PUBLIC MATTER – DESIGNATED FOR PUBLICATION

Filed September 14, 2016

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. 11-O-17874
	)	
KIMBERLY ALLYSON HANSEN,	)	OPINION
	)	
A Member of the State Bar, No. 167597.	)	
	)	

This is Kimberly Allyson Hansen's third discipline proceeding. It arises from her representation of two defendants before the Workers' Compensation Appeals Board (WCAB or Board). The WCAB imposed sanctions against Hansen and three other attorneys from her law firm after concluding that they had intentionally misled the Board, causing it to take unwarranted action.

The hearing judge in the instant disciplinary matter determined that Hansen's participation in the workers' compensation case involved acts of dishonesty constituting moral turpitude. She further found three factors in aggravation (two prior records of discipline, significant harm, and lack of insight) and two factors in mitigation (cooperation and good character). The judge recommended discipline that included an 18-month actual suspension, relying on disciplinary standard 2.11,[1] which provides for disbarment or actual suspension for an act of moral turpitude.

[1] Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct. The standards were revised and renumbered effective July 1, 2015. Because this request for review was submitted for ruling after that date, we apply the revised version of the standards, and all further references to standards are to this source.

Both Hansen and the Office of the Chief Trial Counsel of the State Bar (OCTC) appeal. Hansen asserts that this case should be dismissed because she made no misrepresentations to the WCAB, but rather was merely zealously representing her clients. OCTC supports the hearing judge's culpability findings, but requests that we find more aggravation and less mitigation, and that we recommend disbarment pursuant to standard 1.8(b), which applies, under certain circumstances, when an attorney has two or more prior records of discipline.

Having independently reviewed the record (Cal. Rules of Court, rule 9.12), we find that Hansen is culpable of acts of moral turpitude, in violation of Business and Professions Code section 6106.[2] As the WCAB aptly observed: "The problem was not that the attorneys zealously represented their client; it was that they did so by misleading the WCAB, by concealing material facts, and by supporting their position with half-truths."

We do not apply standard 1.8(b), as urged by OCTC, because Hansen's two other disciplinary matters occurred after her misconduct in the present case. Instead, we agree with the hearing judge that an 18-month actual suspension is appropriate under standard 2.11 in light of Hansen's repeated acts of dishonesty before the WCAB, which echo her earlier dishonesty before a bankruptcy court. Moreover, she committed multiple probation violations and failed to appear at her probation revocation hearing, which demonstrate a disregard of her professional responsibilities. And she has continued to exhibit a lack of insight into the seriousness of her misconduct before the WCAB and the State Bar Court. For this reason, we recommend that Hansen's suspension should continue until she establishes her rehabilitation, fitness to practice law, and present learning and ability in the law in satisfaction of standard 1.2(c)(1). Such a showing will ensure that the public, the courts, and the legal profession are adequately protected.

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[2] All further references to sections are to the Business and Professions Code unless otherwise noted.

I. FACTUAL AND PROCEDURAL BACKGROUND[3]

Hansen was admitted to the practice of law in California on December 10, 1993. At all times relevant to this matter, she worked as a vice-president at the law firm of Stockwell, Harris, Woolverton & Muehl (Stockwell) and was an experienced workers' compensation attorney. As detailed below, Hansen and three other attorneys from Stockwell were sanctioned by the WCAB for engaging in a protracted effort to deceive the Board about the status of a pending case, causing it to engage in wasteful and, ultimately, unwarranted actions.

A. The WCAB Proceedings

Louis Speight, an employee of Vulcan Materials Company, Western Division (Vulcan), submitted a workers' compensation claim for work-related injuries, which was denied by Vulcan's claims adjuster, Zurich North America (Zurich). Speight filed an application with the WCAB in December 2008 for adjudication of his claim, naming Vulcan and Zurich as defendants (the *Speight* matter). The Stockwell firm represented both Vulcan and Zurich, and Hansen was the attorney with primary responsibility for the matter.

