PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed June 29, 2017

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. 14-O-04213
	)	
DARRYL WAYNE GENIS,	)	OPINION
	)	
A Member of the State Bar, No. 93806.	)	
	)	

In this appeal brought by the Office of Chief Trial Counsel of the State Bar (OCTC), we consider a hearing judge's decision to impose an admonition in lieu of discipline for an attorney's acts of deceit to a superior court judge—a proven violation of Business and Professions Code section 6068, subdivision (d).[1] As we shall find, Darryl Wayne Genis was asked by a superior court judge four consecutive times, in part and collectively, whether he had touched, moved, or hid opposing counsel's document during a trial recess. Genis repeatedly, and then categorically, denied the allegations. Videotape evidence from the courtroom showed otherwise and demonstrated that Genis had not been honest in his responses to the judge.

In these proceedings, the hearing judge admonished Genis, an experienced criminal defense attorney admitted to practice law in 1980, after concluding that Genis's false statements were unintentional and resulted in no significant harm. OCTC contends the contrary is true. It argues that Genis acted deliberately to conceal a material fact from the court, and seeks a

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

minimum of 90 days' actual suspension. Genis did not cross-appeal, but in his responsive brief on review, he challenges culpability and requests dismissal of the entire proceeding.

We independently review the record (Cal. Rules of Court, rule 9.12) and affirm the hearing judge's culpability finding. However, we find the misconduct was intentional and harmful to the administration of justice and that the hearing judge erred in both his analysis and in not imposing discipline. Culpability under section 6068, subdivision (d), must be supported, as it is here, by knowing and intentional conduct (which necessarily involves moral turpitude), and applicable rules have long precluded resolution of such a matter by admonition. (Rules Proc. of State Bar, rule 5.126.)[2] Even if an admonition were a permitted option, we recommend discipline of 60 days' actual suspension as a fair and appropriate sanction given the facts of this case, the standards, relevant case precedent, and Genis's prior 30-day actual suspension.

I. PROCEDURAL BACKGROUND

On March 10, 2016, OCTC filed a two-count Notice of Disciplinary Charges (NDC) against Genis, and charged him with willful violations of: (1) section 6068, subdivision (d) (seeking to mislead a judge); and (2) section 6106 (moral turpitude/misrepresentation through knowledge or gross negligence). On April 1, 2016, Genis filed a response to the NDC and denied the charges.

On July 7, 2016, the day of trial, the parties filed a Joint Stipulation as to Facts and Admission of Documents. After a one-day trial and posttrial briefing, the hearing judge issued his decision on October 12, 2016. He found Genis culpable of seeking to mislead a judge. He dismissed the moral turpitude count, however, and issued an admonition in lieu of discipline.

[2] All further references to rules are to the Rules of Procedure of the State Bar unless otherwise noted.

II. FACTUAL BACKGROUND[3]

A. Summary

The hearing judge's factual findings are, for the most part, undisputed by the parties and supported by the record. In sum, a prosecutor alleged that on July 9, 2014, Genis "fiddled" with his papers during a court recess and then rearranged and hid a document from him. The prosecutor promptly reported this to the trial judge. The judge then asked Genis in a series of four consecutive questions whether he touched, moved, or hid any of the prosecutor's documents, and each time, Genis denied the allegations. On the fourth inquiry, Genis "categorically" denied any wrongdoing. The trial judge later reviewed a videotape of the courtroom that revealed to him that Genis did what he denied doing. We adopt these findings as discussed in further detail below.

B. Facts

In 2014, Genis represented the defendant in a driving under the influence (DUI) case in Santa Barbara Superior Court. Deputy District Attorney Justin Greene was the prosecutor. Genis and Greene had been opposing counsel in several other criminal trials, and although they tried to maintain a professional working relationship, there was undeniable animosity and distrust between them.

