

Filed June 12, 2023

STATE BAR COURT OF CALIFORNIA  
REVIEW DEPARTMENT

In the Matter of	)	SBC-21-C-30489; SBC-21-C-30750;
	)	SBC-21-C-30810 (Consolidated)
ADAM SETH DUBIN,	)	
	)	OPINION
State Bar No. 320576.	)	
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Adam Seth Dubin was convicted of 10 misdemeanors in three separate criminal matters, including one conviction for spousal battery that occurred in January 2019; four different Vehicle Code convictions related to a hit-and-run accident with injury and property damage that occurred in July 2019; and four convictions related to his driving under the influence (DUI) that occurred in February 2020, which also involved a conviction for possession of cocaine for personal use. A hearing judge found that the facts and circumstances surrounding the spousal battery incident and the hit-and-run accident involved moral turpitude, and that the DUI was other misconduct warranting discipline. The judge recommended discipline to include an 18-month actual suspension continuing until Dubin provides proof of his rehabilitation, fitness to practice, and present learning and ability in the general law.

Both Dubin and the Office of Chief Trial Counsel of the State Bar (OCTC) appeal the hearing judge’s decision. Dubin disputes the moral turpitude findings, several aggravation and mitigation circumstances, and the discipline recommendation. OCTC agrees with the moral

turpitude findings but asserts disbarment is warranted. OCTC also challenges most of the judge's mitigation and aggravation findings.

Upon our independent review (Cal. Rules of Court, rule 9.12), we find the facts and circumstances surrounding the spousal battery conviction involved moral turpitude. However, we do not find the hit-and-run conviction involved moral turpitude, but constituted other misconduct warranting discipline, as did his other DUI conviction. We also find more mitigation and less aggravation than the hearing judge found. As to discipline, considering the totality of Dubin's misconduct and that the mitigation outweighs the aggravation, we recommend a 15-month period of actual suspension covering all of the alleged misconduct, which is necessary here to protect the public, the courts, and the legal profession.

#### **I. PROCEDURAL BACKGROUND IN THE STATE BAR COURT**

Following Dubin's three separate arrests in just over a year and the resulting 10 misdemeanor convictions, OCTC transmitted evidence of each conviction to the Review Department. In each matter, following receipt of the conviction referral and evidence of finality, we referred them to the Hearing Department for a determination of whether the facts and circumstances of Dubin's violations involved moral turpitude or other misconduct warranting discipline, and, if so, to provide a recommendation as to the level of discipline to be imposed.

The three matters were consolidated for trial, and a four-day trial was held March 22-24 and 29, 2022. The parties filed a stipulation as to facts on March 16, and an amended stipulation as to facts and admission of documents on March 21. The parties filed closing briefs on April 12, and the hearing judge issued both a decision and an amended decision on July 11, 2022. Thereafter, both Dubin and OCTC timely filed requests for review and the parties filed their respective briefs. On March 1, 2023, we granted Dubin's motion to augment the record

with evidence of rehabilitation completed after trial. Oral argument was held on March 15, and the matter was taken under submission.

## II. FACTUAL BACKGROUND<sup>1</sup>

Dubin began using cocaine after learning he did not pass the California Bar Examination on his first try in November 2017. Around the same time, he also started abusing two prescribed medications (Xanax and Adderall) and became physically dependent on them. He was also drinking alcohol approximately four to five days per week. Although he passed the California Bar Examination and was admitted to practice in May 2018, Dubin continued to abuse alcohol, cocaine, and prescription medications.

### A. Domestic Violence Incident (SBC-21-C-30750)

On January 7, 2019, Dubin left his office in Santa Ana at approximately 4:00 p.m., and went to a bar nearby where he drank alcohol for about an hour. Before leaving the bar, he used cocaine for a “pick-me-up.” Dubin left the bar and drove to the residence he shared with his wife, T.F.,<sup>2</sup> in San Clemente. He arrived around 6:00 p.m. Dubin and T.F. had been married for approximately four months but had started to discuss divorce.

Upon entering the home, Dubin and T.F. began to argue, and, at some point, he briefly left with his dog.<sup>3</sup> T.F. texted her ex-husband, Jay Gold, that “[d]inner [wasn’t] going well.” A

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<sup>1</sup> The facts in this opinion are based on the stipulations, trial testimony, documentary evidence, and the hearing judge’s factual and credibility findings, which are entitled to great weight, unless we have found differently based on the record. (Rules Proc. of State Bar, rule 5.155(A); *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737, 748 [Review Department may decline to adopt hearing judge’s findings if insufficient evidence exists in record to support them].)

<sup>2</sup> For confidentiality, because she is a victim of spousal assault, we refer to Dubin’s wife by her initials.

<sup>3</sup> While Dubin’s and T.F.’s accounts of the sequence of events regarding the assault somewhat differ, they agree that the assault did not last long.

few messages later, T.F. texted Gold to “call [the] police now.” When Dubin returned, he threw T.F. off the barstool and onto the tile floor. He then dragged her to the couch and put his hands on her neck, choking her, while cursing and saying he was going to kill her. Gold called T.F.’s cell phone to check on her. When she answered, T.F. was distraught.<sup>4</sup> Dubin then used T.F.’s phone to speak with Gold and told him everything was fine. While Dubin was on the phone, T.F. used the opportunity to escape.

T.F. drove to Gold’s home in Newport Beach, leaving her phone with Dubin. After she arrived, T.F. used Gold’s phone to call 911 at 7:00 p.m. to report the assault, still sounding distraught. She told the dispatcher that Dubin threw her off a stool and onto the tile floor, then threw her onto the couch and choked her.

T.F. and Gold met law enforcement officers at a public parking lot at 7:48 p.m. Orange County Sheriff Department deputies observed that T.F. was crying, shaking, and appeared to be frightened. The sleeve of her blouse was torn and there was redness on the left side of T.F.’s neck. She told the deputies her blouse was ripped during the assault. She recounted the attack to them, including that Dubin choked her and threatened to kill her. T.F. also told them about other incidents of physical abuse, but she had not reported those previously. One deputy contacted a judicial officer, who granted an emergency protective order for T.F. against Dubin.

