

Filed September 7, 2021

STATE BAR COURT OF CALIFORNIA
REVIEW DEPARTMENT

In the Matter of) SBC-19-O-30685
)
RESPONDENT BB) OPINION AND ORDER¹
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_____)

Respondent BB,² while a new San Francisco County Deputy Public Defender, violated his duty to maintain respect due to the courts in two separate courtroom incidents. Before his disciplinary trial, respondent stipulated to his misconduct in the first incident, in which he made disrespectful statements to a superior court judge during jury selection; he apologized to the judge shortly thereafter. In the second incident, respondent violated a court order when his client was remanded during a plea colloquy. When bailiffs were attempting to take the client into custody, respondent failed to comply with a judge’s order to immediately step away from his client, which resulted in a contempt order against respondent.

The hearing judge found respondent culpable of two counts of disrespect to the courts and one count for failure to obey a court order. The judge determined an admonition was appropriate under the “unique circumstances” established at trial along with five circumstances in mitigation and only one in aggravation. The Office of Chief Trial Counsel of the State Bar

¹ This Opinion and Order is published in accordance with rule 5.126(C) of the Rules of Procedure of the State Bar. All further references to rules are to this source unless otherwise noted.

² We do not identify respondent by name because we dispose of this case by admonition. (See *In the Matter of Respondent C* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439, 444, fn. 1.)

(OCTC) appeals, arguing an admonition is inappropriate and some form of discipline should be imposed. It requests an actual suspension of 30 days as the minimum required here. Respondent did not appeal.

Upon independent review of the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge's culpability findings but differ in our review of the aggravating and mitigating circumstances. We find the record establishes no aggravating circumstances and four mitigating ones. Because we increase the weight assigned to three of the mitigating circumstances, the overall mitigation is greater than the judge found. We also acknowledge the unusual facts of the case and conclude, as the judge did, that discipline is not necessary here to protect the public, the courts, or the legal profession. Accordingly, we affirm an admonition as the appropriate disposition for respondent in this matter.

I. PROCEDURAL HISTORY

On December 11, 2019, OCTC filed a Notice of Disciplinary Charges (NDC). On December 30, respondent filed his response. On August 19, 2020, the parties entered into a detailed Stipulation as to Facts and Admission of Documents and Culpability as to Count One (Stipulation). Trial took place on August 26 and 27, and the hearing judge issued her decision on November 18. OCTC filed a request for review on December 2. After briefing was completed, we heard oral argument on June 10, 2021.

II. FACTUAL BACKGROUND³

Respondent was admitted to practice law in California on November 27, 2013. He worked as an associate in a criminal defense practice before joining the San Francisco Public Defender's Office (SFPDO) in February 2016, where he remains employed.

A. June 2017 Jury Selection Incident

On June 5, 2017, respondent represented a defendant in a misdemeanor jury trial before Judge Roger C. Chan in the Superior Court of San Francisco. During jury selection, respondent raised a *Batson-Wheeler* objection, challenging the prosecution's striking of a Latino juror.⁴ The court initially ruled in respondent's favor but, after further argument from the prosecution, reversed its ruling and found striking the juror was valid. As a result, no Latino jurors were seated in a case where the defendant was Latino.

Respondent argued about the changed ruling, and stated, "the [c]ourt has a lack of backbone." Then, interrupting the judge, he repeatedly stated he did not respect the court or its decision. The court warned respondent about his comments, and respondent challenged the court to place him in custody. The court then took a short recess. Later that day, respondent apologized to the judge. He was reprimanded for his actions by Jeff Adachi, the San Francisco Public Defender at the time, and another high-level supervisor.

³ The facts are based on the Stipulation, trial testimony, documentary evidence, and the hearing judge's factual findings, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).) The hearing judge found all the witnesses who testified were credible, including respondent. This finding, along with the judge's other findings of fact, is not disputed by OCTC in its appeal.

⁴ A *Batson-Wheeler* objection is one claiming that the prosecutor has improperly used a peremptory challenge to remove a prospective juror on the basis of race, ethnicity, or sex, in violation of a defendant's constitutional rights to a trial by a jury drawn from a representative cross-section of the community. (*Batson v. Kentucky* (1986) 476 U.S. 79; *People v. Wheeler* (1978) 22 Cal.3d 258.)