The DUI trial was assigned to Judge Brian E. Hill in Department 2. The courtroom was set up so that the prosecutor's and the defense counsel's tables abutted; in the middle was a tabletop podium and a portable exhibit box that could be moved off-center depending on which side was using it. At the far end of each counsel table was a clear, plastic mat (blotter), under

[3] The factual background is based on the pretrial written stipulation, trial testimony, documentary evidence, a July 9, 2014, videotape recording of Department 2 of the Santa Barbara Superior Court, and factual findings by the hearing judge, which are entitled to great weight. (Rule 5.155(A).)

which counsel could find court-issued notices, including schedules and calendars. The courtroom was also videotaped when in use.

Trial commenced on July 9, 2014. Greene called Dean Warden, an expert criminologist, to testify for the prosecution. During Genis's cross-examination of this witness, Greene found it helpful to refer to a laminated placard, given to him by a former supervisor, which listed numerous evidentiary objections.

During the morning recess, Warden remained seated in the witness box.[4] Greene stepped out of the courtroom, but left his belongings on the prosecutor's table, including his open laptop computer, his trial binders, and his laminated placard. Greene testified he was fastidious with his papers, keeping them in the binders and not loose on the table. He also testified that no one else was sitting with him at the prosecutor's table that day.

During the recess, Genis walked over to Greene's area three times.[5] On each occasion, he looked at Greene's materials, and in one instance, he took out his cell phone and appeared to take pictures.[6] On his third visit to Greene's table, he picked up Greene's laminated placard, looked at it, and then placed it under several papers under the blotter at the end of the prosecutor's table.

At some point, Greene reentered the courtroom and spent the remainder of the recess in the back of the room reviewing emails and texts on his phone.[7]

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[4] Warden testified that the witness box was about 10 feet away from the counsel tables.

[5] Genis testified that nervous energy in anticipation of cross-examining the prosecution's witness caused him to pace around the courtroom during the break.

[6] Genis testified that he used his phone to access a magnifier application that allowed him to better read and examine the items.

[7] Greene testified that Genis had been rude to him earlier that morning, and that Greene did not want to engage with him off the record or make eye contact, so he kept his head down and "purposely [drew] [his] attention to something other than Mr. Genis."

Trial resumed and Genis continued with his cross-examination of Warden. Greene began looking for, but could not find, his placard of objections. During the lunch break, Greene mentioned the missing placard to Warden. Warden told him that during the morning recess, he saw Genis pick up a sheet of paper from Greene's side of the table, look at it, and then place it under the blotter.

After lunch, when all parties were present and back on the record, Greene brought the matter to the attention of Judge Hill. When Greene began his address, he still had not located the missing placard, but he described the document to Judge Hill and then reported what Warden had told him. While he was talking, he began lifting items on his table and searching for the placard; when he lifted the blotter, he discovered it under a piece of paper in the lower right-hand corner, which he also reported to the judge:

> Your Honor . . . it's a laminated card that I have, it's about half a page of paper that I use for objections . . . [.] [W]hen I came back from [the] break it was no longer there. It is my understanding that Mr. Genis during [the] break came over, was fiddling around with my stuff and put it underneath this piece of paper. And, I find that highly deplorable that council [*sic*] in this situation would attempt to gain a tactical advantage over [another] in such a deplorable manner. So I just wanted to bring it to your attention.

Judge Hill asked Genis to respond, and Genis retorted, "Does that deserve a response?"

A colloquy ensued. Judge Hill asked Genis twice whether he touched any of Greene's materials. Genis answered "No." Judge Hill then asked if Genis hid or made any effort to hide Greene's document, and again Genis answered "No." On the fourth exchange, the following conversation transpired:

> Court: So we can review it . . . [Mr. Greene], you're accusing Mr. Genis of going to your placard and touching it and hiding it underneath . . . the matt [*sic*] . . . .
>
> Greene: Well, that is what I suspected and then when I spoke to Mr. Warden, Mr. Warden when he was up there noticed Mr. Genis playing around with this and sliding it underneath something. And low [*sic*] and behold when I looked for it underneath . . . [.]

Court: And you're [Genis] saying that you're categorically denying having done that.

Genis: I am categorically denying it.

