PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed March 13, 2023

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	18-C-12466
	)	
LEWIS STEVEN GOLDBLATT,	)	OPINION
	)	
State Bar No. 90674.	)	
	)	

After an incident in January 2017 involving his neighbor, respondent Lewis Steven Goldblatt was arrested for a violation of Penal Code section 314(1) (indecent exposure), a misdemeanor, and ultimately pleaded nolo contendere to violating Penal Code sections 373a (public nuisance) and 415(3) (offensive words), both misdemeanors, in Santa Clara County Superior Court in March 2018. After his conviction was transmitted to us in April 2018, we referred the case to the Hearing Department to determine if the facts and circumstances surrounding the conviction involved moral turpitude or other misconduct warranting discipline.

The hearing judge found that the facts and circumstances surrounding the conviction involved disciplinable misconduct but did not reflect moral turpitude. She recommended discipline including a one-year stayed suspension and one year of probation. The Office of Chief Trial Counsel of the State Bar (OCTC) seeks review, arguing for increased discipline and a finding that Goldblatt's actions involved moral turpitude. Goldblatt does not appeal and did not submit a responsive brief on review.

Upon our independent review (Cal. Rules of Court, rule 9.12), we affirm the hearing judge's finding that the facts and circumstances surrounding Goldblatt's conviction do not rise to the level of moral turpitude. However, because Goldblatt has prior discipline, progressive

discipline dictates a suspension greater than the 90-day actual suspension he previously received. Accordingly, we recommend an actual suspension of 120 days.

I. PROCEDURAL BACKGROUND

The parties filed a Stipulation to Undisputed Facts (Stipulation) on January 14, 2021. Trial was held in this matter on January 26, 2022. On April 15, the hearing judge issued her opinion. On May 12, OCTC filed a request for review. OCTC filed its opening brief on July 28. On August 31, we sent notice to Goldblatt of his failure to file a responsive brief. Goldblatt did not file a responsive brief; therefore, on September 8, we precluded him from appearing at oral argument pursuant to rule 5.153(A)(2) of the Rules of Procedure of the State Bar. We heard oral argument from OCTC on December 15.

II. FACTUAL BACKGROUND[1]

On December 7, 1979, Goldblatt was admitted to practice law in California. In 2013, the Supreme Court of California ordered Goldblatt suspended for 90 days for professional misconduct he committed in Missouri, detailed *post*. (Sept. 25, 2013, S212050.) The instant disciplinary proceeding relates to his 2018 conviction in California.

A. The Arrest

Goldblatt had a contentious relationship with his neighbor who lived in the same building in Morgan Hill, California.[2] The building, located at the end of a cul-de-sac, consists of a house with an in-law unit where Goldblatt resided. There is not a house directly across the street from Goldblatt's unit, but there are homes very close by. Over the years, Goldblatt and his neighbor

[1] The factual background is based on the Stipulation, trial testimony, documentary evidence, police body camera video, and the hearing judge's factual findings, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).) Goldblatt, his neighbor, and a police officer testified at trial.

[2] By the time trial was held in this case, neither Goldblatt nor his neighbor resided in this building.

argued about parking issues and property damage. Viewing the photographs in evidence, the front of Goldblatt's unit is dominated by a driveway. Additionally, there is a second driveway along the left side of Goldblatt's unit. Running along the left side of that driveway is a narrow side yard that extends from the street curb to the back of the building.[3] On the morning of January 31, 2017, the neighbor was in his upstairs unit and looked out his bedroom window and saw Goldblatt sitting in the yard with his shirt undone. He was sitting behind garbage bins and a car that were in the driveway, with a fence and trees to the back of him. Another car parked on the street partially obscured Goldblatt from street view.