B. September 2017 Remand Incident

On September 14, 2017, respondent appeared before Judge Ross C. Moody in Department 17 of the Superior Court of San Francisco. Multiple witnesses testified Department 17 is a very busy and loud courtroom, handling many criminal matters and often full of attorneys and defendants.

Respondent represented a defendant who was entering a plea and not in custody. Respondent, Judge Moody, and the bailiffs knew the defendant from previous court proceedings and were aware the defendant suffered from mental health issues. During the plea, a Tagalog interpreter was present to assist the defendant, who began talking to himself and did not use the interpreter to speak. The defendant did not respond to Judge Moody's questions but instead aggressively yelled in the interpreter's face. His erratic behavior alarmed the judge and a bailiff, Deputy Sheriff Christianne Crotty, who asked the interpreter to step away from the defendant for her safety. Judge Moody asked the defendant to calm down and then asked, "Do you want to finish the plea and walk out that door [referring to the court's exit], or do you want me to put you in custody?" Respondent asked for a brief recess, which the court granted.

When the proceeding was recalled, respondent stood with his right arm around the defendant. Judge Moody believed the defendant was continuing to be disruptive and thus ordered the bailiffs to place him in custody. Crotty and her partner acted immediately and came up behind respondent and the defendant. The following exchange occurred:

The Court: Take him into custody.

Respondent: Your Honor. Your Honor.

Deputy [addressing respondent]: Step away. You don't interfere with our custody.

The Court: Move away, [respondent]. Move away. Move away.

Deputy: It's our job.

Respondent: He's never hurt a person in his whole life.

The Court: [Respondent], move away from the podium.

Respondent: He's never hurt a person in his life. This is why—the system doesn't know how to deal with it.

Deputy [addressing the defendant]: Put your hands behind your back. Put your hands behind your back.

The Court: Five-minute recess.

While the exchange was taking place, respondent kept his right arm between the deputies and the defendant and briefly interfered with the arrest process. While it is unclear exactly how long respondent delayed the arrest, several witnesses, including a bailiff, testified the delay lasted from 10 to 15 seconds. After the recess, Judge Moody told respondent that he was subject to arrest for interfering and asked him if he understood. Respondent then stated, “The [c]ourt told my client he would either finish the plea or go to jail.” Judge Moody told respondent to answer his question. Respondent stated,

That's what the [c]ourt said to my client. And I have the duty—I have a duty to protect my client in a situation with extreme mental health. In chambers I explained to the [c]ourt my concern about [the defendant]. And the [c]ourt has—is usually very diligent and very concerned about those issues. And it was very obvious while I stood here what was going on. And to put someone in a bind to say you either understand what I'm saying or go to jail is improper. And I don't know how to react. And then for it to turn physical was improper. And I'm embarrassed for the [c]ourt today.

Judge Moody then said, “[Respondent], we're talking about your actions today.” Respondent replied, “You mean my reactions,” to which the judge said, “All right.” Respondent finished by stating he needed counsel and the matter was adjourned.

Respondent and other attorneys in the SFPDO testified it was highly unusual for an out-of-custody defendant to be taken into custody when a plea could not be completed.⁵ Judge

⁵ Brian Getz, a seasoned criminal defense attorney for over 40 years, became emotional during his testimony when describing generally the remand of a client who is out of custody. He stated that it is a rare and “devastating” occurrence, which would make him feel like he had let the client down.

Moody also testified this incident is the only time he has remanded someone in this scenario. On September 20, 2017, respondent filed a writ of habeas corpus requesting the defendant's release and arguing the remand was illegal. Another superior court judge determined the remand order was not an abuse of discretion by Judge Moody.

A week after the remand occurred, Judge Moody issued an order to show cause as to why respondent should not be adjudged guilty of contempt of court. At the contempt hearing on September 29, 2017, Adachi represented respondent. The Public Defender's representation of his deputy during the contempt proceeding was atypical. On November 30, Judge Moody found respondent guilty of direct contempt for failing to abide by his order to move away from the defendant during the remand. Respondent unsuccessfully appealed the contempt order.⁶ Respondent was ordered to pay a fine, which he did. He also reported the contempt judgment to the State Bar. He has since appeared before Judge Moody, who testified respondent has acted professionally on those occasions. The bailiffs also testified they have since interacted with respondent in the courtroom, have not had any other problems with him, and feel comfortable working with him in the future. Respondent was not reprimanded by Adachi.

III. CULPABILITY

The hearing judge's culpability determinations are not disputed by the parties. We affirm the judge's determinations as discussed below and find clear and convincing evidence⁷ establishes respondent is culpable as charged under all three counts of the NDC.