At the conclusion of the trial, Judge Hill reviewed the videotape of the morning recess, which revealed to him that: "Mr. Genis approached the prosecutor's counsel table and surveyed his surroundings. He appeared to read and rearrange some documents, then removed his cell phone and photographed something on the prosecutor's table. Mr. Genis then proceeded to hide a document under a larger stack of papers." On July 17, 2014, Judge Hill memorialized these findings in an Order to Show Cause in re Contempt (OSC) and charged Genis with abusing the process by: (1) willfully and deliberately deceiving the court; (2) violating a prior court order by photographing the prosecutor's notes during a trial recess; and (3) hiding and/or rearranging the prosecutor's notes with the intent to vex, annoy, and harass and/or interfere with the prosecutor's ability to litigate the case.

On August 1, 2014, Judge Donna D. Geck presided over Genis's contempt hearing. Genis did not testify, but his attorneys addressed the charges and raised a host of technical arguments. At the end of the hearing, Judge Geck ruled from the bench, and "reluctantly" dismissed the criminal contempt charges, concluding that they had not been proven beyond a reasonable doubt. Judge Geck made no specific findings, and there is no evidence in the record that her ruling was reduced to a written order.

III. STANDARD OF REVIEW

Judge Geck's dismissal of the contempt OSC does not bar the instant attorney disciplinary proceeding based on the same underlying facts. (See *Wong v. State B*ar (1975) 15 Cal.3d 528, 531-532 [State Bar is not bound by acquittal or dismissal of criminal charges against an attorney]; *Emslie v. State Bar* (1974) 11 Cal.3d 210, 224.) However, on review, Genis argues that Judge Geck's dismissal should be entitled to a strong presumption of validity in this

proceeding. We disagree for several reasons. First, the charges raised by OCTC against Genis are more circumscribed than Judge Hill's contempt charges and include only whether Genis sought to mislead a judge and thereby committed an act of moral turpitude. Second, we must review whether Genis is culpable under the clear-and-convincing evidentiary standard (see rule 5.103), which requires a lower quantum of proof than the beyond-a-reasonable-doubt standard.[8] And finally, while the purpose of criminal contempt proceedings is to punish the guilty, the goal of attorney disciplinary proceedings is to protect the public, the courts, and the legal profession. (See *Zitny v. State Bar* (1966) 64 Cal.2d 787, 790, fn. 1 [as between attorney disciplinary and criminal proceedings, differing parties, required quantum of proof, and purposes].)

IV. CULPABILITY

A. Count One: Seeking to Mislead a Judge (§ 6068, subd. (d))

Genis was charged in the NDC with willfully seeking to mislead a judge when he falsely denied to Judge Hill that he touched the prosecutor's desk materials.[9] The hearing judge found Genis violated section 6068, subdivision (d), by falsely denying the allegations, but he found the statements were not made "deliberately or intentionally or with knowledge of their falsity." These findings are incongruous, as a violation of section 6068, subdivision (d), must be supported by knowledge of the falsity and an intent to deceive.

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[8] 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.)

[9] Genis argues that the term "desk materials" was not part of any colloquy with Judge Hill, and that the NDC is therefore "incomplete, vague, and out-of-context." We note that Genis did not raise this objection in his response to the NDC. Further, our rules provide for notice pleading and require only that the NDC contain facts describing the violation in sufficient detail to permit preparation of an attorney's defense. (Rule 5.41(B)(2).) We find the term "desk materials" adequately encompassed the laminated placard in question (which was located on Greene's desk with his materials), and provided Genis with sufficient notice of the charges to prepare his defense.

The Supreme Court long ago held that "[t]he conduct denounced by [section 6068, subdivision (d),] is not the act of an attorney by which he successfully misleads the court, but the presentation of a statement of fact, known by him to be false, which tends to do so. It is the endeavor to secure an advantage by means of falsity which is denounced." (*Pickering v. State Bar* (1944) 24 Cal.2d 141, 144-145.) The Supreme Court further explained that whether an attorney has violated section 6068, subdivision (d), "depends first upon whether his representation to the . . . court was in fact untrue, and secondly, whether he knew that his statement was false and he intended thereby to deceive the court." (*Vickers v. State Bar* (1948) 32 Cal.2d 247, 252-253; accord, *In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166, 174.)

