PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed April 24, 2018

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of RAJ TANDEN, A Member of the State Bar, No. 160169.	Case Nos. 16-C-16580; 16-C-16579 (Consolidated) OPINION

Raj Tanden has three misdemeanor convictions (in 1990, 2012, and 2014) for driving under the influence (DUI) of drugs or alcohol. The latter two occurred while he was a member of the Bar, involved property damage to other vehicles, and are the subject of these proceedings. We referred these two matters to the Hearing Department to: (1) determine if their facts and circumstances evidenced moral turpitude or other misconduct warranting discipline; and (2) recommend or impose appropriate discipline, if necessary. A hearing judge found no moral turpitude, but did find other misconduct warranting discipline and ordered a private reproval with conditions.

The Office of Chief Trial Counsel of the State Bar of California (OCTC) appeals. It seeks a 90-day actual suspension, asserting that Tanden's misconduct involves moral turpitude. During oral argument, however, OCTC advocated for a one-year stayed suspension should we decline to find evidence of moral turpitude. Tanden does not appeal and requests that we affirm the hearing judge's decision.

After independent review (Cal. Rules of Court, rule 9.12), we find insufficient evidence of moral turpitude, but find it necessary to impose greater discipline than that ordered by the hearing judge. We base this finding on: (1) Tanden's long history of alcohol and prescription

drug abuse with no evidence of any sustained period of sobriety beyond the duration of his criminal probation; (2) his violation of probation; and (3) the harm he caused. We therefore recommend a one-year stayed suspension to protect the public and to maintain high professional standards.

I. SIGNIFICANT PROCEDURAL HISTORY

A. Tanden Has Three DUI Convictions

Tanden was admitted to practice law in California on December 1, 1992. He has one prior misdemeanor DUI from 1990. On March 1, 2012, he pled no contest to his second misdemeanor DUI. The superior court convicted him of violating Penal Code section 23152, subdivision (b) (driving with a blood alcohol content (BAC) of .08 percent or greater), and concurrently dismissed a hit-and-run charge in the "interest of justice." Tanden was sentenced to 60 months of summary probation, with terms including payment of fees and fines, 30 days in county jail less credit for time served, and the option of community service. He was also ordered not to drive with any measurable amount of alcohol or drugs in his blood and to complete a three-month, licensed, first-offender alcohol and other drug education and counseling program, as well as the Victim Impact Program of Mothers Against Drunk Driving (MADD).

While still on probation, Tanden was convicted of his third misdemeanor DUI. On June 4, 2014, he pled no contest to a violation of Penal Code section 23152, subdivision (a) (DUI of drugs or alcohol). Again, a hit-and-run charge was dismissed. Tanden was sentenced to 36 months of summary probation, ordered to pay fines and restitution totaling $1,914, and ordered to participate in an 18-month treatment program.

B. State Bar Disciplinary Proceedings

On December 8, 2016, and February 1, 2017, respectively, we referred Tanden's 2012 conviction (State Bar Court Case No. 16-C-16580) and his 2014 conviction (State Bar Court

Case No. 16-C-16579) to the Hearing Department to determine if the facts and circumstances surrounding the convictions involved moral turpitude or other misconduct warranting discipline. (Bus. & Prof. Code, § 6102, subd. (e); see also Rules Proc. of State Bar, rule 5.344.)[1] On February 13, 2017, Tanden requested consideration for eligibility in the State Bar's Alternative Discipline Program, but withdrew the request on March 2. At that time, the two conviction matters were consolidated and set for trial, which was held April 4–5, 2017. Following posttrial briefing, the matter was submitted for decision on April 26. On July 3, the hearing judge issued his decision, finding no moral turpitude, but other misconduct warranting discipline. He ordered Tanden privately reproved, as clarified in the judge's "Decision Errata and Modification" and "Decision and Amended Order of Private Reproval," both filed on July 10, 2017.

OCTC seeks review. Tanden does not; he acknowledges that his DUI convictions involved misconduct warranting discipline and accepts the discipline imposed. Thus, we focus on the issues raised by OCTC, namely: (1) whether Tanden's convictions involved moral turpitude; and (2) the appropriate level of discipline. As noted, we find no evidence of moral turpitude, and determine that a one-year stayed suspension is appropriate.