⁶ Respondent appealed to the appellate division of the San Francisco County Superior Court; the Court of Appeal, First Appellate District; and the California Supreme Court. All appeals were denied.

⁷ 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.)

A. Count One: Duty to Respect the Courts (Bus. & Prof. Code, § 6068, subd. (b))⁸

Count one alleged respondent's conduct before Judge Chan in June 2017 violated section 6068, subdivision (b), because he failed to show respect to the court and its judicial officer. Section 6068, subdivision (b), establishes the duty of an attorney to "maintain the respect due to the courts of justice and judicial officers." Respondent admitted in the Stipulation he was culpable under count one for telling the court it lacked a backbone and for repeatedly stating he did not respect the court or its decision. The hearing judge agreed respondent's statements violated section 6068, subdivision (b). In addition, the judge found respondent's challenge to Judge Chan to place him in custody also demonstrated disrespect to the court. (See *Schaefer v. State Bar* (1945) 26 Cal.2d 739, 751–752 [attorneys obligated to show respect to courts under § 6068, subd. (b)].)

B. Count Two: Duty to Respect the Courts (§ 6068, subd. (b))

Count two alleged respondent's conduct before Judge Moody on September 14, 2017, also violated section 6068, subdivision (b). The hearing judge found respondent culpable under count two for failing to abide by Judge Moody's order and for his subsequent statement that he was "embarrassed" for the court. (See *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389, 403–404 [failure to comply with court order shows disrespect to court in violation of § 6068, subd. (b)].) Respondent does not challenge the judge's culpability finding for this count.

C. Count Three: Failure to Obey a Court Order (§ 6103)

Count three alleged respondent violated section 6103 when he failed to comply with Judge Moody's order to move away from the defendant during the remand. Section 6103

⁸ All further references to sections are to the Business and Professions Code unless otherwise noted.

provides, in pertinent part, that a willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the attorney's profession, which the attorney ought in good faith do or forbear, constitutes cause for suspension or disbarment. An attorney willfully violates section 6103 when, despite being aware of a final, binding court order, he or she knowingly chooses to violate the order. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 787.) The hearing judge found respondent heard Judge Moody's oral orders, and he failed to obey them for several seconds when the orders demanded immediate compliance. The hearing judge found respondent culpable under count three, but did not assign additional disciplinary weight. (*In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511, 520 [no dismissal of charge where same misconduct proves culpability for another charge, but no additional weight in determining discipline].) As in count two, respondent does not challenge the judge's culpability finding for this count.

IV. FOUR MITIGATING CIRCUMSTANCES AND NO AGGRAVATION⁹

Standard 1.5 of the Standards for Attorney Sanctions for Professional Misconduct¹⁰ requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires respondent to meet the same burden to prove mitigation.

⁹ Because our order of admonition is not a recommendation of discipline under the standards (std. 1.1 [standards do not apply to non-disciplinary dispositions such as admonitions]), consideration of aggravating and mitigating circumstances is not required. However, an analysis of the aggravating and mitigating circumstances aids us in determining that a sanction under the standards is not needed, but rather an admonition is appropriate under rule 5.126 and the case law, as discussed *post*.

¹⁰ All further references to standards are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

A. Aggravation

1. Hearing Judge's Finding of Substantial Harm Not Affirmed

The hearing judge found one aggravating circumstance: significant harm to the administration of justice. (Std. 1.5(j).) The judge determined respondent's failure to abide by Judge Moody's orders to move away from the defendant during the remand created a "dangerous and chaotic situation in [the] courtroom." However, the judge determined the aggravation deserved limited weight because "the misconduct was very brief in time, not on-going, and under exceptional circumstances."

We disagree with the hearing judge on assigning aggravation for this circumstance. The fact that a very brief moment of disorder in the courtroom occurred between respondent and the bailiffs would not by itself establish aggravation for significant harm. The disorder certainly increased the *possibility* of a more serious or dangerous occurrence, but OCTC's stance is entirely speculative and does not satisfy the clear and convincing standard. (See *In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283, 290 [no aggravation for speculative harm].) OCTC did not establish a specific, cognizable, and significant harm that occurred which can be directly attributed to respondent's actions beyond his violation of Judge Moody's orders to move away from the defendant. Therefore, we do not assign aggravation under standard 1.5(j).