In order to evaluate Speight's alleged injuries, Hansen sent a letter to Speight's counsel in February 2009, offering to use the services of an Agreed Medical Examiner (AME). She also submitted a Request for Qualified Medical Evaluator Panel (First QME Request) to the Department of Industrial Relations, Division of Workers' Compensation Medical Unit (the Medical Unit).

The Medical Unit responded on May 20, 2009, advising that it was unable to process the First QME Request "due to the lack of all necessary information." Hansen was directed to "resubmit [her] request as soon as possible with all of the information and attachments [she]

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[3] We base the factual background on the parties' Stipulation as to Undisputed Facts and Admission of Documents, 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).)

submitted already." The Medical Unit also informed Hansen that her First QME Request had been filed prematurely.

One week later, Speight's counsel sent Hansen a settlement demand letter, notifying her that he intended to file a Declaration of Readiness to Proceed to trial, and forwarding a report by Speight's treating physician. Since Hansen objected to the treating physician's report, she submitted a second request for a QME panel (Second QME Request) on June 5, 2009. On July 22, 2009, the Medical Unit notified Hansen it was rejecting her second request because it also lacked "all necessary information." One week later, on July 28, 2009, Hansen submitted a third QME panel request to the Medical Unit (Third QME Request).

1. Vulcan and Zurich Seek to Delay Trial

Kevin White, an associate with the Stockwell firm, attended a mandatory settlement conference (MSC) on behalf of Vulcan and Zurich.[4] In the Pre-trial Conference Statement filed with the court, White objected to the medical report by Speight's physician and to setting the matter for trial, asserting that the Defendant was entitled to a QME panel and that the Medical Unit had not issued a panel despite the Defendant's timely request. The Workers' Compensation Administrative Law Judge (ALJ) overruled White's objection and set the matter for trial.

White sought relief from the WCAB by preparing a Petition for Removal[5] requesting that the Medical Unit be ordered to issue a QME panel and that the ALJ's trial-setting order be vacated. In this petition, he represented that the Defendant had made "a timely and proper request for the issuance of a QME panel" but "the Industrial Medical Council never issued the

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[4] Although they were named co-defendants, Vulcan was self-insured, and appeared in the *Speight* matter through Zurich. The WCAB referred to the two entities collectively as "Defendant," and we shall do the same.

[5] Pursuant to Labor Code section 5310, a petition for removal, which is intended to seek the WCAB's interlocutory review of orders not considered final, but which result in significant prejudice and irreparable harm to the petitioner. (Cal. Code Regs., tit. 8, § 10843.)

panel." He argued that the Defendant "should not be paralyzed because the Industrial Medical Unit failed to issue the requested [QME] panel" and that the Defendant would suffer extreme prejudice without additional discovery. He further argued that the ALJ improperly applied California Code of Regulations, title 8, section 30, subdivision (d)(3)[6] "to retroactively deny [D]efendant's right to discovery. . . ."

White failed to disclose to the WCAB that the Medical Unit had timely advised Hansen that the First and Second QME Requests were deficient.

On September 28, 2009, three weeks after the Petition for Removal was filed and before the WCAB ruled on it, the Medical Unit issued a QME panel in response to Hansen's Third QME Request. Although Hansen did not draft, review, or file the Petition for Removal, she was aware of it within 30 to 45 days after it was filed. Nevertheless, she did not inform the WCAB that the Medical Unit had issued a QME panel on September 28, 2009, or that the Medical Unit had previously responded to her First and Second QME Requests.

2. The WCAB Orders Issuance of QME Panel and Vacates Trial

The WCAB granted the Petition for Removal on December 21, 2009, on the grounds that the ALJ should have ordered the matter off calendar to allow the Defendant to obtain a QME panel. Still, Hansen did not notify the Board that a QME panel had already been assigned three months earlier, and she again remained silent when the WCAB issued a second order on March 9, 2010, rescinding the ALJ's trial-setting order and directing the Medical Unit's Medical Director to issue a QME panel.

Three weeks later, the WCAB learned of the true state of affairs when the Medical Director filed a verified Petition for Reconsideration, a Petition to Reopen the Record, and an

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[6] Former California Code of Regulations, title 8, section 30, subdivision (d)(3) (effective Feb. 17, 2009) (hereafter rule 30(d)(3)) provided that whenever an injury or illness claim of an employee has been denied, only the *employee* may request a QME panel. In the *Speight* matter, the Defendant's attorney requested the panel.

