STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **JEANNIE E. TANAKA,** **Member No. 116289,** A Member of the State Bar.	)	Case No.: **12-C-16547-DFM** **DECISION**

INTRODUCTION

On November 7, 2012, **Jeannie E. Tanaka** (Respondent) was criminally convicted of attempted kidnapping, battery, and attempting to evade/elude the police while driving a vehicle. The issues in this proceeding are whether the facts and circumstances surrounding Respondent's convictions involved moral turpitude or other misconduct warranting discipline and, if so, what the appropriate level of discipline should be. (Bus. & Prof. Code, §§ 6101, 6102.)[1]

For the reasons stated below, the court finds that the facts and circumstances surrounding Respondent's convictions did not involve moral turpitude but do represent misconduct warranting discipline. After evaluating the gravity of the crime, the circumstances of the case, and the aggravating and mitigating factors, the court recommends discipline as set forth below.

[1] Except where otherwise indicated, all further statutory references are to the Business and Professions Code.

PERTINENT PROCEDURAL HISTORY

On November 7, 2012, in the Los Angeles County Superior Court, Respondent was convicted of violating Penal Code section 664-207, subdivision (a) (attempted kidnapping), a felony; Penal Code section 242 (battery), a misdemeanor; and Vehicle Code section 2800.2, subdivision (a) (intent/attempt to evade/elude peace officer while driving vehicle), also a misdemeanor.

The record of her convictions was transmitted by the State Bar of California, Office of the Chief Trial Counsel (State Bar) to the Review Department of the State Bar Court (Review Department) on February 6, 2013. On February 21, 2013, the Review Department issued an order classifying Respondent's felony conviction as a crime that may or may not involve moral turpitude. However, based on Respondent's felony conviction, Respondent was suspended from the practice of law, effective March 29, 2013, until final disposition of this proceeding,. (Bus. & Prof. Code, § 6102.)

The matter was then assigned to the undersigned on June 5, 2015. On that same date, this court issued and properly served a Notice of Hearing on Conviction on Respondent. Respondent filed her response on June 25, 2015.

The matter was assigned a trial date of October 6, 2015. Trial was commenced and completed on that day, followed by a period of post-trial briefing.[2] The court submitted the matter for decision on October 6, 2015. The State Bar was represented by Deputy Trial Counsel Sherell N. McFarlane. Respondent was represented by attorney Kevin Gerry of the Law Offices of Kevin Gerry.

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[2] The State Bar has requested that Respondent's personal statement and attached exhibits, appended to her closing brief, be stricken in their entirety and not considered for any purpose in connection with this submitted matter. That motion to strike is denied. However, to the extent Respondent's closing brief seeks to rely on purported facts not received in evidence at trial such matters are not considered by the court.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on the documentary and testimonial evidence admitted at trial.

Jurisdiction

Respondent was admitted to the practice of law in California on December 3, 1984, and has been a member of the State Bar at all relevant times.

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Respondent's convictions arise out of her attempt to take her aged mother from her sister's home, where her mother was being attended by a caretaker. Because of past and ongoing disputes within the family, the Los Angeles County Superior Court had previously appointed an independent conservator to oversee both mother's estate and the mother had issued an order both prohibiting Respondent from visiting her mother without providing prior notice and requiring the presence of a monitor during her visits. Because of concerns and disputes generated by Respondent's prior visits, the monitor was also required to provide to the probate judge for review a report after each visit.

On December 19, 2011, Respondent drove a rental car to her sister's home where her mother was residing. She had not provided any advance notice of her intent to see her mother, and no monitor had been arranged or was present. At the residence, Respondent was greeted at the door of the portion of the home where her mother lived by the mother's caretaker, Nida Tapel (Tapel). Respondent informed Tapel that she was there to pick up her mother and take her to court for the purpose of testifying at a scheduled hearing that day. When Tapel asked to see documents authorizing Respondent to take the mother from the home, Respondent provided various documents. After reviewing those documents, Tapel concluded that no court had authorized the mother to be released to Respondent's custody. Therefore, the caretaker refused to

allow Respondent to take the mother from the premises. Despite this refusal, Respondent indicated that she was still going to take her mother from the home. Respondent then started to leave the residence with the mother, who was willing to leave the home with her daughter but lacked any capacity to authorize Respondent's violation of the court's protective order.