2. No Additional Facts Establish Substantial Harm

On review, OCTC asserts the hearing judge did not consider the full extent of the harm caused by respondent's misconduct, which it argues warrants additional aggravation for significant harm under standard 1.5(j). OCTC argues the incident before Judge Chan delayed and disrupted jury selection and resulted in the SFPDO reprimanding respondent. Any interruption to jury selection was brief, and the record does not establish significant judicial time or resources were used. (Cf. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 77, 79–80

[significant harm to administration of justice where court spent considerable time and resources trying to compel attorney to appear in court]; *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 48 [unnecessary delay of appellate process for two years constitutes significant harm to administration of justice].) Further, OCTC provides no authority that would recognize the SFPDO's reprimand as falling under the ambit of aggravation for significant harm.

OCTC also argues additional harm should be considered for the incident before Judge Moody because judicial resources were expended in the contempt proceeding and appeals, and a bailiff was injured during the arrest. We disagree and see no basis, in fact or in law, that respondent should receive aggravation for asserting his rights in defending against or appealing the contempt order. The cases cited by OCTC involve misrepresentations by attorneys who wasted judicial resources due to their misrepresentations, a fact not present here. The argument for significant harm to the bailiff is also unsupported as no evidence exists regarding the severity of her injury, and it is unclear respondent's actions in fact caused the injury. Accordingly, we reject OCTC's contentions regarding additional aggravation for significant harm.

B. Mitigation

1. Good Faith Belief

Mitigation may include a "good faith belief that is honestly held and objectively reasonable." (Std. 1.6(b); see *Sternlieb v. State Bar* (1990) 52 Cal.3d 317, 331 [credible good faith belief must also be objectively reasonable to qualify for mitigation].) The hearing judge assigned moderate mitigation under standard 1.6(b) because respondent's belief that Judge Moody's remand order was erroneous was held in good faith and was reasonable. OCTC argues respondent is not entitled to mitigation under this standard. We agree. Respondent's belief that the remand order was illegal, even if honestly held, cannot mitigate his actions here, which consisted of interfering with an arrest. No reasonable justification existed for respondent's

failure to immediately move away from the defendant once the judge ordered him to do so. Therefore, we do not assign credit for this mitigating circumstance.

2. Candor and Cooperation

Under standard 1.6(e), respondent is entitled to mitigation for entering into the Stipulation, which was extensive as to facts and admission of documents and included his admission to culpability for count one. In addition, respondent accepted the hearing judge's culpability findings on review for the remaining counts. His actions conserved significant time and resources for the court and OCTC. The judge assigned moderate weight in mitigation, which OCTC does not oppose on review. This weight is appropriate for respondent's cooperation. (See *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive mitigation weight for admission of culpability and facts].)

3. Extraordinary Good Character

Respondent may obtain mitigation for "extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct." (Std. 1.6(f).) The hearing judge assigned significant weight in mitigation, which OCTC does not challenge. We agree with the judge's finding of extraordinary good character but assign compelling weight due to the breadth of the evidence presented by respondent.

Forty-four people testified or attested to respondent's good character. More specifically, eight attorneys testified: seven public defenders, including the current San Francisco Public Defender, and respondent's former employer when he was in private practice. The remaining three witnesses consisted of a former member of the Board of Supervisors for the City and County of San Francisco, a captain and Assistant Sheriff with the San Francisco County Sheriff's Office, and a current client. Almost all of these witnesses were aware of the misconduct and almost all the attorneys testifying on respondent's behalf witnessed the incident in Judge

Moody's courtroom. Thirty-three people submitted declarations: 11 additional public defenders, four former clients, two assistant district attorneys, three other attorneys (one of whom was the former City Attorney for the cities of Santa Cruz and Capitola), a priest, and 12 other people from respondent's personal life. Most of these people had known respondent for several years and were aware of his misconduct.

We highlight his professional colleagues' statements in the record to more fully demonstrate the high regard these people have for respondent. His former employer, a criminal defense attorney for over 40 years, described respondent as vigorously honest, passionate, and devoted to criminal defense. His fellow public defenders stated respondent is a "zealous" and "incredible" advocate for his clients, and he cares deeply about them. They stated respondent has integrity, is dedicated to his work, and is a mentor to others in the office. Respondent's supervisors, who are familiar with his work, echoed these sentiments and also noted they have confidence in his work. They declared he has shown exceptional growth in his professional development and maturity, and, in turn, he has been assigned a more complex and heavier caseload. His past supervisor said respondent is "the type of person that would be there for his clients no matter what." His current supervisor stated he observes respondent in court on an almost-weekly basis. He described respondent as a vigorous and thoughtful attorney with a passion for his work that could "serve as a model for all of us." The current San Francisco Public Defender, Manohar Raju, also praised respondent's character, describing him as committed, with a "first-rate" work ethic and someone who puts his clients first.