When the sheriff deputies did not find Dubin at his home, T.F. gave the deputies the address for the residence of Dubin’s mother, Cynthia Holton, where Dubin was found at around 10:35 p.m. When the deputies questioned Dubin, he falsely claimed that he left work around 6:30 p.m., then drove directly to his mother’s house and nowhere else. He then denied going to his home after work and falsely claimed that he had not seen T.F. that day. When asked if he

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<sup>4</sup> Gold recorded the call, and a copy of the recording was admitted at trial.

had spoken with T.F. that day, Dubin stated they had an argument over text. He was asked if he had any physical contact with T.F. that day, and he falsely claimed that he had not seen her.

Dubin also misled the deputies regarding T.F.'s phone, stating that it was inside his parents' house when it was actually in his pocket. He "surmised" that he got the phone because he told the deputies that T.F. had gone to his office that day, went through his car, and left her phone in it. He falsely claimed that he used T.F.'s phone to call Gold to tell him he had T.F.'s phone and that he had heard T.F. in the background of the call. Dubin was then arrested, and, when searched incident to the arrest, the deputies found two phones on Dubin, his and T.F.'s. When Dubin was booked at the station, he was served with the emergency protective order.

On January 14, 2019, Dubin was charged with three misdemeanor counts: (1) domestic battery with corporal injury in violation of Penal Code section 273.5, subdivision (a); (2) criminal threats in violation of Penal Code section 422, subdivision (a); and (3) damaging a wireless device with intent to prevent a criminal report in violation of Penal Code section 591.5. (*People v. Dubin* (Super. Ct. Orange County, No. 19HM00579).) In addition, the court signed, served, and filed another protective order.

On October 1, 2020, the charges were amended to add a fourth count, a misdemeanor violation of Penal Code section 243, subdivision (e)(1) (spousal battery). On the same day, Dubin pleaded guilty to and was sentenced on that count. The remaining counts were dismissed. He was sentenced to 60 days in county jail, with six days credit for time served. The jail term was to be served on weekends starting in late October. This was later modified to electronic confinement. Dubin was placed on informal probation for three years, to include a 52-week batterer's treatment program, eight hours of community service, and payment of restitution. Dubin timely filed proof of enrollment as to the batterer's treatment program and completion of

community service. Dubin was also ordered to comply with a third protective order issued in the case.

**B. Hit-and-Run Accident (SBC-21-C-30489)**

Late in the evening of July 15, 2019, Dubin and his then neighbor, Brooke Frease, drove in Dubin's 2019 black BMW to a bar. They arrived around 11:30 p.m. and stayed until the bar closed. While there, Dubin drank three double scotch drinks. Around 2:10 a.m., they left in Dubin's car, with Dubin driving. Less than a mile from his home, Dubin hit multiple, unoccupied cars parked on the street, going approximately between 44 and 47 miles per hour. Dubin's BMW sustained major front-end damage. The crash also caused minor damage to two vehicles and major rear- and front-end damage to a third.

Frease and Dubin got out of the car. Dubin then left the accident scene, leaving Frease behind. Costa Mesa Police Department officers arrived around 2:25 a.m. They observed Frease bleeding from a cut to her bottom lip. She had contusions on the inside of her bottom lip, on her left and right calves, and several other internal injuries, including a torn ligament in her ankle. Frease told the officers that the driver was a male named Adam, who was her neighbor and a lawyer. Frease confirmed no one else was in the BMW other than Dubin and herself. Officers attempted to find Dubin near the accident scene and at his residence, but without success.

Early the next morning, Dubin went to Frease's apartment to talk to her. At trial, Frease testified that Dubin asked about her condition and he then entered her apartment. Frease then told Dubin she identified him to a police investigator as the driver of the BMW. Dubin stated that he wished Frease would not have named him as the driver and that he was concerned about the impact the accident might have on his career. He then suggested somebody else could have

been driving the BMW. She concluded her testimony by stating she did not want to imply that Dubin had asked her to lie for him.<sup>5</sup>

On May 6, 2020, Dubin was charged with four misdemeanor violations resulting from the hit-and-run: (1) hit-and-run with injury in violation of Vehicle Code section 20001, subdivision (a); (2) hit-and-run with property damage in violation of Vehicle Code section 20002, subdivision (a); (3) reckless driving in violation of Vehicle Code section 23103, subdivision (a); and (4) reckless driving with bodily injury in violation of Vehicle Code section 23104, subdivision (a). (*People v. Dubin* (Super. Ct. Orange County, No. 20WM06678).) Approximately one year later, on May 4, 2021, Dubin pleaded guilty to all four counts. He was sentenced to pay fines, court fees, and restitution.

**C. DUI and Drug Possession (SBC-21-C-30810)**

On February 9, 2020, Dubin, while driving, hit another car with three occupants while making a left turn at an intersection with a traffic light. Newport Beach police officers arrived and determined that Dubin caused the collision. An officer asked Dubin if he had been drinking, and Dubin responded he had not but had taken an antidepressant medication that morning. The officer observed that Dubin's pupils were dilated and that his speech was slurred. Dubin was arrested and when searched, the officer found a personal use amount of cocaine on him.

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<sup>5</sup> Frease was using a web camera to record before Dubin came into her apartment, and the recording continued when Dubin entered. She stopped recording when Dubin asked her to do so. However, she later recorded him with her cell phone and with his knowledge. She gave these recordings to Detective Darren Wood of the Costa Mesa Police Department, who testified at the disciplinary trial. The recordings were not admitted into evidence at the disciplinary trial, but Detective Wood had viewed the recordings. He believed, based on his interview with Frease and his review of the recordings, that Dubin had attempted to get Frease to give a false version of the facts to police, but if he relied only on his interview with Frease he would not have come to that conclusion. When OCTC attempted to question Detective Wood about his review of the recordings, Dubin objected and the objection was sustained.

On May 12, 2020, Dubin was charged with five misdemeanor violations: (1) driving under the influence of alcohol in violation of Vehicle Code section 23152, subdivision (a); (2) driving with a blood alcohol content of 0.08 percent or more in violation of Vehicle Code section 23152, subdivision (b); (3) driving under the influence of alcohol and drugs in violation of Vehicle Code section 23152, subdivision (g); (4) driving under the influence of drugs in violation of Vehicle Code section 23152, subdivision (f); and (5) possession of a controlled substance, cocaine, in violation of Health and Safety Code section 11350, subdivision (a). (*People v. Dubin* (Super. Ct. Orange County, No. 20HM05109).) He pleaded guilty to all five misdemeanor violations on May 4, 2021.