Judge Hill found that Genis was intentionally and deliberately false in his responses to direct inquiries about the missing placard, and we find Judge Hill's determination is supported by the record to the satisfaction of our clear and convincing standard.

Genis was asked by Judge Hill multiple times whether he touched, moved, and/or hid Greene's materials. Each time, Genis answered, "No." On the fourth inquiry, the exchange was explicit. Judge Hill specifically asked Genis if he touched and hid Greene's "placard" "under the matt [*sic*]" and Genis categorically denied it. Judge Hill reviewed the videotape of the courtroom and found that Genis did what he denied doing.

Like Judge Hill and the hearing judge, we also reviewed the videotape. It shows Genis walking over to the prosecutor's table three times, surveying the materials on Greene's desk, taking out his cell phone and directing it at something on the desk, touching a document among Greene's materials, and moving it from where he found it and placing it underneath something.

Genis testified that he was looking for exhibits and admitted that he moved and placed a laminated placard of objections underneath the blotter. He testified that he did not know at the

time that it belonged to Greene and did not intend to "hide" it, as it contained no indicia of ownership and he thought it was simply an alphabetical list of various common evidentiary objections that belonged under the blotter with other court documents regularly found there. Accordingly, Genis argues he answered Judge Hill's questions truthfully. We disagree for several reasons.

First, the hearing judge did not find Genis's testimony on this point credible, and we give great weight to this finding. (*In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234, 240 [hearing judge's credibility findings given great weight]; *McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [hearing judge best suited to resolve credibility questions].) Greene testified that he openly relied on the placard of objections during the morning cross-examination of Warden and that no one else was seated at or using the prosecutor's table that day. Clearly, the laminated placard belonged to Greene. Further, Greene testified that, at the time in question, all exhibits would have been located in the exhibit box, and each side (the prosecutor's table and the defense counsel's table) had its own blotter with court notices. There was simply no reason for Genis to be touching anything on the prosecutor's table.

Second, by Genis's own admission, he knew he touched and moved a laminated placard (a very specific document) that was located among Greene's belongings.

Third, if Genis ever doubted the placard's ownership, Greene made it clear that it was his, and did so, on the record, in Genis's presence, just before Judge Hill questioned Genis about whether he touched or hid it.

Under these circumstances, when Judge Hill asked Genis about the laminated placard, Genis should have disclosed what he had done—which, at a minimum, was touch and move the placard from where he found it. Instead, he repeatedly and falsely answered Judge Hill's questions in the negative and kept silent as to his actions when he owed a duty to divulge the true

facts. (See *Green v. State Bar* (1931) 213 Cal. 403, 404-405 [respondent made misrepresentations and then maintained silence to court regarding client's true name when he owed duty to bring out true facts, "thereby working a fraud upon the court"]; *Di Sabatino v. State Bar* (1980) 27 Cal.3d 159, 161, 163 [respondent misled bail commissioner by failing to disclose all facts surrounding his efforts to obtain reduction of bail for clients]; *Grove v. State Bar* (1965) 63 Cal.2d 312, 315, citing *Green v. State Bar*, *supra*, 213 Cal. at p. 405 [concealment of material fact violates § 6068, subd. (d), and misleads judge as effectively as false statement; "[n]o distinction can therefore be drawn among concealment, half-truth, and false statement of fact"].)

We emphasize that attorneys are sworn officers of the courts, and "[i]t is, of course, an extremely serious breach of an attorney's duty to a court to lie in statements made to the court [citations] . . . ." (*In re Aguilar* (2004) 34 Cal.4th 386, 394.) Practically speaking, courts simply cannot function unless judges can trust that attorneys appearing before them are telling the truth. Honesty is absolutely fundamental in the practice of law; without it, "the profession is worse than valueless in the place it holds in the administration of justice." (*Tatlow v. State Bar* (1936) 5 Cal.2d 520, 524.)