In addition to his SFPDO colleagues, the two assistant district attorneys described him as a zealous advocate. One attested to her experience working against respondent at trial and in the courtroom, stating he is genuine, passionate, well prepared, and he makes a personal connection with his clients. She stated she enjoys working with respondent despite the adversarial nature of

their work and noted their collegiality is a product of respondent's good character. The other wrote about his admiration of respondent's integrity and his commitment to his clients.

We give serious consideration to attorneys' references because they have a "strong interest in maintaining the honest administration of justice." (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319.) We agree with the hearing judge that it is noteworthy the SFPDO continues to support respondent and provided him with counsel in this disciplinary proceeding.

Further, the client, who testified at trial, stated respondent took a personal interest in his case that went beyond what another attorney might have done. Respondent's former clients, along with their relatives, reiterated this sentiment in declarations and expressed gratitude for respondent's actions as their attorney. Others, including several family friends, wrote highly of respondent's good character, describing respondent as a mentor, community volunteer, or someone who has personally assisted them in their lives.

From all of the character evidence presented, respondent's work in criminal defense is clearly a calling for him and, despite his heavy workload as a public defender, he is tenacious yet conscientious in both his professional and personal lives. The totality of the wide-ranging and extensive character evidence respondent presented from over 40 people is compelling and, therefore, we weigh it as such in mitigation. (*In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171, 185, 187 [presentation of extraordinary demonstration of good character compelling where 36 witnesses testified to attorney's professionalism, honesty, and integrity].)

4. Remorse and Recognition of Wrongdoing and Timely Atonement

Mitigation may also include "prompt objective steps, demonstrating spontaneous remorse and recognition of the wrongdoing and timely atonement." (Std. 1.6(g).) Respondent

demonstrated remorse for the incident with Judge Chan by apologizing to the judge shortly after the incident occurred. We agree with the hearing judge that this deserves mitigation.

However, the hearing judge found respondent's failure to immediately apologize to Judge Moody tempered the mitigating weight. We disagree due to the unique circumstances of this case. The incident with Judge Moody placed respondent in the middle of a dispute involving the entire SFPDO. The Public Defender at the time, Adachi, immediately became involved, when typically, respondent's supervisor would have handled the situation. The SFPDO adamantly disagreed with Judge Moody's remand order and believed respondent did nothing wrong. Respondent challenged Judge Moody's remand order as illegal, and the judge initiated contempt proceedings. In those proceedings, respondent was represented by Adachi, which was again atypical. Clearly, the issue became bigger than respondent, and it is understandable why he did not immediately apologize to Judge Moody—to do so would have put him at odds with Adachi and the SFPDO. Nonetheless, after Judge Moody found respondent guilty of contempt, respondent paid the fine and reported the contempt order to the State Bar.

At trial, respondent explained his belief that his ego and Adachi's became involved, escalating the situation unnecessarily. In hindsight, he recognizes he should have handled things differently. Respondent declared his respect for Judge Moody and has sought to show it in subsequent interactions with the judge; Judge Moody's own testimony supports respondent's. We do not discredit him for not immediately apologizing to Judge Moody. Rather, we believe he is entitled to mitigation for his display of remorse during these proceedings combined with his acceptance of responsibility, payment of the fine, and reporting the contempt to the State Bar.¹¹

¹¹ OCTC argues that respondent is only entitled to "slight" mitigation under standard 1.6(g), arguing that he should have apologized to Judge Moody. We disagree. As explained above, a prompt apology was not pragmatic in this situation. OCTC's analysis unreasonably stops at the failure to apologize, fails to appreciate the context in which the events occurred, and does not credit respondent's subsequent acceptance of responsibility.

Because respondent demonstrated remorse and acceptance of responsibility in both the Judge Chan and Judge Moody incidents as much as one could reasonably expect, we assign full mitigating weight. (See *Hipolito v. State Bar* (1989) 48 Cal.3d 621, 626–627, fn. 2 [timely atonement in consideration with other factors and acceptance of responsibility deserves significant mitigation].)