The neighbor saw Goldblatt pull down the top of his pants, take out a bottle of lubricant, put lubricant on his penis, and touch himself while looking at an adult magazine.[4] He testified he saw Goldblatt's penis outside of his pants "a couple of times." The neighbor asserted that Goldblatt observed that he or someone in his unit had noticed Goldblatt through the window, because Goldblatt moved his chair a few feet from the side of the building so that he was in better view of his neighbor's unit while remaining in the yard. Goldblatt then smiled and waved up to the window while continuing to touch himself.[5] The neighbor called the police and claimed Goldblatt was sitting in the yard masturbating.[6]

Two police officers from the Morgan Hill Police Department arrived at the residence within minutes and approached Goldblatt, who was sitting in the yard with a laptop on his lap. The neighbor also joined the officers at the scene, informing them there was a bottle of lubricant

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[3] Goldblatt identified this area as the "curtilage," but the neighbor called the same area the "front yard." We will refer to this area simply as the "yard."

[4] During his testimony, the neighbor described Goldblatt's actions in various ways, such as touching himself, pleasuring himself, and masturbating.

[5] Goldblatt denied waving. He testified he saw the neighbor in the window, gave him the finger, and said, "Fuck you."

[6] The hearing judge found the neighbor's testimony credible. We agree.

and a "porno mag" underneath Goldblatt's laptop.[7] Officer Todd Davis spoke with Goldblatt and asked him if he was masturbating. Goldblatt denied that he was and stated he was doing legal research on his laptop.[8] Goldblatt told the officer that he had issues with his neighbor concerning automobile insurance claims. He also stated that the night before, he had taken pictures of the neighbor's cars because they were blocking him from exiting his garage. Goldblatt claimed that the real reason his neighbor called the police was due to their ongoing disputes.

The neighbor told the officers that Goldblatt has behaved similarly before—that Goldblatt often sunbathes nude or masturbates in the yard. The officers then arrested Goldblatt. At the scene, they photographed the laptop, a stack of papers, the adult magazine, and a bottle of lubricant that were found on or near Goldblatt.

B. The Conviction

Goldblatt was charged in Santa Clara County Superior Court with indecent exposure in violation of Penal Code section 314(1).[9] As part of a negotiated plea agreement, Goldblatt pleaded nolo contendere to maintaining a public nuisance in violation of Penal Code section 373a,[10] and use of offensive words in violation of Penal Code section 415,

[7] A pornographic magazine was found at the scene. We will refer to it in this opinion as an "adult magazine" as the hearing judge did.

[8] Goldblatt testified there were two laptops, but the photographs and the body camera video showed only a silver laptop. Goldblatt stated he closed a black laptop when the police approached, and it then turned off. This is inconsistent with what is clearly depicted in the body camera video as Goldblatt using a silver laptop. The hearing judge rejected this testimony.

[9] Penal Code section 314(1) provides that it is a misdemeanor for a person to "willfully and lewdly" expose their "private parts" in a public place or a place where "there are present other persons to be offended or annoyed thereby."

[10] Penal Code section 373a provides that it is a misdemeanor for a person to maintain, permit, or allow a public nuisance to exist upon his property or premises.

subdivision (3),[11] both misdemeanors. On March 28, 2018, the court accepted Goldblatt's plea and imposed a sentence of 90 days in county jail, stayed, and three years of probation, with conditions that he participate in psychiatric counseling and have no contact with the neighbor. The indecent exposure charge was dismissed. Goldblatt testified that he completed his probation without any violations and did not have to serve the 90-day sentence; OCTC did not refute this testimony.