Offer of Proof, which disclosed that the Medical Unit had in fact timely responded to Hansen, advising her that the First and Second QME Requests had been denied for procedural deficiencies and that the Third QME Request had been granted and a panel had been issued several months earlier. The Medical Director attested that rule 30(d)(3) had no bearing on the Medical Unit's actions. The director asked the WCAB to vacate its March 9, 2010 order on the grounds that it "was procured by [D]efendant by fraud," and "[t]he evidence does not justify the findings of fact."

In response, Hansen filed an Answer to Petition for Reconsideration (Answer), denying that the Petition for Removal misrepresented the actions of the Medical Unit. She asserted instead that it had merely stated the Medical Unit "never issued the panel," and she averred that any omissions in the Petition for Removal were "irrelevant." She also continued to assert that the ALJ had incorrectly applied rule 30(d)(3) retroactively, which had prompted the filing of the Petition for Removal. The majority of her Answer involved criticizing the Medical Director's attorney, who she maintained had "unjustly and recklessly" accused her of drafting and filing the Petition for Removal.[7] Hansen accordingly asked for sanctions against the Medical Director and his counsel.

3. The WCAB Imposes Sanctions on Hansen et al.

The WCAB did not take lightly the fact that its orders to the ALJ to vacate the trial-setting order and to the Medical Unit to issue a QME panel were based on a distorted version of the record. In its August 12, 2010 Opinion and Notice of Intention to Impose Sanctions (August 12, 2010 Opinion), the Board concluded that it had been misled by Hansen and her colleagues: "Although one could argue that [D]efendant's statements regarding the Medical Director's failure to issue a panel were literally true, those statements were deceptive and

[7] White drafted the Petition for Removal and another Stockwell attorney, Lisa Hanhart, signed and filed it.

misleading. By failing to inform the [WCAB] that the Medical Director had *denied*, with explanation of the reasons, [D]efendant's February 13 and June 5, 2009 requests, [D]efendant painted an incomplete and distorted picture that appears to have been intended to, and did in fact, mislead the [WCAB], resulting in the [WCAB] taking the action requested by [D]efendant." (Italics in original.)

The WCAB did not hold Hansen responsible for preparing or filing the Petition for Removal, but stated it would nevertheless impose sanctions against her because she drafted, signed, and filed the Answer, which the WCAB found "continued [D]efendant's pattern of presenting half-truths." The Board also found fault with Hansen's failure to withdraw the Petition for Removal or to notify the WCAB once the QME panel had been issued. As a consequence, the WCAB rescinded its earlier order to the Medical Director and reinstated the earlier trial-setting order of the ALJ.

Undeterred by the WCAB's criticism, Hansen and the other Stockwell attorneys filed a Verified Reply to the Notice of Intent to Impose Sanctions (Reply) on September 1, 2010, requesting a hearing before the Board. For the first time, Hansen disclosed the complete procedural history of the three QME panel requests. However, to justify her previous actions and those of the other Stockwell attorneys, she argued that the failure to disclose the relevant information was not at issue at the MSC and that the ALJ had wrongfully applied rule 30(d)(3).

In its final order, filed on August 23, 2011 (Final Order), the WCAB rejected all of Hansen's assertions, including her rule 30(d)(3) argument, finding that "[t]he retroactivity issue was nothing but a red herring." Instead, the WCAB found that "the Reply continues defense counsel's pattern of misstating the facts in a manner that casts their behavior in a more innocent light than is merited," and it characterized the Reply as "unapologetic and defiant." The WCAB made clear that it had been deceived and had taken unjustified action based on that deception:

"Defense counsel maintain that they did not *intend* to mislead us, but it was apparent from our March 9, 2010 Opinion and Decision After Removal that we had been misled . . . . [B]ut they took no steps to enlighten us. Remarkably, they responded with hostility when the Medical Director exposed our error in her petition for reconsideration." (Italics in original.)