II. FACTS AND CONCLUSIONS OF LAW

A. Tanden's 2012 DUI Conviction

1. Factual Findings

The hearing judge made the following findings, which the record supports and we adopt. (See rule 5.155(A) [hearing judge's factual findings entitled to great weight]; *In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234, 240 [hearing judge's credibility findings given great weight].)

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

On May 27, 2011, Tanden drove while intoxicated with a BAC of between 0.115–0.117 percent and caused a head-on collision. He had consumed two Black Russian cocktails aboard a flight from Washington, D.C. to Los Angeles. Upon landing, he retrieved his car from the airport parking lot, and drove home using side streets to avoid traffic. He was driving erratically down Whitworth Drive, a two-way street, when he veered into oncoming traffic, ran through a stop sign, and collided head-on with a vehicle driven by Lynne Callaghan (now Talarico). Both vehicles sustained damage, but no one was injured. Tanden did not immediately stop after impact. Instead, he drove about two blocks, turned the corner out of Talarico's sight, and continued driving another quarter of a mile down Bedford Street. He then stopped his car in a red zone and waited for the police. The hearing judge found that, given Tanden's impaired state at the time, he credibly does not remember other details of what happened.

Talarico pulled her car into a driveway on Whitworth Drive. A bystander told her where Tanden was and that he had hit another car. Based on this information, Talarico parked her car and walked to Bedford Street, where she saw Tanden's damaged car stopped in the red zone along with another car.[2]

Before the police arrived, a gathering crowd surrounded Tanden's car. At least one person was "grabbing at him," trying to take his keys away. Tanden became fearful, suffered an anxiety attack, exited his car, and ran across busy Olympic Boulevard to get away. When the crowd dispersed, he returned to sit in his vehicle and await the police. Upon their arrival, he was

[2] At trial, Talarico testified that a woman in a Mustang followed Tanden around the corner, came back, and told Talarico that Tanden had been in another accident on Bedford Street. This hearsay evidence was allowed to establish Talarico's state of mind as to why she went to find Tanden on Bedford Street, but not for the truth of the matter that a second accident occurred. Talarico testified that when she arrived on Bedford Street, she saw that: "[Tanden] had ran [*sic*] into another car, and his front left tire was completely flat, and the front of his car was damaged." OCTC did not have Talarico, a non-percipient, lay witness, explain her statements, nor did it elicit any facts to allow us to determine whether the damage to the front of Tanden's car resulted from the collision with Talarico's vehicle or from the alleged second accident.

cooperative and candid, and he exchanged information with Talarico. Tanden was arrested and later convicted of DUI.

2. Arguments and Conclusions

OCTC argues that Tanden committed an act of moral turpitude when he drove around the block to Bedford Street without immediately stopping and exchanging relevant information with Talarico.[3] OCTC's position is predicated on its contention that Tanden fled the scene of the collision with Talarico and would have kept going had he not hit a second vehicle, which immobilized his car.

The hearing judge found that OCTC failed to produce direct, admissible evidence of a second collision. Instead, OCTC relied on hearsay statements in the police reports[4] and hearsay testimony from Talarico and Officer Caballero, an investigating police officer—neither of whom witnessed the alleged second accident.[5] The judge correctly found that the hearsay evidence, by itself, was insufficient to support a finding that Tanden was involved in or caused a second collision. (See rule 5.104(D) [hearsay may be "used for the purpose of supplementing or explaining other evidence, but over timely objection will not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions"].) Without evidence of a

---

[3] Specifically, OCTC argues that Tanden's conduct violated Vehicle Code section 20002, subdivision (a), which requires a driver in an accident involving property damage to immediately stop his or her vehicle at the nearest location that will not impede traffic or otherwise jeopardize the safety of other motorists. He or she must then either promptly locate the other driver to exchange pertinent information or leave his or her information in a conspicuous place and notify law enforcement of the accident.

[4] The police reports include statements from witnesses at the scene who were not called to testify in this proceeding. Beyond that, the reports contain no details of the alleged second accident, such as the location of the cars in proximity to each other, the damage to the second car, photographs of the scene, or a statement from the driver of the other car.