Dubin was sentenced to 60 days in county jail with home confinement authorized, which was stayed until September 23, 2021, and three years of informal probation. The informal probation terms included, inter alia, completion of a three-month first offender alcohol program, victim impact counseling, and payment of restitution. Dubin thereafter submitted proof he completed the alcohol program. On August 30, 2021, Dubin filed documents that verified he completed his home confinement period.

#### **D.     Addiction Recovery Evidence**

Nancy Clark, director of The Recovery Center, an in-patient rehabilitation facility, testified on Dubin's behalf. Dubin voluntarily attended the facility for 75 days, in-patient, beginning on February 17, 2020, about one week after the first DUI arrest. He successfully completed the in-patient program and one year of the out-patient program. Clark opined that Dubin's recovery had been successful, and he had developed skills and strategies to address his addiction. She believed Dubin achieved recovery from his drug and alcohol abuse, and she had high confidence he would remain sober. Clark acknowledged Dubin did not have a sponsor and stated she believed having a sponsor was an important component of staying sober.



At trial, Dubin testified about his recovery from abuse of prescription medications and cocaine. Even though he no longer abuses medications and no longer uses cocaine, Dubin still drinks alcohol at special events and when out with friends. His fiancé<sup>6</sup> and a high school friend both testified Dubin drank alcohol if he was out to dinner.

Dubin's treating psychologist, Perry Passaro, Ph.D., testified that he did not believe Dubin was at significant risk of relapsing or committing similar criminal offenses. He had five sessions with Dubin prior to trial and based his opinion on his sessions with Dubin and information from Dubin's referring psychiatrist.<sup>7</sup> Dr. Passaro described Dubin's addictive behavior as using stimulants to "up regulate" and using alcohol and Xanax to "down regulate." He believed Dubin's addiction had affected his work life and created an urge for physical violence. After trial, we augmented the record with a subsequent report from Dr. Passaro, who stated that Dubin has continued therapy with him and that Dubin has consistently been attending sessions since February 18, 2022. Dr. Passaro stated Dubin has "maintained his sobriety from benzodiazepines, [A]dderall, and cocaine for over 3 years." He noted he is aware that Dubin occasionally drinks a "very moderate amount of alcohol on certain special occasions." However, Dr. Passaro believed that moderate alcohol consumption in a social setting will not adversely impact Dubin. He continues to believe that Dubin is at low risk for relapse. He stated that Dubin continues to demonstrate a strong commitment to recovery.

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<sup>6</sup> In a recent submission, the fiancé was referred to as Dubin's wife. We continue to use the term fiancé as that is consistent with the trial record.

<sup>7</sup> Dubin's prior therapist died, and Dubin went several months before obtaining Dr. Passaro as his new therapist.

### III. THE FACTS AND CIRCUMSTANCES SURROUNDING DUBIN'S CONVICTIONS INVOLVE MORAL TURPITUDE AND OTHER MISCONDUCT WARRANTING DISCIPLINE

#### A. Applicable Law

For the purposes of attorney discipline, Dubin's convictions are conclusive proof of the elements of his crimes. (Bus. & Prof. Code, § 6101, subds. (a) & (e).) The primary issue before us is whether the facts and circumstances surrounding Dubin's three convictions involve moral turpitude or other misconduct warranting discipline. Dubin's convictions do not inherently involve moral turpitude; however, moral turpitude can be established "based on the particular circumstances surrounding the convictions." (*In re Kelley* (1990) 52 Cal.3d 487, 494.)

OCTC has the burden to establish 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].) In addition, we give great weight to the hearing judge's findings based on credibility assessments. (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [hearing judge best suited to resolve credibility questions "because [the judge] alone is able to observe the witnesses' demeanor and evaluate their veracity firsthand"]; *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 282.) Yet, reasonable doubts resulting from the evidence are resolved in favor of the respondent. (*Himmel v. State Bar* (1971) 4 Cal.3d 786, 793-794.)

As moral turpitude "cannot be defined with precision" (*Baker v. State Bar* (1989) 49 Cal.3d 804, 815, fn. 3), we look to the California Supreme Court for guidance:

Criminal conduct not committed in the practice of law or against a client reveals moral turpitude if it shows a deficiency in any character trait necessary for the practice of law (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) or if it involves such a serious breach of a duty owed to another or to society, or such a flagrant disrespect for the law or for societal norms, that

knowledge of the attorney's conduct would be likely to undermine public confidence in and respect for the legal profession.

(*In re Lesansky* (2001) 25 Cal.4th 11, 16.) We have also determined that moral turpitude “is measured by the morals of the day [citation] and may vary according to the community or the times. [Citation.]” (*In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208, 214.)

Finally, even if the facts and circumstances of an attorney's course of conduct do not equate to moral turpitude, such misconduct can still warrant professional discipline, “as an exercise of [the Supreme Court's] inherent power to control the practice of law to protect the profession and the public.” (*In re Kelley, supra*, 52 Cal.3d at p. 494.) In all three of these criminal matters, Dubin stipulated that his conduct surrounding these matters constituted other misconduct warranting discipline.

**B. Spousal Battery Conviction Involved Moral Turpitude (SBC-21-C-30750)**

The hearing judge determined that the facts and circumstances surrounding Dubin's spousal battery conviction involved moral turpitude based on the violent assault on T.F. and the subsequent lies to law enforcement officers. We agree. We reject Dubin's arguments on review that a plea to spousal battery cannot support a moral turpitude finding. As stated *ante*, we look beyond the elements of the crime and consider all the surrounding facts and circumstances.

Dubin attacked T.F., threw her onto the floor, dragged her to the couch, choked her, and threatened to kill her. On review, Dubin challenges the hearing judge's finding that he choked T.F. We reject his argument as the record supports this finding. T.F. consistently stated Dubin choked her. She told the 911 dispatcher she had been choked, and she repeated this to the sheriff deputies when they interviewed her. This statement was documented in the sheriff deputies' report, and their interview occurred within hours of the assault. The deputies reported they saw

redness on T.F.'s neck and that her blouse was ripped, corroborating T.F.'s account. She was "crying, shaking, and appeared to be frightened." Her distress was also evident in her phone calls with Gold and the 911 dispatcher. Dubin's assault caused T.F. fear and she fled the home. She immediately called law enforcement when she arrived at Gold's home and could use his phone.