Citing its responsibility to ensure that its decisions "are just and are based on a full understanding of all the material facts," the WCAB imposed sanctions on all of the Stockwell attorneys, with Hansen receiving a sanction of $2,500, the maximum permitted by statute. (Lab. Code, § 5813; see also Cal. Code Regs., tit. 8, § 10561.)

B. Discipline Proceedings

As a consequence of the WCAB's actions, OCTC initiated these proceedings against Hansen and White[8] by filing a Notice of Disciplinary Charges (NDC) in May 2014, alleging violations of section 6068, subdivision (d) (seeking to mislead judge)[9] and section 6106 (moral turpitude).[10] On the first day of trial, the parties filed a Stipulation as to Undisputed Facts and Admission of Documents. At the conclusion of the four-day trial, the hearing judge granted Hansen's motion to dismiss with respect to Count One on the grounds that it was duplicative and denied the motion as to Count Two. The judge filed her decision on October 13, 2015.

II. HANSEN IS CULPABLE OF MISREPRESENTATIONS TO THE WCAB

In defending her conduct, Hansen offers this court many of the same arguments she made to the WCAB, to wit: (1) she did not make misrepresentations to the Board; (2) a change in the

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[8] OCTC brought charges against only Hansen and White. Therefore, we have not considered the conduct of the other two Stockwell attorneys unless relevant. The hearing judge's decision became effective as to White on May 28, 2016.

[9] Section 6068, subdivision (d), requires an attorney "[t]o employ . . . those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law."

[10] Section 6106 states in relevant part: "The commission of any act involving moral turpitude, dishonesty or corruption . . . constitutes a cause for disbarment or suspension."

law affecting the Defendant's right to a QME panel justified her conduct; and (3) the WCAB issued its sanctions against her based on its erroneous understanding of her involvement in the *Speight* matter. The WCAB found these arguments unavailing, and so do we.

A. Count One: Section 6068, Subdivision (d) [Seeking to Mislead Judge]

Count One alleges, inter alia, that Hansen made misrepresentations to the WCAB in violation of section 6068, subdivision (d). The hearing judge dismissed this count because the same facts are alleged in Count Two as a violation of section 6106. We agree that Count One is duplicative, and we affirm the dismissal with prejudice. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 786-787 [dismissing § 6068, subd. (d), count as duplicative of allegation of violation of § 6106].)

B. Count Two: Section 6106 [Moral Turpitude (Misrepresentation)]

In Count Two, OCTC alleges, inter alia, that Hansen committed acts involving moral turpitude or dishonesty because she misrepresented to the WCAB that although Defendant "had repeatedly requested a qualified medical evaluator panel to the Medical Director . . . , such requests were ignored, when, in fact, defendants' first two requests were denied in writing for being defective and their final request was granted." It further alleges that Hansen knew or was grossly negligent in not knowing that her representations were false.

The hearing judge found Hansen culpable of moral turpitude as charged, although the judge's decision is unclear as to whether culpability is based on intentional or grossly negligent conduct. At oral argument, OCTC acknowledged that the lack of clarity on this issue was "problematic" in ascertaining the seriousness of the found misconduct and in assessing the corresponding discipline. We agree, and clarify that the record establishes that Hansen intentionally deceived the WCAB. We base this conclusion on the misrepresentations contained in the Answer and Reply, which she authored in part and filed on behalf of the Defendant.

The WCAB found that after White had filed the Petition for Removal containing the initial misrepresentations, Hansen and her colleagues continued to omit material facts and present half-truths to justify their conduct. The Board stated in its Final Order: "In their Reply, and in all previous filings, they admit no error on their part, but, instead, with selective omission of material detail, cast blame on [Speight's] attorney, the [ALJ], the . . . Medical Unit, the Medical Director's counsel, and the [WCAB]." These selective omissions establish Hansen's culpability since "[n]o distinction can . . . be drawn among concealment, half-truth, and false statement of fact. [Citation.]" (*In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 156 [concealment of material fact misleads judge as effectively as false statement].)

