PUBLIC MATTER — DESIGNATED FOR PUBLICATION

FILED January 26, 2015

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. **12-C-15595**
	)	
MARK DANIEL WENZEL,	)	**OPINION**
	)	**[As Modified July 30, 2015]**
A Member of the State Bar, **No. 96673.**	)	
	)	

On four separate occasions during a two-month period, respondent Mark Daniel Wenzel hid a small video camera in a unisex public restroom at Coffee Bean restaurants in Los Angeles. Each time, the camera was found by a patron or employee and turned over to the police, but not before it recorded individuals using the toilet. Wenzel was convicted of a misdemeanor violation of Penal Code section 647, subdivision (j)(1) (viewing into restroom by means of instrumentality), and the criminal court imposed a suspended sentence and probation with conditions.

The hearing judge found that Wenzel's actions involved moral turpitude and recommended discipline, including a one-year suspension. Both the Office of the Chief Trial Counsel (OCTC) and Wenzel appeal. OCTC requests a two-year suspension, as it did at trial, and that Wenzel be required to prove his rehabilitation and fitness to practice law at a formal hearing before he can be reinstated. Wenzel argues his conviction does not involve moral turpitude and that even a one-year suspension is too harsh given older yet comparable case law.

The primary issues in this conviction referral matter are: (1) whether the facts and circumstances surrounding Wenzel's criminal conviction involve moral turpitude; and (2) the

appropriate level of discipline in light of the nature of his wrongdoing and the likelihood that he will commit misconduct in the future.

After independently reviewing the record (Cal. Rules of Court, rule 9.12), we agree with the hearing judge that Wenzel's conviction involves moral turpitude and that several aggravating circumstances are present. But we do not agree that the mitigation evidence establishes Wenzel is unlikely to commit further misconduct, particularly in light of his longstanding substance abuse problem. We note that he had a relapse involving methamphetamines in 2013, just two months before his disciplinary trial. Although the criminal court has punished Wenzel for his criminal acts, significant professional discipline is also warranted to protect the public and preserve the integrity of the legal profession. We recommend increasing Wenzel's discipline to include a two-year suspension that is to continue until he proves his rehabilitation and fitness to practice law — a heavy burden that is necessary to address his egregious misconduct and ongoing substance abuse problem.

I. FACTS

A. Wenzel's Professional Background

Wenzel has been a member of the State Bar since 1980. He is an accomplished trial attorney who has practiced law for decades. Beyond his practice, he has a record of service to the legal profession, particularly to the American Board of Trial Advocates (ABOTA). In 2010, he was honored with a civility award given by the Los Angeles ABOTA chapter. Wenzel has published articles in legal journals and has participated in many pro bono activities. He is co-founder and chairman of a University of California law school scholarship fund.

B. Wenzel's Surreptitious Recordings of Restaurant Customers, His Wife, and His Wife's Friend[1]

On November 23, 2011, Wenzel placed a small video camera, which he happened to have with him, in a restroom of a Coffee Bean restaurant. He then sat on the patio drinking coffee while he waited for the camera to record patrons using the toilet. When he suspected his recording device had been discovered, he fled; in fact, an employee found it and turned it over to the police. Soon thereafter, Wenzel purchased video pen recorders and hid them in various Coffee Bean restrooms on December 21, 2011, January 3, 2012, and January 17, 2012. He stipulated that he positioned his recorders under the sink to "record unsuspecting victims using the toilet." On each occasion, a patron or employee found the recorder and gave it to the police. Following the third incident, an employee surreptitiously summoned the police, who responded to the scene and arrested Wenzel on site. The police confiscated Wenzel's cell phone and conducted a forensic search of the device.

The recording devices and Wenzel's cell phone contained videos of Coffee Bean patrons using the restroom. Adult male patrons at the Coffee Bean restaurants were recorded urinating; one was filmed defecating. One patron was taped using the toilet on two occasions and found the camera both times. Wenzel also taped himself having sex with his wife, and further taped his wife's best friend entering the Wenzels' guest bedroom before she undressed outside the view of the camera. He testified that his wife repeatedly refused to be recorded having sex, but he secretly did so on at least two occasions; he also tried to record her undressed without her knowledge or permission. Wenzel admitted he hid a pen video recorder on New Year's Eve 2011 in a guest bedroom in an effort to film his wife's friend undressing.