III. FACTS AND CIRCUMSTANCES SURROUNDING THE CONVICTION DO NOT INVOLVE MORAL TURPITUDE, BUT INVOLVE OTHER MISCONDUCT WARRANTING DISCIPLINE

With respect to attorney discipline, Goldblatt's conviction is conclusive evidence of guilt of the crime of which he was convicted. (Bus. & Prof. Code, § 6101, subds. (a) & (e); *In re Crooks* (1990) 51 Cal.3d 1090, 1097.) Goldblatt's 2018 misdemeanor convictions under Penal Code sections 373a (public nuisance) and 415(3) (offensive words) establish guilt,[12] but we must determine whether the facts and circumstances surrounding his convictions involve moral turpitude or other misconduct warranting discipline.[13] In doing so, we may consider a wide ambit of facts surrounding the commission of the crime. (*In the Matter of Miller* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 110, 115; see also *In re Langford* (1966) 64 Cal.2d 489, 496 [consider all circumstances of commission of crime including facts relating to dismissed

[11] Penal Code section 415, subdivision (3), provides that it is a crime to use offensive words in a public place which are inherently likely to provoke an immediate violent reaction.

[12] These crimes do not involve moral turpitude per se. We may not make findings of fact contradicting the conclusive presumption of a respondent's guilt in a conviction referral proceeding. (*In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581, 588-589.)

[13] The moral turpitude prohibition is a flexible, commonsense standard with the purpose of protecting the public and legal community against unsuitable practitioners. (*In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208, 214, and cases cited.) "It is measured by the morals of the day [citation] and may vary according to the community or the times. [Citation.]" (*Ibid*.)

charges].) OCTC must prove these facts and circumstances by clear and convincing evidence, which is evidence that 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; *In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283, 288.) As detailed *post*, we do not agree with OCTC that the record establishes moral turpitude here.

We agree with the hearing judge that "Goldblatt was engaged in more than legal research sitting in his yard."[14] The judge found Goldblatt's "steadfast denials" about his misconduct to not be credible and found the neighbor's account of seeing Goldblatt unbutton his pants, slightly pull down his pants, apply lubricant to his penis, and place his hand on his penis while viewing an adult magazine to be credible. The judge's credibility findings are to be accorded great weight, and we see no basis to disturb them in this case. (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.) We find, specifically, that Goldblatt was masturbating in his yard where his neighbor could see him. The neighbor credibly testified that Goldblatt was masturbating, because although Goldblatt's laptop somewhat blocked his view, he could see Goldblatt's hand "going up and down" while he was looking at an adult magazine and applying lubricant to himself. This is consistent with the neighbor's statements to Officer Davis on the date of the incident when the neighbor characterized Goldblatt's actions as masturbation, gestured accordingly, and described the bottle of lubricant that the police body camera video briefly shows was in Goldblatt's lap. Additionally, Officer Davis credibly testified that the lubricant and adult magazine were on Goldblatt's lap prior to Goldblatt standing up when he was being taken into custody. In the body

[14] The hearing judge did not make an explicit finding that Goldblatt was masturbating but stated instead that "Goldblatt was touching himself" and that "his behavior was offensive."

camera video, the neighbor stated Goldblatt was masturbating for about four minutes, which is consistent with his trial testimony. Based on the amount of time that elapsed while the neighbor was observing Goldblatt engaging in this activity, the items that were on Goldblatt's lap, the neighbor's credible testimony that Goldblatt was masturbating, and Goldblatt's implausible testimony, we find there is clear and convincing evidence that Goldblatt was not merely touching himself but was masturbating, as OCTC contends.

OCTC argues that under *In re Lesansky* (2001) 25 Cal.4th 11, which involved an attorney convicted of attempting to commit lewd acts on a child, the facts and circumstances of Goldblatt's conviction should have been found to involve moral turpitude. "Criminal conduct not committed in the practice of law or against a client reveals moral turpitude if it shows a deficiency in any character trait necessary for the practice of law (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) or if it involves such a serious breach of a duty owed to another or to society, or such a flagrant disrespect for the law or for societal norms, that knowledge of the attorney's conduct would be likely to undermine public confidence in and respect for the legal profession." (*Id.* at p. 16.) OCTC bases its moral turpitude argument on the following: that Goldblatt was intentionally masturbating in plain view of his neighbor, that the masturbation was in public view, and that he had masturbated and exposed himself multiple times previously. With respect to this last point, the neighbor testified that previously, he had twice observed Goldblatt masturbating in the backyard. Additionally, several years before the arrest, he saw Goldblatt sunbathing while nude and warned Goldblatt that he could see him doing this. Goldblatt was initially apologetic, but then he moved these activities to the side yard, asserting no one could see him there.