5. Remoteness in Time of Misconduct and Subsequent Rehabilitation

Under standard 1.6(h), mitigation may be found if the misconduct was remote in time and a showing of subsequent rehabilitation is established. The hearing judge assigned limited weight in mitigation. OCTC argues respondent is not entitled to any mitigation under this standard. We reject this argument, as explained below, and find respondent is entitled to substantial mitigation for this circumstance.

At the time of trial, three years had passed since respondent’s misconduct and he has had no other disciplinary issues since. Case law acknowledges this period of time is sufficient for mitigation under this circumstance. (See *Amante v. State Bar* (1990) 50 Cal.3d 247, 256.)¹² Notably, in those three years, respondent has demonstrated more than simply not engaging in additional misconduct; he has provided evidence of professional growth and maturity, which is directly relevant to a conclusion that he has rehabilitated from the misconduct. First, his employer has promoted him from handling misdemeanor cases to felony cases. Additionally, several colleagues stated that, in difficult courtroom situations, respondent is poised, calm, and conscientious, and they noted his professionalism in interacting with the court and opposing

¹² In its briefs on this issue, OCTC misapplies *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61. That case did not discuss rejecting mitigation for an attorney’s *subsequent* period of discipline-free misconduct under standard 1.2(e)(viii) (the earlier version of current standard 1.6(h)), but rejected five years of discipline-free conduct *before* the misconduct occurred as mitigation under standard 1.2(e)(i) (the earlier version of current standard 1.6(a)). (*Id.* at p. 66.)

counsel. Judge Moody testified his subsequent interactions with respondent were professional, as did a bailiff. Finally, respondent also described his commitment to practicing meditation and mindfulness, including his completion of a 52-hour anger management program.¹³ Contrary to OCTC’s argument that respondent has not demonstrated rehabilitation, his improved professional deportment clearly displays substantial rehabilitation from his misconduct.

V. ADMONITION SERVES THE PRIMARY PURPOSES OF DISCIPLINE

“The primary purposes of disciplinary proceedings ... are the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys[;] and the preservation of public confidence in the legal profession.” (*In re Morse* (1995) 11 Cal.4th 184, 205.) As noted *ante*, an analysis of the standards as usually applied is not required where a non-disciplinary disposition, such as an admonition, occurs. Nonetheless, we will look to and consider them to aid us in promoting consistency. (See *In re Silvertown* (2005) 36 Cal.4th 81, 91–92.) The Supreme Court has instructed us to follow the standards “whenever possible.” (See *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.)

The applicable sanction for violations of a court order and violations of an attorney’s duties under section 6068, subdivision (b), is standard 2.12(a), which provides for disbarment or actual suspension. OCTC asserts discipline should be imposed within that range, specifically an actual suspension of 30 days, which it notes is the lowest period of actual suspension contemplated by standard 1.2(c)(1).¹⁴

¹³ The hearing judge considered these facts under standard 1.6(g) (remorse and recognition of wrongdoing), but we find that they are more appropriately considered under standard 1.6(h) to show respondent’s rehabilitation.

¹⁴ In relevant part, standard 1.2(c)(1) states, “Actual suspension is generally for a period of thirty days, sixty days, ninety days, six months, one year, eighteen months, two years, three years, or until specific conditions are met.”

We find it is appropriate here to impose an admonition, a lesser sanction than the one described in standard 2.12(a), because of respondent's compelling mitigation and lack of aggravating circumstances. (Std. 1.7(c) [appropriate to impose lesser sanction where net effect of mitigating and aggravating circumstances demonstrates lesser sanction will fulfill primary purposes of discipline].) In relevant part, standard 1.7(c) also provides, "a lesser sanction is appropriate in cases of minor misconduct, where there is little or no injury to a client, the public, the legal system, or the profession and where the record demonstrates that the [attorney] is willing and has the ability to conform to ethical responsibilities in the future." The facts here meet the requirements of standard 1.7(c). Respondent stipulated to misconduct in the Judge Chan matter and immediately apologized for his comments, which the judge appeared to accept. His misconduct before Judge Moody was very brief, and while speculation has been offered that his actions could have caused a dangerous incident in the courtroom, that is not what actually occurred. His failure to immediately move away from the defendant resulted in no appreciable injury to his client, the public, the legal system, or the profession. Thus, both incidents fall within that standard's definition of "minor misconduct." Further, respondent established his rehabilitation. He has acknowledged he would react differently in the future, which indicates he is willing and has the ability to conform to his ethical responsibilities in the future. Given the circumstances, discipline is unnecessary and would be punitive considering the compelling mitigation and lack of aggravation, the narrow extent of his misconduct, and the lack of consequential harm.