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[1] The undisputed facts regarding the recordings from the Coffee Bean restaurants and Wenzel's home are established by the record of conviction, an extensive stipulation, and the trial testimony of Wenzel, a Coffee Bean Company employee, and a Coffee Bean patron.

C. Wenzel's Misdemeanor Conviction and Its Effect on His Legal Career

Wenzel was charged with four misdemeanors. He pled no contest to one count of violating Penal Code section 647, subdivision (j)(1) (looking into a place in which the occupant has a reasonable expectation of privacy by means of an instrumentality "with the intent to invade the privacy of a person or persons inside"), and the other charges were dismissed. At his criminal sentencing on July 17, 2012, he received a suspended sentence and was placed on summary probation for 24 months. He was ordered to perform 200 hours of community service; pay fines and fees; continue counseling and medical treatment; avoid all Coffee Bean restaurants; cease owning any recording equipment except a cell phone; and refrain from threatening, using violence against, annoying, or harassing any person or witness in the case.

After Wenzel's conviction, his law firm fired him. One partner explained: "we just thought it would be best for our practice and the continuation of our business that at that point that Mark no longer be with us." Another partner conceded that Wenzel was let go "for the good of the firm." For his part, Wenzel voluntarily resigned his ABOTA board membership to avoid embarrassing the organization.

D. Admitted Facts and Circumstances Surrounding the Crime

In this disciplinary proceeding, Wenzel stipulated to certain facts and circumstances surrounding his criminal acts and testified about his motive and thought process. He testified he had hoped to view "some girl's rear end or something like that" and conceded the recordings were "of a sexual nature." Recalling his thinking after the first incident, Wenzel said: "[T]here's an argument going on in my head, 'No, don't do that. That's crazy. That's terrible. How horrible.' " He further recalled that after placing the camera, again he thought: " 'I'll never do that again. What the hell am I doing? I could get in trouble. What do I think I'm doing?' " And

finally, Wenzel volunteered that years earlier, in 2009, he had hidden a camera in a Coffee Bean restroom but never recovered it.

E. Wenzel's Conduct Significantly Harmed His Victims

The Coffee Bean Regional Supervisor testified that the employees feared for their safety during the time of the incidents. Consequently, the company spent considerable resources to protect employee and customer safety. Later, the company was sued because of the recordings. In addition, the twice-victimized patron testified he "was very disappointed that one of such responsibility [an attorney] had abused that responsibility in this way." He testified that he stopped going to the Coffee Bean restaurants, which caused him to lose a place that he cherished: "I just don't feel comfortable going there anymore specifically because of this incident."

F. Testimony of Wenzel's Psychiatrist

Wenzel presented testimony and reports from Dr. Lewis Engel,[2] his psychiatrist, for his type II bipolar disorder. Dr. Engel, who treated Wenzel since April 2009, opined that the criminal misconduct was "caused by a medical illness that is outside of Mr. Wenzel's conscious control." Dr. Engel reported that in November 2011, Wenzel's work-related sleep deprivation "triggered a hypomanic episode," i.e., his action in placing a camera in a Coffee Bean restaurant. He opined that the hypomania was unexpected as Wenzel had never before suffered "hypomanic or manic symptoms." He further asserted that the three videos that followed were triggered by Wenzel's use of prednisone to treat his bronchitis. Dr. Engel reported he does "not believe Mr. Wenzel to be at risk of repeating this behavior as his treatment has been modified to address the future risk [of] having hypomania triggered. His newfound awareness of the importance of sleep maintenance will further contribute to his stability."

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[2] Dr. Engel prepared a report regarding Wenzel and then revised it several times. The last revision in evidence is dated April 24, 2013, two days before his April 26, 2013 testimony in these proceedings.

Dr. Engel based his opinion on his 30 years of experience treating mood and anxiety disorders and a single conversation with Wenzel on February 9, 2012 — three weeks after his arrest and the day after his police interview. Wenzel had not visited Dr. Engel around the time of the recordings in December 2011 and January 2012. Notably, Wenzel told Dr. Engel at their February meeting "that he had never engaged in this kind of activity before," which was untrue. It was not until Dr. Engel's testimony on April 26, 2013, that he learned of Wenzel's attempted secret recording at a Coffee Bean restaurant years earlier in 2009.

The hearing judge did not accept Dr. Engel's opinion that Wenzel's conduct was caused by a medical illness. Instead, the judge found that Wenzel acted intentionally because he "envisioned an opportunity to secretly record his victims, planned his course of action, and acted on his plan on numerous occasions."