We agree with OCTC that Goldblatt intentionally masturbated where his neighbor could see him. The undisputed, longstanding contentious relationship with the neighbor, with the most

recent problem occurring the night before Goldblatt's arrest, demonstrates to us that Goldblatt's actions were directed towards the neighbor, who had previously complained to Goldblatt about exposing himself where he could be seen by others. The neighbor credibly testified that Goldblatt moved closer into view after realizing he was being observed and then waved towards the window while continuing his actions. Even if we were to credit Goldblatt's assertion that he did not wave, but rather he gestured with his middle finger and yelled profanity at his neighbor, it would still show that Goldblatt understood his neighbor was watching. Not only were Goldblatt's actions intentional, but they appear to have been done to provoke his neighbor once Goldblatt understood he was being watched.

However, we are not persuaded by OCTC's assertion that Goldblatt's actions were in public view. In reviewing the body camera video and the photographs, we agree with the hearing judge that Goldblatt's actions were not done in full public sight. Goldblatt's yard is at the end of a cul-de-sac, he was set back from the curb by a reasonable distance, and he was partially obscured by cars and garbage cans with trees and a fence behind him. The neighbor said he saw Goldblatt's penis only a couple of times over a period of several minutes. Because the neighbor's window was on the second floor, Goldblatt's yard was visible to the neighbor, but there is not clear and convincing evidence that Goldblatt was fully exposing himself in a way to be seen by the public or other neighbors if they were to walk or drive by on the street. Therefore, we cannot find that there was potential harm to the public here that would indicate a more serious ethical offense. (See *In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406, 414 [potential harm indication of seriousness of misconduct].) OCTC argues that even if Goldblatt was partially obscured, it should not require a finding that there was no moral turpitude. We find the circumstances of this case do not support such a conclusion. Indeed, the fact that Goldblatt was partially obscured—the location of his chair away from the street, the

surrounding obstructions, the positioning of his laptop, the fact that he was not fully nude, and the lack of evidence that anyone aside from his neighbor could observe him unless coming very close to his yard—indicates that Goldblatt was not acting in a manner consistent with a flagrant disregard to the public.

Finally, we reject OCTC's argument that moral turpitude may be found here based on previous incidents where the neighbor observed Goldblatt in the nude. OCTC argues that Goldblatt's conviction demonstrated "intentional and repeated acts of depravity," and at oral argument, OCTC focused on Goldblatt being repeatedly warned by his neighbor as a reason to find moral turpitude. These arguments are not supported in the record by clear and convincing evidence. The neighbor testified that over the years, he warned Goldblatt about sunbathing in the nude and had also observed him masturbating in the backyard, not the yard where the January 2017 incident occurred. The neighbor testified that Goldblatt was very apologetic about it when the neighbor initially confronted him, but it was not clear from the testimony if the neighbor had complained to Goldblatt about masturbating or just his nude sunbathing. It was also unclear from the record when these events occurred, how often they occurred, and when in time they related to the devolving neighbor relationship. Unlike the January 2017 incident, we cannot make factual findings concerning these past allegations, and there is insufficient evidence to determine that Goldblatt acted intentionally in the past. In fact, it appears that Goldblatt moved his activities to the yard where the January 2017 incident occurred as a concession to his neighbor, and there is no evidence that the neighbor thereafter complained about Goldblatt's activities in that yard until January 2017. Accordingly, we do not consider these past accusations in determining whether Goldblatt's instant actions warrant discipline, and we disagree with OCTC's comparison of this matter to *In the Matter of Wenzel* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 380, a conviction referral matter where an attorney repeatedly hid video cameras in a public restroom. The facts and

circumstances of Goldblatt's conviction do not demonstrate a similar "flagrant disregard of others in multiple instances over an extended period," as occurred in *Wenzel* and as OCTC argues.