Respondent requests we affirm the hearing judge's order of admonishment. OCTC argues an admonition would be inappropriate given its requirements. Rule 5.126(A) provides a disciplinary proceeding may be resolved by admonition if (1) it does not involve a Client Security Fund (CSF) matter or serious offense, (2) the violation either was not intentional or

occurred under mitigating circumstances, and (3) no significant harm resulted. Each requirement is satisfied here.¹⁵ Respondent's misconduct did not involve a CSF matter and was not a "serious offense" as defined under the rules. (Rule 5.126(B) [serious offense involves dishonesty, moral turpitude, corruption, or intentional breach of fiduciary relationship].) Both incidents occurred under mitigating and irregular circumstances.¹⁶ In both, respondent acted as an advocate in a way that he thought was protecting his clients' interests. We agree with the judge that respondent was inexperienced and neglected to properly consider both courts' discretion when he was acting in defense of his clients. Since his misconduct, respondent has acknowledged his wrongdoing and has demonstrated future misconduct is unlikely to recur. Finally, as explained above, no significant harm resulted. Therefore, admonition is appropriate under rule 5.126.

In support of its argument for a 30-day actual suspension, OCTC cites *In the Matter of Collins* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551. Collins was culpable of five separate violations of section 6103 for intentionally failing to comply with sanctions orders and received a 30-day actual suspension. OCTC seeks to compare respondent's misconduct to Collins's, arguing that interfering with the remand of a criminal defendant should not be viewed as less serious than complying with sanctions orders. While we agree with the underlying

¹⁵ The hearing judge issued the admonition without addressing rule 5.126 and analyzing its factors as required.

¹⁶ OCTC argues that we should not consider an admonition because respondent's actions were intentional. OCTC fails to acknowledge the entirety of rule 5.126(A)—an admonition can be appropriate when the violation was not intentional *or* when it occurred under mitigating circumstances. Here, we find four mitigating circumstances under standard 1.6, and also consider the other unique circumstances of this case as mitigating under the rule as well, especially respondent's exceptional concern for both of his clients' circumstances. Respondent became upset when no Latino jurors remained after Judge Chan overruled his *Batson-Wheeler* objection, and he was taken aback when Judge Moody unexpectedly remanded his client into custody. Finally, the delay in the remand caused by respondent was very brief. Therefore, we reject OCTC's argument.

premise OCTC makes (i.e., all court orders must be obeyed), under these circumstances, however, respondent's misconduct is factually less serious than Collins's misconduct and would thus suggest less or no discipline. Collins failed to comply with five sanctions orders for a significant period of time. At the time of his disciplinary hearing, more than 18 months later, Collins had not provided proof of payment of the sanctions. In contrast, respondent's misconduct involved two brief courtroom incidents, and, in the case of the contempt order, he paid the fine once his appeals were completed. Therefore, we do not equate the two cases.

OCTC also points to two reproof cases (*In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592 and *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862), arguing the misconduct in those two cases is less than respondent's misconduct and thus respondent merits a greater discipline.¹⁷ We disagree. While both cases involved attorneys violating court orders, the facts of these cases show either intentional or prolonged disobedience of a court order, along with additional issues, which makes both cases worthy of discipline as opposed to respondent's circumstances. Respondent's actions were different in that his violation of the court order was very brief and, as the hearing judge stated, his disrespectful comments to both judges "were hyperboles stemmed from frustration, not dishonesty." Contrary to OCTC's assertions, both *Respondent X* and *Respondent Y* support a sanction less than reproof as appropriate for respondent.

¹⁷ In *Respondent X*, an attorney received a private reproof for "deliberately" violating a confidentiality order resulting in multiple civil and criminal contempt orders against him. (*In the Matter of Respondent X, supra*, 3 Cal. State Bar Ct. Rptr. at p. 603.) In issuing the private reproof, we noted the attorney had several mitigating circumstances, no aggravating circumstances, and the facts of the case were "unique." (*Id.* at p. 605.) *Respondent Y* involved an attorney who received a private reproof for failure to timely report court-ordered sanctions and also pay the sanctions, which were unpaid for almost two years including through the time of his disciplinary trial.