The hearing judge found T.F.'s testimony credible. We agree and reject Dubin's argument that T.F.'s credibility was undermined due to inconsistencies in her testimony. She consistently testified regarding the key events of the attack—that Dubin threw her to the floor, choked her, and threatened to kill her.<sup>8</sup> From the 911 call through trial in this matter, T.F. has maintained that Dubin choked her. The record does not support Dubin's argument that T.F. had an incentive to lie or exaggerate. Rather, it shows that T.F. was reluctant at times to answer questions that could be detrimental to Dubin.

In addition, Dubin testified that he might have put the "web" of his hand close to T.F.'s neck. He also stated that he put his hands on T.F.'s shoulders and shook her. While he denied that he was trying to prevent airflow, these admissions corroborate T.F.'s account that she was choked with one hand. A deputy reported that T.F. stated Dubin used a "c-clamp" hold with one hand and squeezed her throat.

Beyond the assault, Dubin lied multiple times to the investigating officers. He denied having gone home after work and seeing T.F. that day. He made up a story that T.F. left her phone in his car while he was at work. He also falsely claimed calling Gold and hearing T.F. in the background. This dishonesty supports a moral turpitude finding. (Compare *In the Matter of Herich* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 820, 827 [lies about drinking alcohol and

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<sup>8</sup> There was conflicting evidence concerning where T.F.'s phone was during the assault. We find that this does not undermine her credibility regarding these key events.

not feeling its effects, without more, did not support moral turpitude finding] with *In the Matter of Caplin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 768, 775 [elaborate and numerous lies supported moral turpitude finding].)

We reject Dubin’s argument that his lies cannot constitute moral turpitude because he was intoxicated. The hearing judge did not find Dubin was impaired when he talked to the sheriff deputies, and the record supports this. He was not interviewed until around 10:30 p.m., several hours after the assault, and no indication exists that he continued drinking or using drugs after the assault. Dubin does not sound impaired in the patrol car audio and video evidence. Nothing supports his theory that his ability to tell the truth was affected at this time. Rather, he conceded that he was in a state of “panic” when questioned by officers and was not “mindful” of his answers. In addition, Dubin asked the sheriff deputies if he could go inside his parents’ house to retrieve T.F.’s phone, when it was, in fact, in his pocket. We find this was an attempt to mislead law enforcement as to the location of T.F.’s phone, rather than a miscommunication, as Dubin argues.

Dubin’s violent attack on his spouse and his multiple dishonest statements to the sheriff deputies support a finding of moral turpitude here. (See *In the Matter of Miller* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 110, 115 [“wide ambit of facts surrounding commission of crime is appropriate to consider in conviction referral proceeding”]; *In the Matter of Lais* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112, 121 [deceit to sheriffs supports moral turpitude finding].) Dubin’s actions evidence a disrespect for the law and societal norms. Based on the

attack and the dishonesty, taken together, we find that Dubin's spousal battery conviction involved moral turpitude.<sup>9</sup>

**C. Hit-and-Run Conviction Involved Other Misconduct Warranting Discipline (SBC-21-C-30489)**

Months after the spousal battery incident, Dubin drove while impaired. He caused physical injury to his passenger and significant property damage to multiple cars. The hearing judge, citing *Segretti v. State Bar* (1976) 15 Cal.3d 878, 888 and *In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469, 474-475, found moral turpitude related to the hit-and-run conviction because Dubin suggested a third person may have been driving and encouraged Frease to be untruthful to police.

We find the record does not support by clear and convincing evidence that Dubin encouraged Frease to be less than forthcoming with the police about his role in the accident. Notably, Frease testified Dubin did not ask her to lie for him.<sup>10</sup> In addition, when Dubin talked to Frease, he knew that she had already told the police he was the driver, and, within two days of the accident, he hired an attorney who contacted the police regarding the accident. We reject OCTC's characterization that the conviction involved moral turpitude because Dubin fled the scene of an accident to avoid criminal liability and an impact on his career. Sufficient evidence

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<sup>9</sup> We do not rely solely on the assault to establish moral turpitude related to the spousal battery conviction. We acknowledge that domestic violence is no longer conduct that is ignored or tolerated as it was in past decades. Societal norms have, in fact, changed for the better. Considering the evidence presented in the instant matter, however, the attack itself would not be enough to support a moral turpitude finding. (Cf. *In the Matter of Smart* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 713 [violent and excessive misconduct involved moral turpitude where respondent refused to let victim leave and pinned victim down while respondent was naked, giving victim cause for fear, along with reckless firing of handgun at others].) Here, the attack did not result in significant injury to T.F., and, besides T.F.'s testimony, no corroborating evidence was presented regarding her emotional injuries or the extent of past abuse.

<sup>10</sup> Additionally, as discussed *ante*, Detective Wood testified that, if he relied only on his interview with Frease, he would not conclude that Dubin had asked Frease to lie for him.

does not exist to support such a conclusion, given that Dubin was intoxicated at the time of the accident and then passed out in a nearby driveway shortly after leaving. Therefore, we do not find that the hit-and-run conviction involved moral turpitude. Dubin stipulated that the conviction constituted other misconduct warranting discipline. We agree based on our review of the record. He drove in a residential area after drinking, crashed into multiple cars, and left the scene of the accident. These circumstances reflect poorly on Dubin's judgment and the legal profession and warrant discipline. (See *In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406, 416 [discipline system responsible for preserving integrity of legal profession as well as protection of public].)

**D. DUI and Simple Possession of a Controlled Substance (SBC-21-C-30810)**

The parties stipulated that the February 9, 2020 DUI did not involve moral turpitude, but constituted other misconduct warranting discipline. The hearing judge agreed. This conclusion is supported by the record and we affirm. (*In re Kelley, supra*, 52 Cal.3d at p. 495 [circumstances surrounding two DUI convictions established alcohol abuse problem warranting professional discipline].)

**IV. AGGRAVATION AND MITIGATION**

Standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct<sup>11</sup> requires OCTC to establish aggravating circumstances by clear and convincing evidence. Dubin bears the same burden to prove mitigation. (Std. 1.6.)

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<sup>11</sup> All further references to standards are to this source.