With no similar California precedent, OCTC compares the facts of this case to a decision of the Supreme Court of Indiana, which held that an attorney's conviction for public indecency involved moral turpitude. (*In re Levinson* (Ind. 1983) 444 N.E.2d 1175.) On three occasions, Levinson purposefully stood nude at his window in his residence, masturbating and waving to attract attention from the public, which multiple police officers directly observed. He pleaded guilty to three counts of public indecency. The Indiana Supreme Court held that his actions involved acts of baseness or vileness of principle constituting moral turpitude but provided no analysis. Levinson also engaged in several other acts of misconduct relating to the practice of law. Taken together with his convictions, the court determined that he should be disbarred to protect the public from further professional misconduct. We do not find the facts of *Levinson* sufficiently similar to provide guidance regarding a moral turpitude determination. First, Levinson was fully nude, unlike Goldblatt. Second, there is no indication that Levinson was attempting to shield, even partially, his behavior or nudity. Indeed, it appears the opposite was occurring. Third, Levinson's misconduct occurred on three separate dates in a one-week period, as opposed to Goldblatt's one-time transgression.

For the reasons we have explained, we find the facts and circumstances surrounding Goldblatt's convictions do not involve moral turpitude, but they do involve misconduct warranting discipline.

IV. AGGRAVATION AND MITIGATION

Standard 1.5 of the Standards for Attorney Sanctions for Professional Misconduct[15] requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Goldblatt to meet the same burden to prove mitigation.

A. Aggravation

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

In 2013, Goldblatt stipulated to an actual suspension from the practice of law in California for 90 days based on his professional misconduct in Missouri. (State Bar Court No. 13-J-10396; Bus. & Prof. Code, § 6049.1.) While practicing law in Missouri, Goldblatt committed client trust accounting violations involving multiple clients in 2010 and 2011, in that he failed to maintain the balance of funds received for his clients in a client trust account (CTA) and failed to maintain CTA records.[16] The Office of Chief Disciplinary Counsel for the Supreme Court of Missouri filed misconduct charges against Goldblatt in October 2011. He was disciplined by the Supreme Court of Missouri in January 2013, and then he stipulated to misconduct in our court in May of that year. Specifically, he stipulated to aggravation for multiple acts of misconduct, mitigation for 32 years of discipline-free practice in California, and the imposition of discipline. On September 25, 2013, the California Supreme Court ordered a 90-day actual suspension.

The hearing judge assigned limited weight in aggravation for Goldblatt's prior record of discipline, because it was "fundamentally different in character" than the instant matter and did not raise increased concerns with Goldblatt's inability to rehabilitate himself. OCTC argues on

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

[16] Misappropriation was not found.

review that it should be given moderate weight. We agree with OCTC, but we base our analysis under standard 1.5(a) and not progressive discipline.[17]

Although the nature of Goldblatt's prior misconduct is different from the facts and circumstances surrounding his criminal conviction, Goldblatt was on notice well before his January 2017 arrest that *any* ethical violation he committed could have significant consequences on his ability to practice law. And his 2013 prior discipline was not remote in time so as to diminish its import. (See *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628 [prior reproval considered aggravating as occurred seven years earlier and not remote].) Therefore, we find it is appropriate to assign moderate weight in aggravation for Goldblatt's prior record of discipline.