[5] OCTC called Officer Caballero, who arrived on the scene after the accident, to testify. The officer authenticated his reports, but OCTC did not ask him about his observations, impressions, or professional assessment of the scene.

second accident, the hearing judge found that the record established only that Tanden drove his damaged car until he found a safe place to pull over, where he waited for the police.

It is well settled that all reasonable doubts must be resolved in favor of the accused attorney. (*In the Matter of Respondent H*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 240.) "If equally reasonable inferences may be drawn from a proven fact, the inference leading to innocence must be chosen." (*Ibid.*) Although OCTC produced some hearsay evidence suggesting another accident had occurred, given the lack of any direct evidence, we find the judge's interpretation of events to be equally plausible. At oral argument, OCTC frankly conceded that its evidence of a second accident was weak.

Under these circumstances, we find that OCTC failed to show by clear and convincing proof[6] that a second collision occurred, that Tanden was at fault, and that Tanden attempted to flee the scene of any accident. Since the record establishes that Tanden exchanged information with Talarico, we find no evidence supporting OCTC's claim of moral turpitude.

B. Tanden's 2014 DUI Conviction

1. Facts

After an argument with Tanden on November 15, 2013, his wife announced she was moving out. She then left their home, leaving Tanden to care for their young son. Tanden took Xanax, a non-opiate drug that he had long been prescribed, to alleviate his anxiety, and later drove to the grocery store. Notably, he was still on probation for his 2012 DUI conviction, which prohibited him from driving with any measurable amount of drugs or alcohol in his system. On the way to the store, Tanden hit a parked car and failed to stop until the police pulled

[6] 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.)

him over several blocks away. The other car, owned by Hector Rodriguez, sustained damage to the driver's side rear panel and bumper. Tanden was arrested and later convicted of DUI.

At the time of his arrest, Tanden told the police officer that he had taken four to six 20-milligram Percocet tablets (an opiate), two Xanax pills, and something called "Relaxo." Subsequent drug testing showed no alcohol or opiates in his blood, but did confirm the presence of Xanax. Tanden testified that he drove "in a haze" that day and was so impaired that he does not remember hitting the parked car or his statements to the officer. The officer's report corroborates Tanden's level of impairment and states that Tanden appeared to be "on the nod"—"a term used for persons who are under the influence of a narcotic analgesic which depresses vital signs resulting in subjects sometimes falling asleep and nodding their head."

2. Arguments and Conclusions

OCTC emphasizes that Tanden violated the law and his criminal probation when he drove under the influence of drugs, hit a parked car, and left the accident scene. It argues that his misconduct is a flagrant and serious breach of his duties to society and evidences moral turpitude.

The hearing judge found that Tanden did leave the scene of the collision, but that he was unaware that he did so due to his impaired state. The judge thus concluded that his failure to take appropriate responsive actions at the time did not signify an act of moral turpitude. We agree. While the November 15 circumstances demonstrate Tanden's poor judgment, we find no evidence that he knowingly engaged in acts of moral turpitude. We affirm the judge's finding.

C. The Facts and Circumstances of Tanden's Misconduct Do Not Involve Moral Turpitude but Do Warrant Discipline

For the purpose of attorney discipline, Tanden's convictions are conclusive proof of the elements of his crimes. (See Bus. & Prof. Code, § 6101, subds. (a) & (e); *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813, 820.) Thus, his misdemeanor

convictions establish that he drove with a BAC of at least 0.08 percent (Pen. Code, § 23152, subd. (b)), and drove on another occasion under the influence of drugs or alcohol (Pen. Code, § 23152, subd. (a)).

In the context of attorney discipline, a crime involves moral turpitude if it reflects, "a deficiency in any character trait necessary for the practice of law (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) or if it involves such a serious breach of a duty owed to another or to society, or such a flagrant disrespect for the law or for societal norms, that knowledge of the attorney's conduct would be likely to undermine public confidence in and respect for the legal profession." (*In re Lesansky* (2001) 25 Cal.4th 11, 16.)