## **A. Aggravation**

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

“Multiple acts of wrongdoing” are an aggravating factor. (Std. 1.5(b).) The hearing judge found substantial aggravating weight for Dubin’s multiple acts of wrongdoing based on Dubin’s three separate criminal conviction matters covering conduct spread over 13 months and that he never made any efforts to end his drug and alcohol abuse during that time. OCTC supports the judge’s finding. Dubin argues that less weight is appropriate because he did attempt, albeit unsuccessfully, to end his substance abuse through self-help methods during the 13-month period.

We agree that Dubin’s misconduct sufficiently establishes multiple acts of misconduct under this standard. However, as only three events occurred in a little over a year, we assign only limited weight to this factor. (See *In the Matter of Amponsah* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 646, 653 [modest aggravating weight for three acts of wrongdoing.]; *In the Matter of Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852 [limited weight for three ethical violations].)

### **2. Significant Harm to the Client, the Public, or the Administration of Justice (Std. 1.5(j))**

“Significant harm to the client, the public, or the administration of justice” is an aggravating factor. (Std. 1.5(j).) The hearing judge assigned substantial aggravating weight for the harm Dubin caused T.F., Frease, and to the owners of the vehicles he damaged in the hit-and-run collision. OCTC agrees. Dubin challenges this finding, arguing for no aggravation.

Dubin’s actions caused emotional harm to T.F.—she underwent months of therapy after the assault. Her testimony shows that the assault continues to affect her emotional wellbeing. The assault also resulted in physical injuries to T.F. These factors constitute significant harm



and were not considered in determining that the spousal battery conviction involved moral turpitude. (See *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 68 [improper to consider factual findings in aggravation already considered in finding moral turpitude].) Dubin's actions were serious and resulted in harm to T.F. and we assign substantial weight under standard 1.5(j).

However, we do not assign additional aggravation for the injuries caused to Frease and the property damage in the hit-and-run accident. Dubin pleaded to hit-and-run with injury, hit-and-run with property damage, and reckless driving with bodily injury. Therefore, we do not consider the harm to Frease and the other cars Dubin crashed into as separate aggravating circumstances. (*In the Matter of Burns, supra*, 3 Cal. State Bar Ct. Rptr. at p. 414 [duplicative to consider harm to victim as separate aggravating circumstance when plea necessarily involved severe injury].) These facts and circumstances are nevertheless considered *post* in determining the degree of discipline. (*Ibid.*)

### **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 did not find aggravation for indifference, but OCTC argues on review that we should find substantial weight for Dubin's indifference because he suggested Frease lie to the police and blamed his misconduct on his substance abuse. As stated *ante*, we do not find clear and convincing evidence that Dubin suggested Frease lie. In addition, throughout the disciplinary proceedings, Dubin has been remorseful. He has taken steps to address his addiction issues. Therefore, we do not assign any aggravation under this factor.

#### **4. Lack of Candor (Std 1.5(l))**

“Lack of candor and cooperation to the victims of the misconduct or to the State Bar during disciplinary investigations or proceedings” is an aggravating factor. (Std. 1.5(l).) The hearing judge did not find aggravation for lack of candor, but OCTC asserts on review that Dubin lied at trial when he denied that multiple instances of domestic violence occurred prior to the January 7, 2019 incident and that he asked Frease to make false statements. Clear and convincing evidence to support OCTC’s claims does not exist, and we thus do not assign aggravation under standard 1.5(l).

#### **B. Mitigation**

##### **1. Lack of Harm to the Client, the Public, or the Administration of Justice (Std. 1.6(c))**

“Lack of harm to the client, the public, or the administration of justice” is a mitigating factor. (Std. 1.6(c).) The hearing judge found minimal weight in mitigation for this factor because Dubin’s acts of wrongdoing did not harm any clients. Dubin does not challenge this finding, and OCTC argues Dubin should not receive any mitigation under this factor.

We agree with OCTC that mitigation for lack of harm is not appropriate here as Dubin caused significant harm to T.F. (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].) His other convictions involved physical harm and property damage. He has not established by clear and convincing evidence that he deserves mitigation under standard 1.6(c), and we do not assign any.

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

Extreme emotional difficulties or physical or mental disabilities suffered by the attorney at the time of the misconduct may qualify for mitigation. However, standard 1.6(d) provides that

such difficulties or disabilities cannot be “the product of any illegal conduct by the lawyer, such as illegal drug or substance abuse.” The hearing judge did not assign any mitigation under this standard, which Dubin challenges on review. Dubin testified he abused cocaine, an illegal drug, which contributed to his misconduct. Dr. Passaro also testified cocaine played a role in Dubin’s behavior. He was convicted of cocaine possession, and this illegal drug use disqualifies him from any mitigation under standard 1.6(d). Further, he has not established that his addiction qualifies as a “compelling mitigating factor justifying less severe discipline.” (*Twohy v. State Bar* (1989) 48 Cal.3d 502, 514.)

### **3. Cooperation (Std. 1.6(e))**

“Spontaneous candor and cooperation displayed to the victims of the misconduct or the State Bar” is a mitigating factor. (Std. 1.6(e).) The hearing judge assigned moderate weight in mitigation for this factor based on the detailed stipulation as to facts and admission of documents, which conserved court resources. Dubin also admitted in the stipulation that his convictions involved misconduct warranting discipline.

We reject OCTC’s argument on review that Dubin should not receive any mitigation, as we do not find that he gave false testimony at trial. We agree with Dubin that more weight in mitigation is due for his cooperation because he admitted that the facts and circumstances underlying his convictions constituted misconduct. Even though he did not admit that the spousal battery conviction involved moral turpitude, we find substantial mitigation is appropriate here given his admissions and the detailed stipulation. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive weight in mitigation for those who admit culpability and facts].)

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

“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” is a mitigating factor. (Std. 1.6(f).) Given character witness statements, which did not demonstrate that the declarants were aware of Dubin’s continued consumption of alcohol, the hearing judge questioned the declarants’ veracity and knowledge about Dubin’s character. The judge assigned limited weight for the evidence he presented. Both OCTC and Dubin challenge this finding: OCTC argues for nominal weight and Dubin asserts that more weight is appropriate.

Fiancé Megan Blanda, friend Joseph R. Costanzo, Dubin’s mother, Clark from the Recovery Center, and Dr. Passaro testified at trial regarding Dubin’s character. Additionally, eight character reference letters were admitted from declarants who did not testify. In total, four of the witnesses were attorneys, and we give serious consideration to their testimony.<sup>12</sup> (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [attorneys have strong interest in maintaining honest administration of justice].) One attorney had worked on several cases with Dubin and praised his work as an attorney.