Hansen argues that she is not culpable of perpetuating the fraud on the Board since the WCAB was fully aware of the facts at the time she filed the Answer and the Reply. However, misleading statements to a court or tribunal constitute moral turpitude whether or not the attorney actually succeeds in perpetrating a fraud. (*Bach v. State Bar* (1987) 43 Cal.3d 848, 852-853, 855.) Hansen had a duty to affirmatively advise the court of the true state of affairs *before* it took action. The WCAB recently reminded attorneys appearing before it "of their continuing duty to timely advise the WCAB (i.e., both the Appeals Board and the [ALJs]) of any material change in circumstances that could substantially affect cases pending before it." (*Dubon v. World Restoration, Inc.* (2014) 79 Cal.Comp.Cases 1298 [2014 WL 4975935, at *10, fn. 24] (Appeals Board en banc).)

It is significant that Hansen failed to convince the WCAB of her honest intentions because it was "in a better position than this reviewing court to pass upon truthfulness." (*Lee v. State Bar* (1970) 2 Cal.3d 927, 940.) The WCAB findings are particularly persuasive here since the Board itself was the target of the fraud, and took action in reliance on the misrepresentations.

We would be hard-pressed to second-guess the Board's own finding that *it* was deceived, and we thus give a strong presumption of validity to this finding, which is supported by substantial evidence. (*Maltaman v. State Bar* (1987) 43 Cal.3d 924, 947; see also *Foster v. Workers' Comp. Appeals Bd*. (2008) 161 Cal.App.4th 1505, 1509 ["WCAB's findings on questions of fact are conclusive where supported by substantial evidence. [Citations.]"].) Furthermore, we may rely on the WCAB's findings because Hansen was a party who was subject to the sanctions order, which is a conclusive legal determination of her conduct in perpetrating the fraud on the Board. That misconduct bears "a strong similarity, if not identity, to the charged disciplinary conduct." (*In the Matter of Lais* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112, 117.)

We thus conclude that Hansen is culpable of acts of moral turpitude, as charged in Count Two, because she intentionally misled the WCAB while representing the Defendant in the *Speight* matter.

III. SIGNIFICANT AGGRAVATION OUTWEIGHS MITIGATION

Standard 1.5 requires OCTC to establish aggravating circumstances by clear and convincing evidence.[11] Standard 1.6 requires Hansen to meet the same burden to prove mitigation. Applying these standards, the hearing judge found three factors in aggravation and two in mitigation.

A. Aggravation

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

During the trial, OCTC offered Exhibits 30 and 31 as evidence of Hansen's disciplinary history. On appeal, Hansen renews her trial objection to the admission of the records of her two

[11] 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.)

other disciplinary matters, citing to the State Bar Court Rules of Practice, rule 1260.[12] We deny Hansen's request to strike this evidence. At the close of the trial proceedings (but before the matter was submitted), the hearing judge stated she would "hold off on the admission of those two documents" until after she received a closing brief and written objections from the parties. According to the State Bar Court Exhibit Log, the hearing judge did not admit Exhibits 30 and 31 until the date she filed her decision on October 13, 2015.

In that decision, the hearing judge properly ruled on the admissibility of Exhibits 30 and 31 after making her culpability findings, and only then considered the exhibits as evidence of aggravation. (Rules Proc. of State Bar, rule 5.106(D).) Having exercised our independent review of the record, we have concluded that Hansen is culpable, and therefore we too consider her disciplinary history for the purposes of aggravation and discipline. To the extent Hansen challenges the weight to be afforded to her disciplinary history, we give consideration herein to that argument.

The hearing judge correctly considered Hansen's discipline record as aggravation under standard 1.5(a), but the judge did not analyze the chronology of her other two discipline matters or specify the weight to be given to this factor. Hansen's disciplinary history is unusual in that the NDC in *Hansen I* was filed in October 2010 and the motion to revoke probation, which initiated *Hansen II*, was filed in March 2012, both of which occurred *after* the misconduct that is the subject of this proceeding. We therefore afford less weight to the aggravating force of Hansen's discipline history because we consider prior, not subsequent, discipline as "indicative

[12] Hansen initially objected at trial only to admission of Exhibit 31 as evidence in aggravation on the grounds that it was not a prior record since that proceeding post-dated the misconduct subject to the instant proceeding. In her Closing Brief filed in the Hearing Department, Hansen changed course and objected to admission of both Exhibits 30 and 31 on the basis that they could not be admitted prior to a finding of culpability under rule 1260 of the State Bar Court Rules of Practice.

of a recidivist attorney's inability to conform his or her conduct to ethical norms [citation] . . . ." (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 619, 602.)