As a superior court judge, Judge Hill was required, in part, to see that the attorneys in his courtroom acted in a dignified and courteous manner. (Cal. Code Jud. Ethics, canon 3B(4).) Accordingly, his questions to Genis involved material allegations of inappropriate behavior toward Greene, and Genis knowingly and intentionally answered falsely and withheld key information in clear violation of section 6068, subdivision (d). (See *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490, 497 [violation of § 6068, subd. (d), requires that misrepresentation to tribunal be material to issues before tribunal].)

B. Count Two: Moral Turpitude/Misrepresentation (§ 6106)[10]

Genis was also charged with engaging in an act of moral turpitude by falsely denying that he touched Greene's desk materials when he knew or was grossly negligent in not knowing the statement was false. The hearing judge dismissed Count Two as duplicative of Court One, but found that neither count involved moral turpitude.[11] However, per long-standing case precedent, a violation of section 6068, subdivision (d), necessarily involves moral turpitude, and thus also constitutes a willful and intentional violation of section 6106. (*Bach v. State Bar* (1987) 43 Cal.3d 848, 855 [attorney has duty never to seek to mislead judge and, as matter of law, "[a]cting otherwise constitutes moral turpitude"]; *Grove v. State Bar*, *supra*, 63 Cal.2d at p. 315 [misleading judge constitutes "'act involving moral turpitude'" condemned by § 6106].)

Since the same intentional misconduct underlies the violations of sections 6106 and 6068, subdivision (d), however, we treat them as a single offense involving moral turpitude (*Bach v. State Bar*, *supra*, 43 Cal.3d at p. 855; *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211, 221), and assign "no additional weight to such duplication in determining the appropriate discipline." (*In the Matter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430, 435, fn. 4.)

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

[11] The hearing judge also noted that to the extent Genis was charged with a section 6106 violation based on gross negligence, Count Two failed to provide him with adequate notice of the factual allegations against him. We find no support for this finding, as the NDC provided a sufficient factual basis for the charges and Genis had adequate opportunity to prepare his defense. (Rule 5.41(B)(2).) However, as discussed above, because we find Genis's misconduct was knowing and intentional, we do not address culpability under section 6106 based on gross negligence.

V. AGGRAVATION AND MITIGATION

Standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct[12] requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Genis to meet the same burden to prove mitigation.

A. Aggravation

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

Genis has one prior imposition of discipline—a 30-day actual suspension in 2015 (*Genis I*). The operative NDC in *Genis I* was filed in October 2013 and charged Genis with: (1) making a false and malicious State Bar complaint; (2) committing an act involving moral turpitude; and (3) disobeying court orders. On February 3, 2014, the hearing judge dismissed the first two counts, but found Genis culpable of violating court orders. After weighing factors in aggravation (multiple acts, bad faith, indifference, and harm to the administration of justice) and mitigation (a 30-year discipline-free career and good character), the judge recommended a 90-day actual suspension. We affirmed the judge's culpability findings that Genis violated two superior court orders in separate matters: (1) that he personally appear for court conferences; and (2) that he not engage in certain lines of questioning of law enforcement witnesses. While we expressed concern over the evidence of aggravating conduct by Genis in deprecating—even bullying—the judges of the superior court's appellate division, we reduced the discipline recommendation to a 30-day actual suspension, placing greater weight on Genis's three decades of law practice without misconduct and his pro bono work, and noting the lack of any case law to support a 90-day actual suspension. The Supreme Court adopted our recommendation, and,

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

effective October 9, 2015, imposed a one-year stayed suspension, with conditions, including 30 days of actual suspension and two years of probation.

