior reprimand for unrelated misconduct); *Disciplinary Matter Involving Stockler (*Alaska 2020) 457 P.3d 551 (one-year actual suspension with conditions for reinstatement for three federal misdemeanor convictions for failure to file tax returns for three years with $886,058 tax liability; no prior record of discipline); *In the Matter of Busch* (Kan. 2008) 194 P.3d 12 (six-month suspension for single federal misdemeanor conviction for failure to file tax returns for eight years with over $1 million dollar tax liability; no record of prior discipline).

A lengthy suspension at the upper range, followed by a required hearing per standard 1.2(c)(1) is warranted, because Genis has two prior disciplinary records, has engaged in a pattern of misconduct, and has caused significant harm to the administration of justice. He must be separated from the practice of law for enough time for him to continue his valuable rehabilitation, to serve the critical goals of attorney discipline, and to make progress toward being able to prove his fitness to practice law. (*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].) However, here, disbarment is excessive and punitive in light of either persuasive precedent in this state or in sister states, particularly considering that moral turpitude was not found in the facts and circumstances of Genis's tax conviction. We agree with the hearing judge that a two-year actual suspension, continuing until Genis proves his fitness to practice law, is appropriate. This is significantly progressive discipline from his prior suspensions of 30 and 60 days, is in the upper range of discipline described in standard 2.12(a),[23] and reflects our increasing concern about Genis's extensive misconduct.

VII. RECOMMENDATIONS

We recommend that Darryl Wayne Genis, State Bar No. 93806, be suspended from the practice of law for three years, that execution of that suspension be stayed, and that he be placed on probation for three years with the following conditions:

1. **Actual Suspension and Until Rehabilitation.** Genis must be suspended from the practice of law for a minimum of the first two years of his probation and until he provides proof to the State Bar Court of his rehabilitation, fitness to practice, and 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).)

[23] Standard 1.2(c)(1) provides, in pertinent part, "Actual suspension is generally for a period of thirty days, sixty days, ninety days, six months, one year, eighteen months, two years, three years, or until specific conditions are met."

2. **Review Rules of Professional Conduct.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Genis 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 his compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Genis's first quarterly report.

3. **Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions.** Genis must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of his 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, Genis must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has his current office address, email address, and telephone number. If he does not maintain an office, he must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Genis 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, Genis must schedule a meeting with his assigned probation case specialist to discuss the terms and conditions of his 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, he may meet with the probation case specialist in person or by telephone. During the probation period, Genis 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 Genis's probation period, the State Bar Court retains jurisdiction over him to address issues concerning compliance with probation conditions. During this period, he must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to his official membership address, as provided above. Subject to the assertion of applicable privileges, he 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. Genis 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, Genis 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. Genis must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether he 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. Genis is directed to maintain proof of his 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 his actual suspension has ended, whichever is longer. He 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, Genis 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 Genis will not receive MCLE credit for attending this session. If he 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, Genis will nonetheless receive credit for such evidence toward his duty to comply with this condition.

9. **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 Genis has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

10. **Proof of Compliance with Rule 9.20 Obligation.** Genis is directed to maintain, for a minimum of one year after commencement of probation, proof of compliance with the Supreme Court's order that he 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 Genis 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 him with the State Bar Court. He 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 Darryl Wayne Genis 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 Genis 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, he will nonetheless receive credit for such evidence toward his duty to comply with this requirement.

IX. CALIFORNIA RULES OF COURT, RULE 9.20

We further recommend that Genis 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.[24] Failure to do so may result in disbarment or suspension.

[24] 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) 32 Cal.3d 38, 45.) Further, Genis is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files 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).)

X. COSTS

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

We do not recommend the imposition of monetary sanctions in this matter, as this matter was commenced before April 1, 2020. (Rules Proc. of State Bar, rule 5.137(H).)

STOVITZ, J., Acting P.J.*

WE CONCUR:

CHAWLA, J.**

ROLAND, J.**

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*Retired Presiding Judge of the State Bar Court, serving as Review Judge Pro Tem by appointment of the California Supreme Court. Acting Presiding Judge McGill and Review Judge Honn took no part in this proceeding on review.

**Judge of the Hearing Department of the State Bar Court, designated to serve in this matter as a Review Department Judge Pro Tem, pursuant to rule 5.155(F) of the Rules of Procedure of the State Bar.