G. Wenzel's Substance Abuse

Wenzel admits he has struggled with alcoholism since the 1980s and has used illegal drugs periodically since becoming a member of the Bar. Though he has maintained long periods of sobriety, he was drinking heavily at the time of his misconduct. Following his arrest, Wenzel returned to regularly attending Alcoholic Anonymous meetings and was sober for approximately one year. However, in late January, two months before the disciplinary trial below, he testified he relapsed and used methamphetamine.

II. FACTS AND CIRCUMSTANCES INVOLVE MORAL TURPITUDE

After the State Bar transmitted his conviction records to us, we referred this matter to the hearing department to determine whether the facts and circumstances surrounding Wenzel's crime involve moral turpitude or other misconduct warranting discipline and, if so, the appropriate level of discipline. (See Bus. & Prof. Code, § 6102, subd. (e).) The California Supreme Court has explained that "[c]riminal conduct not committed in the practice of law or

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

On four occasions, Wenzel intentionally hid cameras in public restrooms to obtain secret recordings to view for his sexual gratification. Arguably, the first event may have been opportunistic. However, the other occasions involved advanced planning with a clear purpose and a complete disregard for the privacy rights of others. Nothing in the record indicates that Wenzel took precautions to ensure that children were not among his victims, and his conduct stopped only upon his arrest. Without question, his crime is likely to undermine public confidence in and respect for the legal profession — clear evidence of this fact being the testimony of the twice-victimized Coffee Bean patron and Wenzel's law firm's decision to let him go.

Further, Dr. Engel's opinion that Wenzel is not responsible for his misconduct due to a bipolar disorder is contrary to the evidence. First, Wenzel's conviction is conclusive proof that he acted "with the intent to invade the privacy" of the Coffee Bean patrons, in violation of Penal Code section 647, subdivision (j)(1). (See Bus. & Prof. Code § 6101, subd. (a).) Second, Wenzel admitted he hid the cameras for the specific purpose of making surreptitious recordings and that he knew at the time his actions were unethical and illegal. Finally, as the hearing judge noted, Dr. Engel's opinion lacks reliability because it was formed: (1) without knowledge of Wenzel's prior attempt to record a victim in 2009; (2) absent a firsthand observation of Wenzel

in a manic state; and (3) relying solely on Wenzel's historical version of events. Moreover, Dr. Engel is neither a forensic psychiatrist nor an expert in the criminal standards for mental illness.

III. THE AGGRAVATION OUTWEIGHS THE MITIGATION[3]

Neither party challenges the hearing judge's findings in aggravation. We adopt and affirm them as supported by the record. Wenzel committed multiple acts of misconduct (std. 1.5 (b)), and his misconduct caused significant harm to his victims and to the public (std. 1.5(f)).

The hearing judge found six factors in mitigation. We find four factors and assign significantly less weight to each of them than the hearing judge did.

First, the hearing judge found that Wenzel's 30-plus years of discipline-free practice is significant mitigation. We find that only modest mitigation is warranted despite Wenzel's lengthy practice. When the misconduct is serious, as it decidedly was here, a long record without discipline is *most* relevant when the misconduct is aberrational. (Std. 1.6(a) [mitigation for no prior record of discipline over many years coupled with present misconduct that is not serious]; see *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [where misconduct is serious a long discipline-free practice is most relevant where misconduct is aberrational].) Each time Wenzel returned to the Coffee Bean to commit his pre-planned crime, he did so after he had time to reflect on and consider the consequences of his misconduct. Under these circumstances, we cannot say his misconduct was aberrational or is unlikely to recur.

As for the second factor in mitigation, Wenzel is not entitled to mitigating credit for his bipolar disorder. (Std. 1.6(d).)[4] He did not establish that his disease was directly responsible for

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[3] The Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 1.5 requires OCTC to establish aggravating circumstances by clear and convincing evidence (hereafter, standards). Standard 1.6 requires Wenzel to meet the same burden to prove mitigation.

[4] Standard 1.6(d) provides mitigation credit for "extreme emotional difficulties or physical or mental disabilities suffered by the member at the time of the misconduct and established by expert testimony as directly responsible for the misconduct, provided that such

the many acts of misconduct he committed. Also, Wenzel testified to his long-standing substance abuse problem and methamphetamine use just two months before his hearing, indicating he continues to struggle with this problem. Moreover, no evidence establishes that these difficulties are resolved or that Wenzel is no longer at risk of committing future misconduct.