Having given Genis the benefit of the doubt in *Genis I*, we assign significant aggravating weight to his prior record of discipline. The instant misconduct occurred in July 2014, just five months after the hearing judge issued his decision in *Genis I*. At the time, Genis was subject to a disciplinary recommendation and he should have heeded the import of the situation and been particularly mindful of his ethical obligations; instead, he engaged in new misconduct, which demonstrates that his actions are not isolated or aberrational. (See *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619 [part of rationale for considering prior discipline as having aggravating impact is that it is indicative of recidivist attorney's inability to conform his conduct to ethical norms].) Moreover, the hearing judge found Genis's conduct involved, to some degree, the bullying of Greene. Genis's bullying of other officers of the court appears to be a common thread among his past and present misconduct, which we find to be particularly serious, and further demonstrates his lack of rehabilitation. (*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443-444 [similarities between prior and current misconduct render previous discipline more serious, as they indicate prior discipline did not rehabilitate]; *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 841 [great weight placed on common thread among attorney's past and present misconduct].)

2. Significant Harm to the Administration of Justice (Std. 1.5(j))

The hearing judge found Genis caused no significant harm and afforded him mitigation credit on this basis. (See std. 1.6(c) [lack of harm to client, public, or administration of justice is mitigating factor].) We disagree. Genis's misconduct burdened the superior court and resulted in criminal contempt proceedings, thus causing significant harm to the administration of justice, which is an aggravating factor. (Std. 1.5(j) [significant harm to administration of justice is

aggravating circumstance].) Genis should have simply told Judge Hill what he did, which was touch and move something on the prosecutor's table. Instead, he made false statements and concealed his actions, and the resulting OSC and contempt hearing took up the time and resources of not one, but two superior court judges. The record clearly establishes that Genis's actions disrupted the efficient administration of justice and improperly taxed the court system. We find this undue burden constitutes significant aggravation. (See *In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206, 217 [wasted judicial time and resources considered aggravating].)

B. Mitigation

1. No Mitigation Credit for Legal Skills and Dedication As They Relate to General Law Practice

Citing *Rose v. State Bar* (1989) 49 Cal.3d 646 and *Hawk v. State Bar* (1988) 45 Cal.3d 589, the hearing judge afforded Genis mitigation credit for his "very good legal skills" and his "dedication to his clients and the legal profession." However, the hearing judge provided no context or analysis for applying this mitigation, and based on Genis's general law practice alone, we decline to extend such mitigation. Members of the bar are expected to maintain high ethical standards on behalf of their clients and the profession and to perform competently. (See *Levin v. State Bar* (1989) 47 Cal.3d 1140, 1147.) Moreover, *Hawk* and *Rose* involved broader categories of recognized mitigation. In *Hawk*, the attorney was afforded mitigation based on several character witnesses who attested to his legal work and dedication. (*Hawk v. State Bar*, *supra*, 45 Cal.3d at p. 602. In *Rose*, which cites to *Hawk*, the court gave mitigating weight to the attorney's "demonstrated legal abilities" but in relation to his "dedication to the cause of the disabled" and "zeal in undertaking pro bono work." (*Rose v. State Bar*, *supra*, 49 Cal.3d at p. 667.) We similarly recognize Genis's legal skills and dedication to his work in the broader context of his pro bono activities and community service as discussed below.

2. Pro Bono Activities and Community Service

Genis testified that he was a founding member and the vice-president of the California DUI Lawyers Association. In this capacity, he served as pro bono amicus counsel on three California Supreme Court cases involving search and seizures of biological samples in DUI matters. Although he did not introduce the cases into evidence, he testified that his name appears on two of them (one from 1984 and one from 2009). He also testified that he has performed free legal work on numerous other DUI cases over the years, and since 2013, he has handled approximately 20 to 30 DUI appeals on a pro bono basis. (See *Calvert v. State Bar* (1991) 54 Cal.3d 765, 785 [community service and pro bono activities are mitigating circumstances].) However, we assign only limited weight in mitigation to these pro bono activities given that they are based solely on Genis's testimony (see *In the Matter of Shalant*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 840 [limited weight in mitigation where community service evidence based solely on respondent's testimony]) and that the same activities were the basis of his pro bono mitigation credit in *Genis I*.