Dubin’s witnesses represented a wide range of references in the legal and general communities; were aware of his misconduct, addiction issues, and criminal convictions; and most had known Dubin for a considerable amount of time. They described him as loyal, congenial, honest, and hardworking. They attributed his substance abuse to the dramatic change in his personality and demeanor at the time of his crimes. The witnesses also discussed Dubin’s

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<sup>12</sup> We differ with the hearing judge’s determination that Dubin’s mother (Holton), who is an attorney, was not a credible witness because she sent a text message during her testimony and, therefore, “did not seem to take the proceeding seriously.” We find that this fact does not take away from her credibility regarding her assessment of Dubin’s character. Holton apologized to the judge for her actions. The record does not support an adverse credibility determination. (See *In the Matter of DeMassa, supra*, 1 Cal. State Bar Ct. Rptr. at p. 748.)

rehabilitation efforts and commitment to recovery. Some witnesses did not mention that Dubin continues to occasionally drink alcohol; however, Costanzo and Blanda knew that Dubin did not abstain from alcohol and discussed it in their testimony. The positive statements made about Dubin's good character are not altered by the failure to acknowledge his continued alcohol use. Statements from two of Dubin's friends were particularly compelling as they had known him for nearly 20 years and were assured that he has learned from his mistakes and is committed to recovery. For all of these reasons, we find Dubin's character evidence warrants substantial mitigation. (See *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 591-592 [significant mitigation for three good character witnesses (two attorneys and fire chief) who had long-standing familiarity with respondent and broad knowledge of good character, work habits, and professional skills].)

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

"Prompt objective steps, demonstrating spontaneous remorse and recognition of the wrongdoing and timely atonement" can be considered in mitigation. (Std. 1.6(g).) The hearing judge found substantial weight for this factor because Dubin completed a 75-day in-patient rehabilitation program, a 12-month out-patient program, and expressed shame and remorse for his actions. OCTC contends mitigation is not appropriate for this circumstance, again asserting that Dubin asked Frease to lie to the police and that Dubin continues to consume alcohol. Dubin does not challenge the judge's finding. Dubin's occasional consumption of alcohol does not factor into our analysis of the remorse he has shown and the steps he has taken towards recovery. We agree with the judge that substantial weight is appropriate here considering Dubin volunteered for a lengthy in-patient treatment program followed by a 12-month out-patient program when he was only ordered to complete a three-month program, has continued with therapy, and has consistently expressed remorse and a willingness to change his behavior. His

witnesses corroborated that he is remorseful. He has recognized that his actions were wrong, pleaded guilty, and admitted his convictions involved conduct warranting discipline. For these reasons, we assign substantial weight in mitigation under standard 1.6(g).

#### **6. Remoteness in Time and Subsequent Rehabilitation (Std. 1.6(h))**

In mitigation, we may also consider the remoteness in time of the misconduct and subsequent rehabilitation. (Std. 1.6(h).) The hearing judge did not assign mitigation under this factor, but, due to Dubin's rehabilitation efforts, we find a discussion of this standard is appropriate. Dubin's misconduct occurred from January 2019 through February 2020. It has now been three years since his last misconduct and when he entered an in-patient rehabilitation program. Three years is not a particularly lengthy period of time, but it is entitled to some consideration. (*Amante v. State Bar* (1990) 50 Cal.3d 247, 256.) He has been an active attorney during this time and has had no other disciplinary issues since. During this time, he underwent extensive rehabilitation treatment and continues bimonthly cognitive behavioral therapy. No evidence of continued drug abuse exists. He has demonstrated that he is committed to growth and change and has fully acknowledged the wrongfulness of his actions, which is an "essential step towards rehabilitation." (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.)

However, we are concerned that he continues to occasionally drink alcohol, an activity substantially connected to his prior drug abuse, which resulted in three separate criminal conviction cases. Dr. Passaro testified alcohol was integral to Dubin's addiction pattern of "down regulating" with alcohol and "up regulating" with stimulants. Further, the director of The Recovery Center stated that she was concerned that Dubin does not have a sponsor to aid him in remaining sober. For these reasons, we cannot give full mitigating weight for the remoteness of his misconduct and rehabilitation efforts. Therefore, we assign moderate mitigation for Dubin's

rehabilitation efforts. (See *Howard v. State Bar* (1990) 51 Cal.3d 215, 222 [petitioner has heavy burden to demonstrate effective rehabilitation justifying relief from or reduction of discipline].)

#### **V. FIFTEEN-MONTH ACTUAL SUSPENSION IS APPROPRIATE DISCIPLINE**

We begin our disciplinary analysis by acknowledging that our role is not to punish Dubin for his criminal conduct as that has already occurred in the criminal justice system. Our role is to recommend professional discipline. (*In re Brown* (1995) 12 Cal.4th 205, 217 [aim of attorney discipline is not punishment or retribution; it is imposed to protect the public, to promote confidence in legal system, and to maintain high professional standards]; std. 1.1.) In determining the appropriate discipline, we follow the standards whenever possible and balance all relevant factors, including mitigating and aggravating circumstances, on a case-by-case basis to ensure the discipline imposed is consistent with its purpose. (*In re Young* (1989) 49 Cal.3d 257, 266, 267, fn. 11.)

Our discipline analysis begins by identifying which standard presents the most severe sanction for the misconduct. (Std. 1.7(a) [most severe sanction must be imposed where multiple sanctions apply].) Because moral turpitude has been established in one of Dubin's three criminal referral cases, standard 2.15(b) applies, which calls for disbarment or actual suspension as the presumed sanction. In addition, we can impose a lesser or greater sanction depending upon the nature and weight of the aggravating and mitigating circumstances. (Std. 1.7(b), (c).) Finally, as to the broad range of discipline suggested in standard 2.15, we consult case law for guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.)

We agree with the hearing judge that an actual period of suspension is necessary to meet the discipline goals set forth in standard 1.1. As discussed *post*, we find that 15 months of actual suspension is a sufficient sanction. Due to Dubin's rehabilitation efforts, it is not necessary that

he prove rehabilitation, fitness to practice, and present learning and ability in the general law under standard 1.2(c)(1) as the hearing judge recommended.