2. Indifference Toward Rectification or Atonement for the Consequences of the Misconduct (Std. 1.5(k))

Indifference toward rectification or atonement for the consequences of the misconduct is an aggravating circumstance. While the law does not require false penitence, it does require an attorney to accept responsibility for wrongful acts and show some understanding of his culpability. (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) The hearing judge assigned substantial weight in aggravation for Goldblatt's indifference, and OCTC agrees, asserting that Goldblatt was indifferent both at the time of trial (by denying he was masturbating) and at the time of his misconduct (because he was smiling and waving at the neighbor). OCTC argues this indicates Goldblatt has not acknowledged the consequences of his misconduct and shows he is likely to reoffend.

[17] OCTC conflated the analysis of standard 1.5(a) with standard 1.8(a) by relying on *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52, 61. The effect of Goldblatt's prior discipline on the appropriate level of sanction to recommend is analyzed *post* under standard 1.8(a), which concerns progressive discipline.

On review, we find that Goldblatt has failed to accept responsibility for his actions. Despite his neighbor's credible testimony, the body camera video, and the items found at the scene of the arrest (lubricant and an adult magazine), Goldblatt refused to admit he was masturbating in the yard, or that he had committed any misconduct warranting attorney discipline notwithstanding his two misdemeanor convictions, claiming instead that he was merely doing legal work outside. Goldblatt testified that he was "forced" to plead guilty to the misdemeanors, because the trial judge repeatedly continued his case and he no longer had financial resources to go to trial. And he asserted at the hearing that there was no factual or legal basis for his plea.[18] Despite the overwhelming evidence to the contrary, Goldblatt continually fails to display insight into his behavior. Therefore, we assign substantial weight in aggravation. (*In re Silverton* (1975) 14 Cal.3d 517, 523 ["[I]t is significant that petitioner has failed to show any remorse and has devoted his efforts chiefly to an attempt to show that there was a complete lack of evidence in the trial court pointing to his guilt of the crimes of which he was convicted"].)

3. Lack of Candor and Cooperation (Std. 1.5(l))

Aggravation may be found for "lack of candor and cooperation to the victims of the misconduct or to the State Bar during disciplinary investigations or proceedings." OCTC argued before the hearing judge that Goldblatt's testimony lacked candor, but the judge found that while parts of Goldblatt's testimony were not credible, she did not find his testimony to be so deceptive or dishonest to rise to the level of lacking candor. OCTC does not challenge this finding on review. We give great weight to the judge's finding and do not assign aggravation for this

[18] Goldblatt blamed his arrest on factors other than his misconduct by claiming at various times that his neighbor called the police at the urging of the Morgan Hill Police Department (MHPD) who supported his neighbor's brother in an unsuccessful political campaign, that MHPD police officers are incentivized to make dubious arrests since the county and city are financially rewarded for each arrest, and that the mayor of Morgan Hill was retaliating against him due to Goldblatt's representation of individuals in litigation in which the mayor was named or had involvement.

circumstance. (See *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 282 ["Even though a witness's candor must ordinarily be shown by clear and convincing evidence, great weight is still given to the hearing judge's findings on candor"].)

B. No Mitigation for Extreme Emotional or Physical Difficulties (Std. 1.6(d))

The hearing judge assigned mitigation for only one circumstance under standard 1.6—Goldblatt's mental health problems and serious medical issues, which he testified about at trial. OCTC does not dispute this finding.

Standard 1.6(d) provides that mitigation may be assigned for extreme emotional difficulties or physical or mental disabilities if (1) the attorney suffered from them at the time of the misconduct; (2) they are established by expert testimony as being directly responsible for the misconduct; and (3) they no longer pose a risk that the attorney will commit future misconduct. Goldblatt did not present expert testimony and claimed there was no misconduct, thereby not meeting the requirements of standard 1.6(d). The hearing judge assigned nominal weight under this standard, citing *In the Matter of Shkolnikov* (Review Dept. 2021) 5 Cal State Bar Ct. Rptr. 852, 865-866 (mitigation for emotional difficulties for pressures of dealing with family medical problems during some of misconduct, but only minimal weight as problems did not explain misconduct or coincide with all misconduct, no expert testimony offered, and no demonstration that future misconduct would be avoided). We find Goldblatt's testimony did not establish clearly and convincingly that his mental health and medical issues mitigated his misconduct. Indeed, he continues to deny that he did anything wrong, thereby rendering irrelevant his health conditions to the issue of mitigation. Consequently, we do not agree with the hearing judge that Goldblatt is entitled to even nominal mitigation, and we find there is no mitigation for this circumstance.