Our case precedent makes clear, however, that a misdemeanor DUI conviction does not involve moral turpitude per se. This applies even when an attorney has one DUI conviction, violates probation, and is convicted of a second DUI. (*In re Kelley* (1990) 52 Cal.3d 487, 494 [two DUI convictions with violation of probation does not involve moral turpitude].) And, for the reasons discussed above, we agree with the hearing judge that the facts and circumstances surrounding Tanden's misdemeanor convictions do not evidence dishonesty or other acts of moral turpitude.

Nevertheless, we may still recommend discipline if "other misconduct warranting discipline" surrounds the misconduct. (*In re Kelley*, *supra*, 52 Cal.3d at pp. 494–495 [Supreme Court imposes discipline for misconduct not amounting to moral turpitude as exercise of its inherent power to control practice of law and to protect legal profession and public].) Like the hearing judge, we find that the totality of events surrounding Tanden's misconduct justifies professional discipline. He committed three DUI-related misdemeanors,[7] two of which were

[7] Pre-admission misconduct may be considered in discipline. (See *In the Matter of Guillory* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 402, 407; *Stratmore v. State Bar* (1975)

at-fault, alcohol- or drug-related collisions. He violated the terms of his 2012 criminal probation, and he exhibited uncontrolled problems with alcohol and prescription drug use through May 2014. The judge correctly found that Tanden's misconduct revealed a nexus between his substance abuse and his practice of law, making discipline necessary to protect the public and the profession. Tanden's repeated instances of driving under the influence evidence a lack of respect for the law, as well as addiction issues that he has since been able to control, but only while under criminal probation for virtually the entire period up to his trial.

Tanden does not dispute that his misconduct warrants some level of discipline. Thus, we focus the remainder of this opinion on the appropriate level of sanction after weighing aggravation and mitigation.

III. AGGRAVATION AND MITIGATION

Standard 1.5 requires OCTC to establish aggravating circumstances by clear and convincing evidence; standard 1.6 requires Tanden to do the same to prove mitigation.[8] The hearing judge found two factors in aggravation (multiple acts and significant harm) and six in mitigation (efforts at sobriety, no prior discipline, emotional difficulties, remorse, good character, and community service). On balance, the judge found Tanden's mitigation significant and "strong evidence that only 'relatively minimal discipline' is warranted or necessary to ensure that the public and profession will be protected." On review, Tanden does not challenge the findings and submits that the hearing judge correctly assessed mitigation and aggravation. OCTC seeks substantially reduced mitigation. As discussed below, we modify the hearing judge's mitigation findings and afford Tanden less overall mitigation.

---

14 Cal.3d 887, 891.) We are not assessing discipline for Tanden's 1990 DUI, but we find it relevant to his two pending DUI conviction matters before us.

[8] All 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. Multiple Acts of Wrongdoing

We agree with the hearing judge that Tanden committed multiple acts of wrongdoing, and assign moderate aggravating weight. Since his admission to practice law in 1992, Tanden has twice been convicted of DUI. He has two property-related accidents, one where he was found to have left the scene. And he also violated the terms of his 2012 criminal probation. (See std. 1.5(b); *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646–647 [three acts of misconduct are considered multiple acts]; *In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 279 [multiple acts in aggravation are not limited to counts pleaded].)

2. Significant Harm

Tanden caused two DUI-related traffic collisions, both resulting in property damage. Rodriguez sustained damage to his driver's side rear panel and bumper. Talarico sustained $2,000 in damage and loss of value to her car, and she testified she was "shaken" by the head-on collision. The hearing judge found that the consequences were slight in comparison to what they might have been, but they nonetheless constituted significant harm. We agree. We find Tanden's actions were serious and resulted in harm to the safety of others and their property. We assign significant weight to this factor.

B. Mitigation

1. Efforts at Sobriety

While not expressly listed as a mitigating circumstance under standard 1.6, "[a]n attorney's rehabilitation from alcoholism or other substance abuse is entitled to significant weight in mitigation if the attorney establishes these elements: (1) the abuse was addictive in nature, (2) the abuse causally contributed to the misconduct, and (3) the attorney has undergone a

meaningful and sustained period of rehabilitation." (*Hawes v. State Bar* (1990) 51 Cal. 3d 587, 595.) For the following reasons, we find Tanden has not demonstrated all three factors.