Hansen I.[13] In December 2003, Hansen made misrepresentations to the United States Bankruptcy Court in a Chapter 7 bankruptcy petition that she and her husband jointly filed concerning the number and amount of encumbrances on her residence. In February 2004, Hansen also altered and then recorded a deed of trust so that it misstated the amount of the loan it secured. Inexplicably, OCTC did not file an NDC in *Hansen I* until October 28, 2010. On July 27, 2011, the Supreme Court ordered, inter alia, that Hansen be actually suspended for 30 days and placed on probation for two years as the result of a stipulation to one count of misconduct for gross negligence in committing acts of moral turpitude. No aggravating circumstances were involved. In mitigation, Hansen had no prior record of discipline, cooperated with the State Bar, and provided one good character letter and one letter describing her membership in a non-profit organization.

Hansen II.[14] Between approximately September 2011 and May 2012, Hansen failed to comply with several probation conditions from *Hansen I*, including failing to participate in a scheduled telephonic Office of Probation meeting, provide proof of completion of six hours of MCLE-approved courses, and timely submit a quarterly report. In aggravation, Hansen had one prior record of discipline, engaged in multiple acts of misconduct, and failed to participate in the probation revocation proceeding. No mitigating factors were established. On September 25, 2012, the Supreme Court ordered Hansen's probation revoked, and further ordered that she be actually suspended for one year and placed on probation for two years, subject to conditions.

[13] Supreme Court case no. S193233; State Bar Court case no. 07-O-12444.

[14] Supreme Court case no. S193233; State Bar Court case no. 12-PM-12254.

In the Matter of Sklar, supra, 2 Cal. State Bar Ct. Rptr. at p. 619 guides us to look at the totality of Hansen's misconduct. In so doing, we observe a troubling repetition of misrepresentations before two judicial tribunals, the first occurring in 2003 and the second between 2009 and 2010. We also find a recurring disregard for adherence to her professional responsibilities. In *Hansen II*, Hansen violated several conditions of her probation and then failed to participate in the revocation proceedings. In view of these circumstances, we assign moderate weight to Hansen's prior discipline.

2. Significant Harm (Std. 1.5(j))

The hearing judge correctly found that Hansen significantly harmed the administration of justice. (Std. 1.5(j).) The WCAB found in its August 12, 2010 Opinion that "[b]y presenting half-truths and failing to disclose material facts," the Stockwell attorneys delayed the *Speight* matter for nearly a year. Further, the WCAB found in its Final Order that the conduct of Hansen and the other Stockwell attorneys resulted in a "massive waste of time and energy," particularly the unnecessary use of judicial resources.[15]

3. Indifference and Lack of Insight (Std. 1.5(k))

The hearing judge found that Hansen demonstrated indifference because, even at her discipline trial, she failed to appreciate that asserting half-truths, concealing material facts, and failing to correct the record regarding the Medical Unit's responses constituted misconduct. We agree, and find this is a significant factor in aggravation. At trial, Hansen continued to blame others and to justify her conduct using the very factual and legal arguments that the WCAB had unequivocally rejected. As the WCAB observed, Hansen and the other Stockwell attorneys

[15] We reject OCTC's request that we find a fourth aggravating circumstance under either standard 1.5(b) (multiple acts of wrongdoing) or standard 1.5(c) (pattern of misconduct) based on Hansen's conduct before the WCAB. Although the hearing judge found she engaged in a "pattern of telling half-truths," our finding of moral turpitude already accounts for this misconduct.

remained "unapologetic and defiant." Such lack of insight into her wrongdoing raises this court's concern that her misconduct will recur.