V. PROGRESSIVE DISCIPLINE REQUIRES ACTUAL SUSPENSION

We begin our disciplinary analysis by acknowledging that our role is not to punish Goldblatt for his criminal conduct, but 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.) We do so by following the standards whenever possible and balancing 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.)

For misdemeanor convictions not involving moral turpitude, but encompassing other misconduct warranting discipline, standard 2.16(b) provides for discipline ranging from reproval to suspension. However, when an attorney has a prior record of discipline, standard 1.8(a) states that "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." As we found *ante*, Goldblatt's prior discipline was not remote in time—the previous misconduct occurred less than six years before his arrest and his discipline was effective less than four years before his arrest. And the previous misconduct was serious, involved multiple CTA violations, and resulted in a 90-day actual suspension. Accordingly, the exception to progressive discipline under standard 1.8(a) does not apply. (*In the Matter of Khishaveh* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 564, 571 [must impose greater discipline under standard 1.8(a) when exception not applicable, even if present misconduct is less serious than past wrongdoing].)

We acknowledge the hearing judge's reliance on *In the Matter of Anderson*, *supra*, 2 Cal. State Bar Ct. Rptr. 208 and *In the Matter of Stewart*, *supra*, 3 Cal. State Bar Ct. Rptr. 52, to

support her conclusion that strict application of standard 1.8(a) is not always warranted. However, we find these cases distinguishable from the instant matter. *Anderson* did not analyze standard 1.8(a); it considered whether *disbarment* was appropriate under standard 1.8(b),[19] because Anderson had two prior records of discipline—a private reproval and a public reproval, both for inattention to his clients. Here, Goldblatt has only one prior record of discipline; therefore, disbarment is not at issue under standard 1.8. In addition, Goldblatt's prior misconduct resulted in actual suspension unlike Anderson's reprovals. Actual suspension exemplifies that Goldblatt's previous misconduct was serious; thus, greater discipline is not manifestly unjust. (See *In the Matter of Buckley* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 201, 205 [manifestly unjust to impose suspension where prior disciplinary matters resulted in private reprovals and later offense involved misdemeanor sex offense].) Further, as we stated in *Khishaveh*, the purpose of progressive discipline under standard 1.8(a) is to "address recidivist misconduct by *requiring* greater discipline in a second case unless the specified exceptions set out in the standard are met." (*In the Matter of Khishaveh*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 571, citing *In re Silverton* (2005) 36 Cal.4th 81.)

In *Stewart*, we found that the prior and later offenses were "not exactly contemporaneous," but were only a year apart, which added support to not strictly following progressive discipline. (*In the Matter of Stewart*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 61.) Goldblatt's case is distinguished from Stewart's because Goldblatt's prior misconduct preceded his arrest by several years and he had time to heed the import of his prior disciplinary proceeding. While we agree with the hearing judge that both Stewart's and Goldblatt's later

[19] The current standards are numbered differently than they were at the time of the *Anderson* decision.

offenses were of "fundamentally different in character" than the prior misconduct, that fact alone does not warrant a departure from progressive discipline under standard 1.8(a).

Also factoring into our disciplinary recommendation is the weight of the aggravation and the mitigation. In addition to his prior record of discipline, Goldblatt has failed to accept responsibility for his actions and failed to establish mitigation. The balancing of these factors supports progressive discipline because cases where we have decided not to impose progressive discipline involved less aggravation or compelling mitigation. (*In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527 [compelling mitigation established]; *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83 [prior record only aggravating factor].) Therefore, a period of actual suspension longer than 90 days is appropriate.