As evidenced by his 1990 DUI conviction for alcohol, Tanden has a long history of alcohol- and prescription drug-related problems, which have escalated over the past decade. According to his medical records in evidence, he was increasingly plagued by the stresses of work, marital life, and injuries from biking and skiing accidents that necessitated surgery to install a steel rod. In 2010, Tanden was prescribed Vicodin/Norco (opiate painkillers) for his physical pain, and became addicted. When the prescriptions ran out, he maintained his supply by "doctor shopping." By 2010, his consumption of alcohol had also increased, and by 2012, he was drinking "almost around the clock."[9]

In October 2011, while his criminal DUI charges were still pending, Tanden voluntarily enrolled in a three-week, inpatient, substance abuse therapy program. Although he completed the program, he was only able to maintain sobriety for one week. Following his DUI conviction in March 2012, he was placed on a 60-month summary probation, ordered to enroll in a three-month treatment program and a program offered through MADD, and ordered not to drive with any measurable amount of drugs or alcohol in his system.[10]

Despite his probation and his ongoing efforts to maintain sobriety, Tanden relapsed. In November 2012, he traveled to Boston to attend a four-day meeting of his law firm. Tanden did not attend the scheduled events, but instead spent the entire four days binge-drinking in his hotel

---

[9] The quoted material comes from statements made by Tanden to his treatment provider during his inpatient therapy at Betty Ford Center in 2012.

[10] At oral argument, Tanden's counsel stressed that Tanden's probation was *summary* probation and therefore "unsupervised." However, according to the superior court docket, the court was actively involved in monitoring his progress after he failed to timely comply with conditions and was found in violation of his probation. The superior court held hearings on the matter on December 4, 2012, and January 7, 2013. On April 8, 2013, his probation was reinstated. On April 16 and June 17, 2013, the court held progress report hearings. Accordingly, we do not view his probation as "unsupervised."

room. When he went to the airport to return to California, he was so intoxicated that he was taken to a local emergency room. After returning home, he learned he had been terminated from his job.

A few days later, Tanden enrolled in an inpatient therapy program at Betty Ford Center, which he completed on December 12, 2012. Upon his discharge, he indicated that he would pursue his recovery efforts through outpatient therapy. The medical discharge summary listed his prognosis as "guarded."

Approximately one year later, in November 2013, while still on criminal probation for his prior conviction, he drove while under the influence of prescription drugs (Xanax) and was again arrested for DUI. Thereafter, Tanden sought therapy at KLEAN, another residential program, where he began treatment with Alyson Albano (formerly Stack), a newly-licensed marriage and family therapist. He completed a 37-day inpatient program, and was discharged on December 19, 2013.

Tanden was able to maintain sobriety until May 2014. At that time, he and his wife formally separated, and his substance abuse issues recurred. He entered another inpatient program at Cliffside, where Albano was also affiliated. While there, he regained sobriety, which he has maintained up to and including the trial in this matter (approximately two years and 11 months).[11] He continues to see Albano on a regular basis,[12] and he attends AA meetings and KLEAN alumni meetings. Tanden's 60-month probation period from his 2012 DUI expired on February 28, 2017, approximately one month before trial in this case began.

---

[11] We note that Tanden did not attempt to augment the record to include evidence of continued sobriety between trial and this appeal. (See rule 5.156(C) [permitting party to move to present additional evidence occurring after evidentiary proceedings, including evidence of rehabilitation].) Accordingly, although he argues he has been sober for nearly four years, our evidentiary record demonstrates two years and 11 months.

[12] Albano estimated that she has had 50 counseling sessions with Tanden since November 2013, when she first began treating him.

The hearing judge credited Tanden with undertaking significant efforts at sobriety, which OCTC challenges on review. The judge found that Albano credibly testified that Tanden has completely changed his lifestyle. She further testified that he is actively involved in 12-step support groups, including having a sponsor, he has developed better coping skills, and his risk of relapse at this point is very low after nearly three years of sobriety. The hearing judge relied on this testimony and concluded that "[Tanden's] prior problems are unlikely to lead again to misconduct." Somewhat inconsistently, however, the judge also found that it was "premature" to give Tanden complete credit for overcoming his past alcoholism and substance abuse problems. The judge found that "enhanced caution" is particularly appropriate here since Tanden's voluntary efforts at sobriety have failed, and the only evidence of successful rehabilitation is under court-monitored probation.