B. Mitigation

1. Cooperation (Std. 1.6(e))

We agree with the hearing judge's assignment of limited mitigation credit for Hansen's cooperation with the State Bar during trial. Although she entered into an extensive factual stipulation, most of those facts were easily provable. (*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443 [factual stipulation merits some mitigation]; *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive mitigation for those who admit culpability].)

2. Character Evidence (Std. 1.6(f))

Standard 1.6(f) authorizes mitigating credit 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 [attorney's] misconduct." Hansen presented five good character witnesses, all of whom are attorneys.[16] All of the attorneys attested that Hansen is an honest, highly capable, organized, and knowledgeable attorney. (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [character testimony from attorneys is valuable given their "strong interest in maintaining the honest administration of justice"].)

But even with these positive assessments, the judge properly assigned limited mitigation credit as only two witnesses were aware of the full extent of the misconduct charged against Hansen. (*In re Aquino* (1989) 49 Cal.3d 1122, 1131 [seven witnesses and 20 letters of support

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[16] Three individuals testified at trial, and two submitted declarations. In addition, the managing partner testified both as a percipient witness and as a character witness. Given the Stockwell firm's involvement in the WCAB matter, the hearing judge found the managing partner was not an impartial witness and gave little or no weight to his character testimony. We give great deference to this determination. (See *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266, 280 [hearing judge's credibility findings entitled to great weight].)

not "significant" evidence of mitigation because witnesses were unfamiliar with details of misconduct].) Moreover, the remaining witnesses did not constitute a wide range of references from the legal and general communities, as required by the standard. (*In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 387 [three attorneys and three clients do not constitute broad range of references].) We thus assign limited mitigation credit to Hansen's good character evidence.

IV. 18-MONTH ACTUAL SUSPENSION IS APPROPRIATE DISCIPLINE

Our disciplinary analysis begins with the standards. Although they are not binding, we give them great weight to promote consistency. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.) Importantly, the Supreme Court has instructed us to follow the standards "whenever possible" (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11), and also to look to comparable case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.)

At the outset, we observe that standard 1.1 specifies that the purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys. Hansen argues that no discipline should be imposed and that this matter should be dismissed since she is not culpable of any wrongdoing. OCTC asserts that because this is Hansen's third disciplinary proceeding, disbarment is the appropriate discipline under standard 1.8(b).[17]

OCTC acknowledged in its Closing Trial Brief filed below that the chronology of Hansen's discipline matters is "problematic" if we are to apply standard 1.8(b) because the

[17] Standard 1.8(b) instructs that if a member has two or more prior records of discipline, disbarment is appropriate (unless the most compelling mitigating circumstances clearly predominate or the prior misconduct occurred during the same time period as the current misconduct) if actual suspension was previously ordered, or if the prior and current misconduct demonstrate a pattern or an inability to conform to ethical responsibilities.

misconduct presently before us occurred *before* her other two disciplinary proceedings. Due to this unusual chronology, we assigned diminished weight to the aggravating effect of Hansen's discipline history, citing to the rationale articulated in *In the Matter of Sklar*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 619. For the same reason, we do not believe that the presumptive discipline of disbarment under standard 1.8(b) should be applied. This standard is intended as a deterrent to recidivism, which is not at issue when, as here, the misconduct predates the attorney's other discipline cases. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5 [requiring clear reasons for departure from standards].)

Instead, we look to standard 2.11, which provides for disbarment or actual suspension as the presumed sanction for acts of moral turpitude. Standard 2.11 guides us to consider "the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the member's practice of law."