Genis also testified that, from 1996 to 1999, he served on the board of directors of the Hollister Ranch Owners' Association, a residential community and cattle cooperative. However, he provided no details regarding the work he performed or the extent of his actual involvement with this organization, and, accordingly, we assign little weight to this activity. (See *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280, 287 [little weight given to pro bono activities where respondent testified but evidence fails to demonstrate level of involvement].)

VI. A 60-DAY ACTUAL SUSPENSION IS THE APPROPRIATE DISCIPLINE

Our disciplinary analysis begins with the standards, which, although not binding, are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.) The Supreme Court has

instructed us to follow them whenever possible. (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) We also look to comparable case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.)

Standard 2.12(a) provides that disbarment or actual suspension is the presumed sanction for violation of an attorney's duty under section 6068, subdivision (d), to never mislead a judge.[13] Yet the hearing judge opted to resolve this case with an admonition in lieu of discipline based on his findings that Genis's misconduct was unintentional, "negligible," and tantamount to "inappropriate sophomoric behavior." We disagree with this disposition. The hearing judge seemingly focused on Genis's underlying acts of touching and moving Greene's placard, rather than Genis's false statements to Judge Hill. We find this led the judge to err in his disciplinary analysis, specifically in the application of our rules, case law, and the standards.

First, our rules specify that a matter may not be resolved by admonition if it involves dishonesty or moral turpitude. (Rule 5.126(A), (B).) As discussed above, a violation of section 6068, subdivision (d), requires the predicate findings of knowledge and intent. (*In the Matter of Chesnut*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 174 [knowledge and intent essential elements of § 6068, subd. (d), violation].) Here, the record establishes that Genis knowingly and intentionally made false statements to Judge Hill and concealed material facts. Such misconduct necessarily involves dishonesty and moral turpitude and thus does not qualify for an admonition under our rules. (See *In the Matter of Jeffers*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 221 [misleading judge involves moral turpitude].)

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

Second, recent case precedent underscores the point that an admonition is insufficient for misconduct involving false and deceptive statements. (*In the Matter of Parish* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 370, 378 [admonition insufficient for attorney who violated rule 1-700 of the Rules of Professional Conduct by making recklessly false statements during judicial campaign].)

Finally, standard 2.12(a) instructs that discipline ranging from actual suspension to disbarment is the presumed sanction for misleading a judge, and standard 1.8(a) calls for increased discipline if the member has a prior record of discipline: "If a member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust." Here, Genis has a recent (October 2015) 30-day actual suspension for violating court orders, aggravated by serious disrespect toward a superior court appellate bench.

OCTC urges us to recommend a 90-day actual suspension, citing several cases that include a wide range of discipline. Our own review of case precedent involving similar attorney dishonesty to courts also discloses a wide array of disciplinary sanctions.

For example, in *Pickering v. State Bar*, *supra*, 24 Cal.2d 141, an attorney with no prior record of discipline was actually suspended for one year for signing and filing a complaint which asserted facts about his client's marital status that he knew to be untrue. Likewise, in *Davis v. State Bar* (1983) 33 Cal.3d 231, an attorney was placed on a one-year actual suspension for failing to perform competently and for falsely denying that he represented a client in his verified answer in a malpractice action. The attorney had two prior records of discipline, both involving stayed suspension. (*Id.* at p. 235.) Notably, *Pickering* and *Davis* dealt with misrepresentations

in verified court pleadings, filed under penalty of perjury, which made the offenses particularly serious and deserving of greater discipline than in Genis's case.

In *In the Matter of Chesnut*, *supra*, 4 Cal. State Bar Ct. Rptr. 166, an attorney was actually suspended for six months for falsely representing to two different judges that he had personally served dissolution pleadings on his client's husband. In December 1995, he represented to a Texas judge that he had personally served the husband; a few months later, in February 1996, he repeated the lie to a California judge. (*Id.* at p. 170.) The attorney had one prior 15-day actual suspension. (*Id.* at p. 175.) We find *Chesnut* more egregious than the case at hand. For two months, the attorney in *Chesnut* had time to reflect on his first misrepresentation before making the second. Here, Genis made repeated misrepresentations to Judge Hill during a single colloquy that transpired over the course of a few minutes.