Confronted with these two conflicting views, we are left to our own independent evaluation. Although Tanden has taken positive strides to overcome his addiction, his efforts and success thus far have occurred primarily during his criminal probation. And although his therapist credibly testified that he is sober and at low risk for relapse, her focus on his personal recovery differs from our public protection role. We place greater emphasis on his period of sobriety without the oversight of the courts—which on this record is approximately one month. (See *Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 939 [inadequate that petitioner stayed out of trouble while on criminal probation]; *In re Giddens* (1981) 30 Cal.3d 110, 116 [proof of rehabilitation needed "during a period when petitioner is neither on parole . . . nor under supervision of the bar"].)

We find that Tanden is entitled to some mitigation for his sobriety during probation. However, he has not demonstrated a meaningful and sustained period of rehabilitation beyond that to warrant full mitigating credit. (*In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State

Bar Ct. Rptr. 459, 464 [some weight given to respondent's activities while on probation, but far greater weight given to those after completion of criminal probation].)

2. No Prior Discipline

Absence of a prior record of discipline over many years, coupled with present misconduct that is not likely to recur, is a mitigating circumstance. (Std. 1.6(a).) The hearing judge credited Tanden with significant mitigation for his nearly two decades of discipline-free law practice between 1992 and 2011. On review, OCTC argues that Tanden is not entitled to full credit under standard 1.6(a) because his repeated DUI convictions demonstrate that his misconduct is not aberrational. We find that Tanden is entitled to only minimal weight in mitigation for his years of practice with no discipline. Given his history of relapse, we cannot find that Tanden has demonstrated that his substance abuse problems are resolved enough to make recidivism unlikely. (See *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [long discipline-free practice is most relevant where misconduct is aberrational].)

3. Emotional Difficulties

Mitigation is available for "extreme emotional difficulties or physical or mental disabilities" if: (1) the member 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 member will commit future misconduct. (Std. 1.6(d).)

The hearing judge found that Albano established that Tanden's emotional stresses from marital issues were the underlying cause of his misconduct, and that they have now been resolved. OCTC argues that Tanden did not establish that his difficulties were extreme, nor that a nexus existed between them and his DUIs.

The uncontradicted testimony of Tanden and his expert, Albano, established that he suffered from long-standing physical and emotional stresses (including anxiety, marital

problems, two accidents, and surgery) that led to his dependency issues and ultimately his criminal convictions. (See *Friedman v. State Bar* (1990) 50 Cal.3d 235, 245 [marital problems considered mitigating].) However, as discussed previously, we cannot conclude, without a period of sustained recovery beyond his criminal probation, that his issues are fully resolved such that he no longer poses a risk. (*In re Lamb* (1989) 49 Cal.3d 239, 246; see also *Rosenthal v. State Bar* (1987) 43 Cal.3d 658, 664 [attorney must demonstrate "a meaningful and sustained period of successful rehabilitation"]; *Slavkin v. State Bar* (1989) 49 Cal.3d 894, 905 [attorney suffering from drug or alcohol dependence generally must establish that addiction is permanently under control]; std. 1.6(d).) Accordingly, we assign minimal weight to Tanden's emotional and physical difficulties.

4. Remorse, Recognition of Wrongdoing, and Timely Atonement

The hearing judge gave Tanden mitigating credit for expressing remorse for his past problems with alcohol and drugs and for his continuing remedial efforts to overcome them. OCTC contends that he is not entitled to such mitigation under standard 1.6(g), which requires him to show that he took prompt objective steps demonstrating spontaneous remorse and recognition of the wrongdoing and timely atonement. We agree and assign nominal weight. There is no evidence that Tanden took any prompt and spontaneous steps to atone to Talarico and Rodriguez, the victims of his misconduct. While we acknowledge his remorse at trial, his expression of regret at this stage, on its own, is not independently deserving of significant weight. (*Hipolito v. State Bar* (1989) 48 Cal.3d 621, 627, fn. 2 ["expressing remorse for one's misconduct is an elementary moral precept which, standing alone, deserves no special consideration"].) Moreover, Tanden was already afforded some mitigation for his rehabilitative efforts, and is not entitled to additional mitigation for such efforts under standard 1.6(g).