During the initial conversation between Respondent and the caretaker, Respondent had asked to borrow Tapel's cell phone, stating that her own phone was not working and that she needed to call the court. In response, Tapel provided her personal cell phone to Respondent. Later, after the disagreement developed over whether Respondent could take her mother from the home, the caretaker asked Respondent to return the borrowed phone. Respondent replied that she did not have it. The caretaker then sought to use the portable house phone but discovered that it was not there. As a result, Tapel was unable to call anyone to seek assistance in preventing Respondent's from taking the mother from the home.

After the mother and Respondent exited the house and were headed for Respondent's rental car, the caretaker physically sought to impede the mother's progress toward the car. However, Respondent, who had come to the residence with two canisters of pepper spray, responded by pulling one of the canisters from the fanny pack she was wearing and spraying the caretaker in the face, including the eyes and the back of the head. After then shouting unsuccessfully for help, the caretaker ran to the street, where she was able to get the attention of the driver of a car, who then called 911 and asked that the police go immediately to the location of the dispute.

The caretaker then ran back to where mother was in the process of getting into the rental car. Committed to protecting the mother, the caretaker jumped into the rental car and refused to leave, despite Respondent's demands that she do so. However, before Respondent could drive the rental car away, the police arrived. On exiting squad car, the uniformed officers ordered

Respondent to stop. She did not. Instead, she backed the car into the street and drove away. The police officers quickly returned to their patrol vehicle and pursued Respondent's vehicle, using lights and sirens to signal Respondent to stop. Respondent, who was aware of the pursuing police vehicle with its lights and sirens, did not voluntarily stop. Instead, the following events ensued, as set forth by the police in their report:

> We continued following the [Respondent's] vehicle on numerous streets. . . . Initially, the [Respondent's] vehicle was following all rules of the road and was adhering to the vehicle code. . . .
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> We then observed [Respondent's] vehicle narrowly miss a pedestrian walking . . . in the crosswalk . . . . The [Respondent's] erratic driving also caused several vehicles to swerve to avoid colliding with the [Respondent's] vehicle. . . . Air 4 assumed control of broadcasting the direction of travel, of the [Respondent's] vehicle, as they arrived on scene. Per the incident recall, at 15:16 hrs, Air 4 declared we were in pursuit of the [Respondent's] vehicle . . . because the [Respondent's] vehicle was reckless and was not obeying the rules of the road.
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> We observed the [Respondent] driving . . . on the opposite side of the road . . . in lane #1, almost colliding with [police] Unit #14MQ78 at the intersection . . . .

(Ex.7, pp. 2-3.)

Respondent then turned down a dead-end street. At that point, the police were able to force her to stop. She was then arrested for violation of Penal Code section 12403.7(g).

On being taken into custody, it was determined that Respondent had packed food, water, clothes, and more than $43,000 in cash in the rental car prior to driving to pick up her mother. After the incident, Respondent was initially charged with violating Penal Code section 207, subdivision (a) (kidnapping) and Penal Code section 245, subdivision (a)(1) (assault by means of force likely to produce great bodily injury), both felonies, and Vehicle Code section 2800.2(a) (evading/eluding a peace officer), a misdemeanor. On November 7, 2012, as part of a plea bargain, Respondent pled guilty to the three counts listed above. She was sentenced to four years in state prison but the court suspended the execution of that sentence and placed Respondent on

formal probation for a period of five years with conditions, including, among other things, ongoing psychiatric treatment, including the following:

> [Respondent] shall continue to see a psychotherapist on a weekly basis, or more frequently if needed, during her probation.
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> [Respondent] shall see a psychiatrist, at least every 1 to 2 months, or more regularly if necessary. If the psychiatrist requires medication, You must take the medication. You must cooperate with psychiatric orders.
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> The psychotherapist or psychiatrist have any concerns regarding the dangerousness of [Respondent] while she is on probation, then they should immediately contact each other, her probation officer, and the court. [Respondent] must waive confidentiality for this purpose.
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> The psychotherapist must write a regular progress report for the court and include comments and recommendations from the psychiatrist.