Given the range of discipline in standard 2.11, we look for additional guidance to the decisional law involving misrepresentations to the court. A review of relevant cases involving similar attorney misconduct discloses a broad spectrum of discipline imposed. (See, e.g., *Grove v. State Bar* (1965) 63 Cal.2d 312 [in pre-standards case, public reprimand where attorney with previous private reproval intentionally misled judge into believing opposing party had defaulted]; *Bach v. State Bar*, *supra*, 43 Cal.3d 848 [60-day actual suspension where attorney with prior public reproval intentionally misled judge about whether he was ordered to produce client at hearing]; *In the Matter of Chesnut* (Review Dept. 1994) 4 Cal. State Bar Ct. Rptr. 166 [six-month actual suspension where attorney with prior 15-day actual suspension falsely represented to two judges he had personally served opposing party]; *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490 [six-month actual suspension where attorney

with prior 90-day actual suspension falsely stated to judge he had witness under subpoena]; *Davis v. State Bar* (1983) 33 Cal.3d 231 [one-year actual suspension where attorney with two prior disciplines but no previous actual suspension knowingly submitted false answer to court and failed to competently perform legal services]; *Arm v. State Bar* (1990) 50 Cal.3d 763 [18-month actual suspension where attorney with three prior disciplines, including 60-day actual suspension, misled court about impending disciplinary suspension during further hearing of matter].)

We acknowledge that the 18-month actual suspension recommended by the hearing judge is at the severe end of the disciplinary continuum as developed in the decisional law, and it constitutes significant discipline. But we adopt her recommendation based on the totality of Hansen's misconduct, which would justify an 18-month suspension had all of the misconduct been brought as one case. (*In the Matter of Sklar*, *supra,* 2 Cal. State Bar Ct. Rptr. at p. 619.) Indeed, Hansen's misconduct in her three cases spans more than eight years and involves repeated probation violations and two instances of moral turpitude for making misrepresentations to separate judicial tribunals. Notably, Hansen made the misrepresentations to better her own personal position. And in the instant case, the deceptions to the WCAB occurred over many months, even after the Board warned Hansen that she was wading into deep ethical waters and facing possible sanctions. Yet she pressed on, essentially doubling down on her efforts to justify her conduct. Her presentation of half-truths and concealment of material facts significantly and adversely impacted the administration of justice. Furthermore, all of the misconduct was directly related to her practice of law before the WCAB.

Of course, Hansen had the right to defend herself from the imposition of sanctions, but even now, on appeal, she seems unable to recognize that her conduct was to any extent improper, much less unethical. Instead, she remains steadfast in her belief that the only person who is

culpable of dishonesty is the Medical Director's counsel. We find that Hansen's unwillingness even to consider that her actions might be inappropriate goes "beyond tenacity to truculence." (*In re Morse* (1995) 11 Cal.4th 184, 209.)

The WCAB fittingly described this case as "an unfortunate and avoidable scenario in which the attorneys, rather than acknowledging error, created a much graver situation by misrepresenting and distorting facts, blaming others, and creating an overall fiction to justify their actions." Hansen's failure to appreciate the importance of her professional responsibilities, which in the past was evidenced by her failure to comply with her prior probation conditions and her failure to appear at her revocation proceeding, continues to the present in that she disavows any wrongdoing in the face of significant sanctions by the WCAB. This raises additional concerns about the potential for future misconduct, and for this reason, we recommend that the 18-month period of actual suspension should continue until Hansen establishes her rehabilitation, fitness to practice law, and present learning and ability in the law in satisfaction of standard 1.2(c)(1). Such a showing is necessary to ensure that the public, the courts, and the legal profession are adequately protected. (*In the Matter of Luis* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 737, 742-743 [reinstatement hearing offers public protection through formal proceeding designed to ensure moral fitness and legal learning before attorney permitted to return to practice of law].)

V. RECOMMENDATION

For the foregoing reasons, we recommend that Kimberly Allyson Hansen be suspended from the practice of law for three years, that execution of that suspension be stayed, and that she be placed on probation for three years on the following conditions:

1. She must be suspended from the practice of law for a minimum of the first 18 months of the period of her probation and until she provides proof to the State Bar Court of her rehabilitation, fitness to practice, and learning and ability in the general law. (Std. 1.2(c)(1).)

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

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

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

5. She 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, she must state whether she has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of her probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.

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

7. Within one year after the effective date of the discipline herein, she 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 she shall not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

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 she 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 Hansen be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar

Examiners during the period of her actual suspension, 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. RULE 9.20

We further recommend that Hansen be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

VIII. COSTS

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

EPSTEIN, 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.