5. Good Character Evidence

Tanden is entitled to mitigation if he establishes "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 afforded significant mitigation for the testimony of Tanden's seven character witnesses—four attorneys, two former clients (a dentist and a tax compliance officer), and his AA sponsor. The attorneys included peers and managing partners at large law firms and the Vice-Chair of the American College of Tax Counsel, an invitation-only organization of which Tanden is a member. Each had personally worked with Tanden, spoke highly of their working relationship, and described him as an exceptionally talented tax lawyer. All seven witnesses attested to his good character, his candor about his prior substance abuse problems, his ongoing commitment to sobriety, and his dedication to his son. All were aware of Tanden's misconduct and the nature of the disciplinary charges against him.

On appeal, OCTC seeks reduced mitigation. It argues that Tanden's witnesses do not constitute a wide range of references and that the attorneys' testimonials regarding his legal skills are insufficient to establish his good character. We find no support for OCTC's position. The witnesses are from both the legal and general communities, and the record is replete with testimony from all of the witnesses regarding Tanden's honesty, veracity, and outstanding traits as a father, friend, and coworker. Accordingly, we affirm the hearing judge's finding of significant weight in mitigation. (See *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [significant mitigation given to testimony of attorney witnesses who have "strong interest in maintaining the honest administration of justice"].)

6. Legal and Community Service

We learned through Tanden's character witnesses that he has donated hundreds of hours of volunteer service to the USC Tax Institute (where he served on the executive committee). The hearing judge found this to be a mitigating factor. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785 [legal and community service activities are mitigating circumstances].) OCTC argues Tanden is not entitled to mitigation because he is a tax attorney and participation in the USC Tax Institute benefits him personally. We note that the record also includes evidence that he was involved with other professional associations, including the American College of Tax Counsel (where he is a "fellow") and the ABA Tax Institute. He also volunteered to speak about substance abuse recovery in connection with a Salvation Army Treatment Facility Panel and at Cliffside, his former treatment center. We find Tanden's overall service and dedication to the legal and general communities worthy of considerable mitigation. (See *Schneider v. State Bar* (1987) 43 Cal.3d 784, 799 [considerable weight given for legal and community service where attorney, certified tax specialist and adjunct law professor, served on several bar and law school committees; founded tax group and pension council; provided supporting letters from attorneys, clients, and judge; and received commendation from local council for "Decade of Friendship"].)

IV. DISCIPLINE

We begin our disciplinary analysis in this conviction proceeding by acknowledging that it is not our role to punish Tanden 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; rather, attorney discipline is imposed to protect the public, to promote confidence in the 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 that the discipline imposed is consistent with its purpose. (*In re Young* (1989) 49 Cal.3d 257, 266, 267, fn. 11.) Guided by the standards and relevant case law, we exercise our independent judgment in recommending the appropriate discipline. (*Kent v. State Bar* (1987) 43 Cal.3d 729, 734.)

Standard 2.16(b) applies, providing that "[s]uspension or reproval is the presumed sanction for final conviction of a misdemeanor not involving moral turpitude but involving other misconduct warranting discipline." Beyond the standard, there are myriad cases dealing with DUI convictions, but none involving the same facts as presented here.

The hearing judge found *In re Kelley, supra*, 52 Cal.3d 487, most relevant. *Kelley* involved an attorney, with no prior record of discipline, who acquired two DUI misdemeanor convictions just a few years apart. Neither incident involved injury or property damage, but the second DUI occurred while Kelley was on probation for her first DUI. Kelley failed to acknowledge her alcohol abuse problem and made no showing of rehabilitative efforts. The Supreme Court found that Kelley did not commit acts of moral turpitude, but her lack of respect for the legal system and her apparent alcohol dependency problem warranted a public reproval with conditions, including three years' probation and referral to the State Bar's alcohol abuse program. The Court emphasized that "[Kelley's] problems, if not checked, may spill over into [her] professional practice and adversely affect her representation of clients and her practice of law." (*Id.* at p. 496.)