OCTC argues if standard 2.12(a) is not followed, case law nonetheless supports more than an admonition and cites to *In the Matter of Parish* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 370 and *In the Matter of Lindmark* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 668. The facts of *Parish* are not similar to the current matter; Parish made a factual misrepresentation about his opponent in a judicial election, which violated former rule 1-700 of the State Bar Rules of Professional Conduct (currently designated as rule 8.2 of the State Bar Rules of Professional Conduct). We found Parish's reckless decision to implicate a judge in bribery and corporate fraud warranted a public reproof instead of an admonition because his actions "*uniquely* threaten[ed] to erode public confidence in the judiciary." (*Id.* at p. 378 [italics added].) Respondent's statements to Judge Chan and his brief disobedience of Judge Moody's order to move away from the defendant during remand are not comparable to Parish's false allegation about a judge in an election and does not threaten public confidence in the judiciary, as OCTC argues. Therefore, we reject OCTC's argument that an admonition is improper here based on *Parish*.

Lindmark was a case where we imposed a public reproof for failure to refund an unearned fee. OCTC argues respondent's misconduct is worse than *Lindmark*'s. Like *Parish*, the facts of *Lindmark* are quite dissimilar to those here. Additionally, *Lindmark* had aggravating circumstances and modest mitigation for eight years of discipline-free practice and good character attested to by four witnesses, while respondent has no aggravation and far more extensive mitigation, including numerous good character witnesses and rehabilitation. Comparing *Lindmark* to this case is also unhelpful as *Lindmark* was culpable of an attorney-client violation and is also a pre-standards case.

Finally, OCTC cites to two admonition cases, *In the Matter of Respondent V* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 442 and *In the Matter of Respondent C* (Review Dept.

1991) 1 Cal. State Bar Ct. Rptr. 439, to demonstrate that only “very minor cases” not involving aggravation merit admonition. The misconduct in these two cases is not comparable to respondent’s: *Respondent V* involved improper use of the state seal in a solicitation letter, and *Respondent C* involved a failure to communicate with a client. More to the point, like respondent, the attorneys in *Respondent V* and *Respondent C* engaged in very limited misconduct, did not engage in dishonesty, no harm was done, and neither case involved aggravating circumstances. Contrary to OCTC’s position, we find both cases support our conclusion to issue an admonition.

Based on rule 5.126 and the case law, we affirm the hearing judge’s order of admonition. The essence of respondent’s misconduct is disrespectful comments to a judge in one matter and very brief disobedience of a judge’s order in another. Because misconduct occurred, we cannot dismiss the charges and respondent has not requested that from us. Respondent was upset by the superior court’s ruling in the first incident and worried about the implications for his client being tried by a jury without a Latino juror. He immediately apologized for his actions and it is clear from his testimony he would not react in the same manner today. In the second incident, respondent complied with the order to move away from the defendant after 10 to 15 seconds and no appreciable harm resulted. He understands his wrongdoing and would not act similarly in the future. He also respects the court’s contempt order and paid the associated fine. For these reasons, we agree with the judge that a recommendation of discipline would be punitive here and would not advance the fundamental purposes of attorney discipline—protection of the public, the courts, and the legal profession.

By issuing an admonition, we do not detract from the seriousness of respondent’s misconduct. As an officer of the court, maintaining respect to the courts and following its orders are crucial duties of an attorney; our system of justice could not work otherwise. As the hearing

judge aptly noted, “Disagreement with [a] court is expected, but the manner of expression of that dissent is vital.” However, in the range of misconduct for these violations, respondent’s actions are certainly at the lower end. Based on the record as a whole, given the unique circumstances established, no aggravation, and the extensive and compelling mitigation, we find that an admonition in lieu of discipline is the appropriate disposition of this matter.

VI. ORDER OF ADMONITION

Respondent is admonished upon the filing of this Opinion and Order. (Rule 5.126(A).) Because an admonition does not constitute the imposition of discipline (rule 5.126(D)), the State Bar is not entitled to an award of costs under Business and Professions Code section 6086.10, subdivision (a). In addition, because respondent has not been exonerated of all charges, he is not entitled to an award of costs under Business and Professions Code section 6086.10, subdivision (d).

McGILL, J.

WE CONCUR:

PURCELL, P. J.

STOVITZ, J.*

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

No. 19-O-30685-MC

In the Matter of
RESPONDENT BB

Hearing Judge
Hon. Manjari Chawla

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