Third, Wenzel is entitled to significant mitigation for entering into an extensive stipulation that disclosed his intent in hiding the cameras. (Std. 1.6(e) [mitigation for spontaneous cooperation to the victims of misconduct or to State Bar].) He also volunteered that he engaged in similar behavior in 2009. For these admissions, he is entitled to significant mitigation. (See *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 ["more extensive weight in mitigation is accorded those who . . . willingly admit their culpability as well as the facts"].)

Fourth and fifth, the hearing judge assigned substantial mitigation to Wenzel's extraordinary good character (std. 1.6(f) [mitigation for extraordinary good character attested to by wide range of references in legal and general community who are aware of misconduct]), and strong mitigation for his pro bono work (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785). We adopt the pro bono mitigation finding but assign only moderate weight to his overall good character. Wenzel presented seven witnesses — each a lawyer who knows him both personally and professionally. Six are members with Wenzel in the Los Angeles chapter of ABOTA. All uniformly attested to his good character, integrity, and legal skills, and each believed the misconduct was aberrant and not in keeping with the Wenzel they know as a person and as an attorney. Despite this laudatory character testimony, it is limited to a narrow cross-section of the

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difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the member established by clear and convincing evidence that the difficulties or disabilities no longer pose a risk that the member will commit misconduct."

legal community and is therefore not entitled to substantial weight. (*In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469, 476-477 [character evidence given limited weight when not from wide range of references]; but see *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [serious consideration given to testimony of attorneys given their "strong interest in maintaining the honest administration of justice"].)

Finally, we assign some mitigation credit to Wenzel's remorse and recognition of his wrongdoing. (Std. 1.6(g) [mitigation for prompt objective steps that demonstrate spontaneous remorse and recognition of wrongdoing and timely atonement].) He expressed genuine contrition to his wife and his wife's friend. Due to legal considerations, he was not able to do the same for the Coffee Bean Company or the victims. Overall, he stated he was remorseful, although his focus was primarily on his and his family's suffering, and not that of his victims.

IV. TWO-YEAR ACTUAL SUSPENSION IS PROPER DISCIPLINE

We begin by acknowledging that "the 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." (*In re Brown* (1995) 12 Cal.4th 205, 217; Std. 1.1.) It is not our role to punish Wenzel for his crime — the superior court has done so by sentencing him in the criminal proceeding. Instead, our objective is to recommend the professional discipline that will advance the goals of attorney discipline and, particularly in this case, preserve public confidence in the profession. We accomplish this 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.) We conclude that the recommended discipline should be increased.

Standard 2.11(c) provides for a wide range of discipline for Wenzel's misconduct. It instructs that disbarment or actual suspension is appropriate for misdemeanor convictions involving moral turpitude. The hearing judge recommended a one-year suspension, reasoning that Wenzel was "unlikely to reoffend" because he: (1) recognized and accepted his wrongdoing; (2) consulted a physician; and (3) entered into a stipulation. OCTC contends that notwithstanding the judge's findings, Wenzel's misconduct is very serious and calls for disbarment or a two-year actual suspension, which is in the upper range of discipline suggested by standard 2.11(c). Wenzel urges no suspension because: (1) his misconduct did not involve moral turpitude;[5] and (2) even assuming moral turpitude is found, comparable case law provides for a no more than a stayed suspension. We find, as did the hearing judge, that disbarment is not warranted. However, a period of actual suspension is clearly appropriate given the seriousness of Wenzel's misconduct. To determine the proper length of suspension to recommend, we look to case law. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311 [case law provides guidance on discipline].)

As the hearing judge noted, no published case law discusses the specific crime Wenzel committed, and little relevant law addresses discipline for misdemeanors where the facts and circumstances constitute moral turpitude based on similar misbehavior. Wenzel relies on *In re Safran* (1976) 18 Cal.3d 134. Safran was convicted of two misdemeanors for annoying or molesting a child under 18 years (former Pen. Code, § 647a, amended and renumbered as Penal Code § 647.6 by stats. 1987, ch. 1418, § 4.3) and had previously been convicted of indecent exposure. The facts and circumstances, although not recited in the opinion, were found to have involved moral turpitude, and Safran received a three-year stayed suspension. In mitigation, Safran was undergoing and was committed to continuing psychiatric treatment. The *Safran* court

[5] This argument lacks merit as Wenzel's misconduct involves moral turpitude.

found that "a period of probation under intensive supervision by the State Bar will adequately protect the public and the profession." (*Id.* at p. 136.)