On the other hand, OCTC cites to *In the Matter of Guillory*, *supra*, 5 Cal. State Bar Ct. Rptr. 402, and argues for greater discipline. *Guillory* is another case involving multiple DUI misdemeanor convictions, which involved far more serious circumstances than in this case and resulted in a two-year actual suspension to continue until Guillory proved his rehabilitation. Guillory had no prior record of discipline, but one DUI while he was in law school and three

while he was a licensed attorney and serving as a deputy district attorney. We found evidence of moral turpitude because: (1) his cousin died in his first alcohol-related driving incident; (2) he was driving with a suspended license and on probation at the time of his two most recent DUIs; and (3) he repeatedly drove with a BAC well above the legal limit. (*Id*. at p. 405.) We further found that Guillory lied to the arresting officers, saying that he was permitted to drive to and from work with a suspended license. Worse, on three occasions when he was stopped by the police, he tried to avoid arrest by engaging in "badging," i.e., he sought to exploit his insider status as a deputy district attorney. (*Id.* at pp. 406, 408.) We concluded that his conduct demonstrated "a disturbing lack of respect for the integrity of the legal system." (*Id*. at p. 408.) Finally, of great concern was Guillory's failure to acknowledge his long-standing substance abuse problem, even though his alcohol-related criminal conduct spanned a period of 12 years or more and "showed a wanton disregard for the safety of the public . . . ." (*Ibid.*)

By comparison, we find Tanden's misconduct more serious than that in *Kelley*, but not nearly as egregious as the misconduct in *Guillory*. Tanden has no prior record of discipline, but suffered one DUI misdemeanor conviction before he was licensed to practice law. He has two additional DUI convictions since becoming an attorney, both resulting in property damage to other vehicles and one involving a violation of probation and leaving the scene. Unlike in *Kelley* and *Guillory,* Tanden recognizes his long history of alcohol and substance abuse and has taken steps to address it. The hearing judge relied heavily on this fact in imposing only a private reproval. But despite Tanden's awareness of his problems, his ongoing rehabilitative efforts, his previous DUIs, and the probation conditions attached to his 2012 conviction, he was not deterred from incurring yet another DUI conviction in 2014. Moreover, his problems have already "spilled over" into his professional capacity, causing him to miss his four-day law firm meeting and lose his job as a result.

While Tanden has since taken measures to address his issues and maintain sobriety, he has done so almost exclusively under the umbrella of court-ordered probation. He has no meaningful period of sobriety beyond this from which we can assess successful rehabilitation.

Moreover, the Supreme Court has held that efforts at sobriety, while laudable, do not vitiate the need for discipline: "While evidence that the attorney has taken steps to deal with his alcohol problem is mitigating evidence that may properly be taken into account in determining the degree and nature of the discipline that should be imposed, such evidence does not eliminate the initial misconduct as an appropriate basis for discipline." (*In re Hickey* (1990) 50 Cal.3d 571, 579.) Accordingly, we find that a one-year stayed suspension is appropriate discipline. (See generally *In re Kelley*, *supra*, 52 Cal.3d at p. 496 ["Although it is true that petitioner's misconduct caused no harm to her clients, this fact alone does not insulate her from discipline aimed at ensuring that her potentially harmful misconduct does not recur"].)

V. RECOMMENDATION

We recommend that Raj Tanden be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that he be placed on probation for a period of two years subject to the following conditions:

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

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

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

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

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

6. Within one year after the effective date of the discipline herein, he must submit to the Office of Probation satisfactory evidence of completion of the State Bar's 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 shall not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

7. He must not drive any vehicle with any measurable amount of alcohol or drugs in his blood or refuse to take and complete any blood alcohol or drug chemical test, any field sobriety test, and any preliminary alcohol screening test, when request by any peace officer.

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

VI. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Tanden be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year of the effective date of the Supreme Court order in this matter and to provide satisfactory proof of such passage to the Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

VII. COSTS

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

HONN, J.

WE CONCUR:

PURCELL, P. J.

McGILL, J