Dubin's dangerous and reckless conduct while abusing multiple substances for more than a year as a new admittee warrants significant discipline. He abused his wife, causing physical and emotional harm, and then was dishonest with the investigating officers. Dubin repeatedly drove while impaired and was convicted for a hit-and-run, which involved injury to a passenger and property damage to three other vehicles. The injured passenger stayed with the car, while Dubin left the scene. This incident did not stop him as he subsequently crashed into another car when he was driving under the influence of drugs and alcohol, resulting in a further conviction for DUI and cocaine possession. During this 13-month period, he repeatedly placed the public at risk of harm. Further, his alcohol and drug convictions, while not directly related to the practice of law, did involve potential harm to the clients he represented. He claims his substance abuse did not affect his work, yet the record shows that his personality was totally different during this time, and he was prone to anger, violence, and recklessness.

He has presented sufficient evidence demonstrating his rehabilitation efforts, his commitment to change, and his desire to prevent this type of misconduct in the future. We found moral turpitude related to only one of his misdemeanor convictions. After the February 2020 DUI incident, he promptly entered in-patient rehabilitation treatment for 75 days, then pleaded guilty to the misdemeanors at issue.

OCTC's request for disbarment is excessive and not necessary as demonstrated by the record. We reject OCTC's argument in support of disbarment that Dubin has displayed a "deep lack of understanding of the duties of an attorney." Rather, Dubin has shown cooperation in these proceedings, remorse, and voluntary and continued treatment for his addiction to address the substance abuse related to his misconduct. The cases OCTC cites in support of disbarment



are not analogous to the instant matter. *In the Matter of Peters* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 536 involved death and permanent, serious bodily injury, which is not present here. Nor is soliciting false statements and filing numerous false court documents as found in *In the Matter of Romano* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391. The misconduct found in *Lebbos v. State Bar* (1991) 53 Cal.3d 37—multiple acts of moral turpitude and dishonesty, a pattern of abuse of judicial officers and the court system, commingling, altering court documents, concealing assets, and giving false deposition testimony—is also not comparable to Dubin’s misconduct. The record does not show that Dubin attempted to obstruct justice or interfere with the hit-and-run investigation. Further, a pattern of dishonesty was not established. Therefore, these cases do not support Dubin’s disbarment.

*In the Matter of Guillory* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 402 is also distinguishable from this case. Guillory had four DUI convictions, attempted to use his position as a deputy district attorney to avoid arrest, and was dishonest with the police. He violated the terms of his probation from his first DUI by driving on a suspended license. He did not learn from his misconduct and failed to recognize his wrongdoing. We recommended a two-year actual suspension and proof of rehabilitation under standard 1.2(c)(1). Unlike Guillory, Dubin has shown that he is “on a path to rehabilitation.” (*Id.* at p. 411.) Therefore, an actual suspension less than two years is appropriate in this matter.

Dubin’s argument for a 60-day actual suspension is also not supported. He cites *In the Matter of Caplin, supra*, 5 Cal. State Bar Ct. Rptr. 768, a case involving a 30-day actual suspension for a single DUI involving moral turpitude. Dubin was convicted of 10 misdemeanors in three separate cases, far greater misconduct than Caplin. A sanction greater than 60 days is appropriate. In addition, Dubin’s reliance on an out-of-state case is unpersuasive. (*State of Oklahoma ex rel. Oklahoma Bar Association v. Corrales* (Okla. 2012) 280 P.3d 968.)

The Supreme Court of Oklahoma imposed a public reprimand for misconduct involving domestic violence and assault. Dubin's convictions were more extensive, and California case law calls for actual suspension for Dubin's misconduct.

Dubin committed serious misconduct that led to three criminal conviction matters, one involving moral turpitude for attacking his wife and lying to police, one for a hit-and-run accident that caused injury and property damage, and another for drug possession and a DUI that resulted in a collision. Our discipline recommendation must take into consideration current societal morals regarding the seriousness of domestic violence—we cannot view these as lesser offenses as courts have done in the past, especially in light of Dubin's dishonesty about the assault. The other two conviction matters did not constitute moral turpitude, but rather other misconduct warranting discipline. All his convictions were misdemeanors—none were felonies. We find it appropriate to give a lesser sanction than the hearing judge due to not finding moral turpitude surrounding the hit-and-run accident and finding less aggravation and more mitigation than the judge. Dubin's mitigation heavily outweighs the established aggravation, which also supports a lesser sanction. Therefore, we find that a 15-month actual suspension is appropriate here. Due to our concerns regarding Dubin's alcohol use, we find that probation conditions requiring abstinence from alcohol will aid in Dubin's recovery and help to prevent similar misconduct in the future.

## **VI. RECOMMENDATIONS**

We recommend that Adam Seth Dubin, State Bar Number 320576, be suspended from the practice of law for two years, that execution of that suspension be stayed, and that he be placed on probation for two years with the following conditions:

- 1. Actual Suspension.** Dubin must be suspended from the practice of law for the first 15 months of the period of his probation.

- 2. Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions.** Dubin must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of probation.
- 3. Review Rules of Professional Conduct.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Dubin 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 Dubin's first quarterly report.
- 4. Complete E-Learning Course Reviewing Rules and Statutes on Professional Conduct.** Within 90 days after the effective date of the Supreme Court order imposing discipline in this matter, Dubin must complete the e-learning course entitled "California Rules of Professional Conduct and State Bar Act Overview." Dubin must provide a declaration, under penalty of perjury, attesting to Dubin's compliance with this requirement, to the Office of Probation no later than the deadline for Dubin's next quarterly report due immediately after course completion.
- 5. 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, Dubin 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. Dubin 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.
- 6. Meet and Cooperate with Office of Probation.** Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Dubin must schedule a meeting with his assigned Probation Case Coordinator 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, Dubin may meet with the Probation Case Coordinator in person or by telephone. During the probation period, Dubin 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.
- 7. State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court.** During Dubin's probation period, the State Bar Court retains jurisdiction over him to address issues concerning compliance with probation conditions. During this period, Dubin 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 State Bar record address, as provided above. Subject to the assertion of applicable privileges, Dubin must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

## 8. Quarterly and Final Reports.

- a. **Deadlines for Reports.** Dubin 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, Dubin 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.** Dubin 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.** Dubin 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. Dubin is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

9. **State Bar Ethics School.** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Dubin 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 he 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, Dubin will nonetheless receive credit for such evidence toward his duty to comply with this condition.