While *Safran* has similarities to Wenzel's case, it is distinguishable for two reasons. First, it was decided nearly 40 years ago before the standards were in effect. The current applicable standard calls for a period of *actual* suspension as the minimum appropriate discipline for misdemeanor convictions involving moral turpitude. Second, the facts and circumstances surrounding Wenzel's crime are serious, while little is known about the facts and circumstances in *Safran*. In comparison, Safran was convicted of two counts of sexual misconduct while Wenzel repeatedly made surreptitious recordings of patrons in a public restroom and of his wife for his personal and sexual gratification. His acts involved premeditation with conscious disregard of the fundamental privacy rights of individuals unwittingly exposed to his lens. Wenzel's actions threaten the public's confidence in our profession as expressed by one victimized patron's disappointment that an attorney would engage in such conduct. The threat posed by his misconduct is also reflected in Wenzel's decision to step down from the ABOTA Board. Perhaps most tellingly, Wenzel's own law firm could not stand by him professionally. Just as his long-time colleagues were compelled to let Wenzel go for the "good of the firm," we take his misconduct seriously and impose significant discipline for the good of the profession.

Also different from *Safran*, a stayed suspension here would not adequately protect the public because we do not find that Wenzel is unlikely to commit future misconduct. As noted, Dr. Engel's opinion is not a reliable indicator of Wenzel's future conduct, and Wenzel's substance abuse remains a concern given his recent illegal drug use. Simply put, Wenzel needs more time to demonstrate he will not commit future misconduct, is managing his emotional issues, and has dealt with his substance abuse problem. As to Wenzel's mitigation, his character witnesses' continued faith in him is a testament to their loyalty to him, not an objective

assessment of whether he will repeat his actions. Nor does Wenzel's current recognition of his wrongdoing have predictive value about his future misconduct because he admitted he knew his actions were wrong when he made the secret recordings.

After considering all the relevant factors and the range of discipline suggested by standard 2.11(c) (actual suspension to disbarment), we conclude Wenzel must be suspended for a lengthy period – at the high end of the standard's range – and then prove he is rehabilitated. Given his serious misconduct *and* his failure to demonstrate reform, we recommend a two-year actual suspension and a requirement that Wenzel present proof at a formal hearing of his rehabilitation and present fitness to practice law pursuant to standard 1.2(c)(1). This discipline is appropriate under standard 2.11(c) to protect the public, the courts, and the legal profession. It also sends the proper message that repeated acts of moral turpitude such as Wenzel's will result in significant professional sanctions, even when the underlying criminal conduct involves a single misdemeanor conviction.

V. RECOMMENDATION

For the foregoing reasons, we recommend that Mark Daniel Wenzel be suspended for two years, that execution of that suspension be stayed, and that he be placed on probation for three years with the following conditions:

1. He is suspended from the practice of law for a minimum of the first two years of the period of his probation and until he provides proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

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

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

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

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

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

7. 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.)

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

VI. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Mark Daniel Wenzel be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners during the period of his actual suspension 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. RULE 9.20

We further recommend that Mark Daniel Wenzel 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 Business and Professions Code section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment.

PURCELL, P. J.

I CONCUR:

EPSTEIN, J.

McELROY, J.,* dissenting.

I agree with the majority that the facts and circumstances surrounding Wenzel's misdemeanor conviction involve moral turpitude, but respectfully disagree as to the appropriate level of discipline. I would affirm the hearing judge's recommendation of a one-year actual suspension, subject to a two-year stayed suspension, and three years' probation. Although Wenzel's misconduct is clearly serious and involves moral turpitude, there is no controlling case law directly on point and certainly none that supports the two-year suspension recommended by my colleagues.

A one-year actual suspension is unquestionably significant discipline for Wenzel's misconduct given his 30 years of discipline-free practice. Further, it is well within the range of discipline suggested by standard 2.11(c) (disbarment or actual suspension appropriate for misdemeanor conviction involving moral turpitude). Wenzel has admitted his misconduct and sought therapy to address the emotional problems that led to his wrongdoing. Accordingly, I believe that a one-year actual suspension, the requirement of a formal reinstatement hearing, and three years of State Bar probation monitoring will serve the goals of attorney discipline without being punitive.

*Hearing Judge of the State Bar Court, assigned by the Presiding Judge pursuant to rule 5.155(F) of the Rules of Procedure of the State Bar