In *In the Matter of Farrell*, *supra*, 1 Cal. State Bar Ct. Rptr. 490, an attorney with a prior 90-day actual suspension was the subject of progressive discipline that included a six-month actual suspension for falsely telling a municipal court judge that he had subpoenaed a witness. The attorney's false statement caused a court delay and resulted in the judge later questioning the witness about whether he had disobeyed the subpoena. (*Id.* at p. 496.) The attorney was found in civil contempt and fined. (*Ibid.*) Given the attorney's prior 90-day actual suspension, the judge's reliance on his misrepresentation, and the resulting contempt finding, we find *Farrell* warranted more severe discipline than in this case.

In *Bach v. State Bar*, *supra*, 43 Cal.3d 848, an attorney was actually suspended for 60 days for making intentional misrepresentations to a judge during a single courtroom colloquy regarding the existence of a court order requiring his client to appear for mediation. The attorney had one prior public reproval and no mitigation. (*Id.* at pp. 851-852, 857.) Although *Bach*

involved an attorney with a prior reproval, compared to Genis who has a prior actual suspension, we find this case most on point given the facts and circumstances at issue.

The hearing judge noted that public reprovals have also been imposed in cases involving isolated misrepresentations to a court. But reprovals are considered discipline, whereas an admonition is not;[14] and the case the judge cited, *In the Matter of Pasyanos* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 746, dealt with entirely different charges than those presented here. That case involved a newly admitted attorney's failure to update an Application for Determination of Moral Character submitted to the Committee of Bar Examiners during her admissions process. The attorney was found to have violated the admissions rules, but not section 6106. (*Id.* at pp. 753-754.)

Here, unlike the hearing judge, we consider measured and progressive discipline warranted. Genis's misconduct is serious and involves moral turpitude; it interferes with the efficient administration of justice and is the kind of misconduct that undermines public confidence in the legal system. Indeed, "'[M]anifest dishonesty . . . provide[s] a reasonable basis for the conclusion that the . . . attorney cannot be relied upon to fulfill the moral obligations incumbent upon members of the legal profession.'" (*In re Glass* (2014) 58 Cal.4th 500, 524, quoting *Hallinan v. Committee of Bar Examiners* (1966) 65 Cal.2d 447, 471, second ellipsis added.) Given Genis's prior and present misconduct, we recommend 60 days' actual suspension as a necessary and appropriate disciplinary sanction that serves to protect the public, the bench, and the bar. (*Gary v. State Bar* (1988) 44 Cal.3d 820, 827 ["primary purpose of attorney disciplinary matters is to protect the public, bench, and bar"].)

[14] See standard 1.1 (admonitions are "non-disciplinary dispositions").

VII. RECOMMENDATION

For the foregoing reasons, we recommend that Darryl Wayne Genis be suspended from the practice of law for one year, that execution of that suspension be stayed, and that he be placed on probation for two years on the following conditions:

1. He must be suspended from the practice of law for the first 60 days of the period of his probation.

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

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

4. Within 30 days after the effective date of discipline, he must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, he must meet with the probation deputy either in person or by telephone. During the period of probation, he must promptly meet with the probation deputy as directed and upon request.

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

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

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

VIII. PROFESSIONAL RESPONSIBILITY EXAMINATION AND ETHICS SCHOOL

We do not recommend that Genis be ordered to take and pass the Multistate Professional Responsibility Examination or to attend the State Bar's Ethics School, as he was recently required to do so. On October 1, 2015, the Supreme Court ordered Genis to: (1) take and pass the Multistate Professional Responsibility Examination; and (2) provide the Office of Probation satisfactory proof of his attendance at a session of the State Bar Ethics School and passage of the test given at the end of that session.

IX. COSTS

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

STOVITZ, J.[*]

WE CONCUR:

PURCELL, P. J.

McELROY, J.[**]

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

[**] Hearing Judge of the State Bar Court, assigned by the Presiding Judge pursuant to rule 5.155(F).