However, OCTC has not provided sufficient support for a six-month actual suspension as it asserts is necessary. As discussed *ante*, OCTC relies on the *Levinson* case from Indiana to support a finding of moral turpitude, which we have rejected. Therefore, analysis under standard 2.15(b) is also inappropriate, and OCTC's argument that we should recommend a discipline using the range in that standard is unpersuasive.[20] We decline to adopt OCTC's analysis under *In the Matter of Buckley*, *supra*, 1 Cal. State Bar Ct. Rptr. 201, a case where we imposed a public reproval where an attorney was convicted of soliciting lewd conduct in public. *Buckley* is scant on facts that would provide useful comparison here. And in the *Wenzel* case cited by OCTC, discussed *ante*, we recommended two years of actual suspension, as the case involved repeated and more extreme criminal conduct than occurred in the instant matter. (*In the Matter of Wenzel*, *supra*, 5 Cal. State Bar Ct. Rptr. 380.) Therefore, *Wenzel* does not provide guidance on the appropriate duration of actual suspension necessary here. Finally, OCTC cites a

[20] Standard 2.15(b) provides that disbarment or actual suspension is the presumed sanction for a final conviction of a misdemeanor involving moral turpitude.

case from the Supreme Court of Kansas which imposed a six-month actual suspension for an attorney who was convicted of seven counts of misdemeanor lewd and lascivious behavior. (*In re Cranmer* (2008) 287 Kan. 495 [196 P.3d 932].) Cranmer engaged in a pattern of misconduct, which we do not find here. If any guidance is to be taken from this out-of-state case, it directs us to an actual suspension of less than six months.

Because Goldblatt had previous discipline including a 90-day actual suspension, standard 1.8(a) requires that the discipline in the instant case be greater. Standard 1.2(c)(1) states that the next duration of actual suspension above 90 days is "generally" six months. As this is not a mandate and considering the unique circumstances of this case—that Goldblatt's conduct was directed at his neighbor who no longer resides in the same building as him after years of ongoing disputes and was somewhat camouflaged—we find that an actual suspension of 120 days is adequate to protect the public and the courts, and to emphasize to Goldblatt the importance of following the law and his ethical obligations.

VI. RECOMMENDATIONS

We recommend that Lewis Steven Goldblatt, State Bar Number 90674, 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 one year with the following conditions:

1. **Actual Suspension.** Goldblatt must be suspended from the practice of law for the first 120 days of the period of his probation.
2. **Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions.** Goldblatt 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, Goldblatt 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 Goldblatt'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, Goldblatt must complete the e-learning course entitled "California Rules of Professional Conduct and State Bar Act Overview." Goldblatt must provide a declaration, under penalty of perjury, attesting to Goldblatt's compliance with this requirement, to the Office of Probation no later than the deadline for Goldblatt'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, Goldblatt 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. Goldblatt 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, Goldblatt 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, Goldblatt may meet with the Probation Case Coordinator in person or by telephone. During the probation period, Goldblatt 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 Goldblatt's probation period, the State Bar Court retains jurisdiction over him to address issues concerning compliance with probation conditions. During this period, Goldblatt 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, Goldblatt 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.** Goldblatt 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, Goldblatt 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. Goldblatt 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. Goldblatt 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. Goldblatt 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, Goldblatt 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, Goldblatt 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 Goldblatt has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

11. **Proof of Compliance with Rule 9.20 Obligation.** Goldblatt 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 Goldblatt 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 Lewis Steven Goldblatt 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 Goldblatt 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 Lewis Steven Goldblatt 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.[21] (*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 imposing discipline].) Failure to do so may result in disbarment or suspension.

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

IX. 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.

X. MONETARY SANCTIONS

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

RIBAS, J.

WE CONCUR:

HONN, P. J.

McGILL, J.