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

- 11. Mental Health Condition.** Dubin must obtain psychiatric or psychological counseling or treatment to address addiction issues, at his own expense, from a duly licensed psychiatrist, psychologist, clinical social worker, or marriage and family therapist (mental health professional), and must provide such licensed individual with a copy of this opinion. However, if such mental health professional determines at any time that no additional counseling or treatment is necessary, Dubin may furnish a written statement from the mental health professional to that effect to the Office of Probation. He must commence counseling or treatment no later than 30 days after the effective date of the Supreme Court's order imposing discipline in this proceeding and must comply with any counseling or treatment plan developed by the mental health professional. Dubin must certify under penalty of perjury in each quarterly report and in the final report submitted to the Office of Probation that he has obtained and complied with such psychiatric or psychological counseling or treatment plan during the period covered by such report. Within 60 days of written notice from the Office of Probation, he must provide satisfactory evidence of such compliance to the Office of Probation. The Office of Probation may require that such satisfactory evidence be a letter from the mental health professional on such individual's letterhead, or on a form approved by the Office of Probation, that Dubin has obtained such psychiatric or psychological counseling or treatment and that he has complied with a counseling or treatment plan during the period specified in the written notice.
- 12. Abstinence.** Dubin must abstain from using alcoholic beverages and must not use or possess any illegal drugs or illegal drug paraphernalia. In each quarterly and final report submitted to the Office of Probation, he must report compliance with this condition.
- 13. Abstinence Program Meetings.** Dubin 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. Dubin must contact the Office of Probation and obtain written approval for the program he wishes to select prior to receiving credit for compliance with this condition for attending meetings of such group. He 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, Dubin may not sign as the verifier of such attendance.
- 14. Laboratory Testing.** Within 45 days after the effective date of the Supreme Court order imposing discipline in this matter, Dubin must select a licensed medical laboratory or laboratories acceptable to the Office of Probation and having the capability to provide observed testing of Dubin as specified below. Dubin must provide a copy of this condition and the Office of Probation Lab Test Information Sheet to each and every laboratory he uses to perform any portion of the testing required to comply with this probation condition. In the event that Dubin subsequently is informed or learns that any laboratory, previously approved by the Office of Probation to conduct the testing set forth below, is no longer willing or able to perform such testing in the manner set forth below, he must (1) notify the Office of Probation in writing of that fact within 72 hours after acquiring such information, and (2) select a new licensed medical laboratory, acceptable to the Office of Probation and capable of providing observed testing of Dubin as specified below, sufficiently promptly that he will be able to continue to comply timely with the testing requirements set forth below.

After the expiration of the first 60 days of Dubin's probation, he must be tested monthly, at his expense, within the first five days of each remaining calendar month of his probation to show that he has abstained from the use of alcohol and drugs. This testing will include an ethyl glucuronide (EtG) test and a ten-panel drug test (or equivalent tests accepted and approved in advance by the Office of Probation) for drugs and other substances specified by the Office of Probation, including but not necessarily limited to alcohol, amphetamines, methamphetamines, barbiturates, benzodiazepines, cocaine metabolite, opiates, oxycodone, marijuana, methadone, and propoxyphene. These tests must be performed by the laboratory pursuant to United States Department of Transportation guidelines, and all testing must be observed. Dubin must comply with all laboratory requirements regarding specimen collection and the integrity of specimens.

In addition to the monthly testing, the Office of Probation may require Dubin to undergo up to one additional test per month, as described above, during the period of his probation, at times selected by the Office of Probation on a random basis. During the period of probation, Dubin must maintain with the Office of Probation a current telephone number and email address at which he can be reached. Such tests are to be performed by the laboratory no later than eight hours after the Office of Probation's email and telephone call to Dubin that the Office of Probation requires such additional testing.

For each test, Dubin must instruct the laboratory to provide a screening report directly to the Office of Probation, at his expense, that contains an analysis of the above tests, shows that each tested sample was properly obtained, and demonstrates that the above testing requirements were satisfied. Failure to provide, or revocation of, such instruction for a particular required test may be deemed a failure to comply with this condition. Each screening report must be provided directly to the Office of Probation at or before the time that its results are disclosed to Dubin and within 10 days after the time that the tested sample is provided to the laboratory. Each report must record the date and time of the testing, list all of the substances for which he was tested, and show the individual results for each such substance. An overall synopsis, e.g., "negative," with no specific breakdown, is not sufficient. In the event a previously selected and approved laboratory fails to provide the Office of Probation with test results or screening reports meeting the above requirements within two weeks of testing, the Office of Probation may require Dubin to choose a different licensed medical laboratory, approved by the Office of Probation, for future testing.

- 15. Proof of Compliance with Rule 9.20 Obligation.** Dubin 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 Dubin 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.

## **VII. MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION**

We further recommend that Adam Seth Dubin 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 Adam Seth Dubin 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.

## **VIII. CALIFORNIA RULES OF COURT, RULE 9.20**

We further recommend that Adam Seth Dubin be ordered to comply with 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 calendar days, respectively, after the date the Supreme Court order imposing discipline in this matter is filed.<sup>13</sup> (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45 [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].) Failure to do so may result in disbarment or suspension.

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<sup>13</sup> Dubin 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).)

## **IX. MONETARY SANCTIONS**

We further recommend that Adam Seth Dubin be ordered to pay monetary sanctions to the State Bar of California Client Security Fund in the amount of \$2,000 in accordance with Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar. The hearing judge reasoned that sanctions in the amount of \$2,500 were appropriate because of the “nature and seriousness of [Dubin’s] misconduct, which evidenced moral turpitude and caused harm to his wife and Frease.”

Sanctions are appropriate based upon the nature, circumstances, and harm Dubin caused while abusing various substances. However, the maximum sanction is not warranted under these facts and circumstances. Dubin’s request, however, for a \$500 or \$1,000 sanction is too low. Considering the seriousness of his misconduct, along with the fact that he has taken steps toward recovery, we find that a \$2,000 monetary sanction is appropriate here. Monetary sanctions are enforceable as a money judgment and may be collected by the State Bar through any means permitted by law. Monetary sanctions must be paid in full as a condition of reinstatement or return to active status, unless time for payment is extended pursuant to rule 5.137 of the Rules of Procedure of the State Bar.

## **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.

McGILL, J.

WE CONCUR:

HONN, P. J.

RIBAS, J.