(Exh. 6, pp. 13-15.)

During the trial of this disciplinary proceeding, Respondent sought to explain her conduct by stating that she had been advised by her attorney in the probate matter to serve her mother with a subpoena to appear as a witness at the hearing scheduled on the afternoon of December 19, 2011, the day of the above events. She suggested, without specifically stating, that all of her efforts that day were only to take her mother to court on the advice of her attorney. That explanation is not credible. Even if Respondent had been advised by her attorney to serve her mother with a subpoena, the mere service of a subpoena would not have entitled Respondent to take physical custody of her mother, especially given the existence of a court order prohibiting any such act.

Further, the circumstances surrounding the timing and location of Respondent's actions are not consistent with her explanation of them. Respondent's mother was living on Benecia Avenue in West Los Angeles. Respondent did not arrive at the Benecia Avenue residence to pick up her mother until the middle of the afternoon. The police records indicate that the 911 call for assistance was received at 3:00 p.m. The probate court hearing was scheduled to be held

in the Mosk courthouse on Hill Street in downtown Los Angeles. The mother's conservator testified that: (1) the probate hearing had been scheduled for an earlier time in the day; (2) she and the various attorneys had appeared for it; (3) the start of the hearing was delayed because of Respondent's failure to appear for it; and (4) it was after the matter had been heard by the court and she had left the courthouse later in the day that she was contacted about the problems taking place at the mother's place of residence. In sum, the timing of Respondent's arrival at the mother's residence on December 19, 2011, was not consistent with any possibility of taking the mother to testify at a hearing scheduled to take place earlier that day.

Finally, Respondent's explanation of her conduct is inconsistent with her interactions with the police. If she really had intended to be taking her mother to court, she merely needed to explain that fact to the police and show them the subpoena for the mother's appearance there. Instead, she ignored their commands and sought to escape from them.

During the trial of this matter, Respondent sought to explain her failure to comply with the red lights and sirens of the police vehicle by suggesting that she believed the police were somehow providing her with a police escort to the courthouse. That explanation is clearly erroneous and was either a deliberate attempt by Respondent to mislead this court or the product of a delusional view by Respondent of what happened. This court concludes that it is the latter. The erratic route traveled by Respondent with her mother was inconsistent with any possible intent to take her mother to testify at trial. More significantly and contrary to Respondent's testimony, given that Respondent had not had any conversation with the police officers prior to the commencement of the police chase, Respondent had no reason to believe the officers were aware of her alleged intent to drive to the downtown courthouse.

None of the crimes of which Respondent was convicted constitute a crime of moral turpitude *per se*. However, the State Bar contends that Respondent's conduct involved moral

turpitude based on the particular circumstances surrounding the convictions. That contention is opposed by Respondent. At the conclusion of the trial, the court ordered the parties to submit written briefs regarding the law addressing that issue.

Moral turpitude has been defined in many ways. The foremost purpose of the moral turpitude standard is not to punish attorneys but to protect the public, courts, and the profession against unsuitable practitioners. (*In re Scott* (1991) 52 Cal.3d. 968, 978.) 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.) Finding that an attorney's conduct involved moral turpitude characterizes the attorney as unsuitable to practice law. *(In re Strick* (1983) 34 Cal.3d 891, 902.)

This court concludes that the evidence fails to show that the circumstances of Respondent's misconduct here involved moral turpitude. There are no bright line indicators to guide this court's determination of that issue. Instead, the determination requires a comparison of the conduct here with the prior disciplinary cases involving similar conduct or convictions. The cases identified by this court as most comparable to the circumstances here are *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208, *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581, and *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52. In each of those cases, the Review Department of this court

provided an extensive discussion and analysis of how it determined the issue of moral turpitude in those cases.

In *In the Matter of Anderson, supra,* 2 Cal. State Bar Ct. Rptr. 208, the Review Department discussed the issue of assessing whether a criminal conviction involved moral turpitude in the context of an attorney having repeated convictions of driving under the influence of alcohol. It concluded that the convictions did not involve moral turpitude, although the circumstances did warrant attorney discipline. In that case, involving four DUI convictions previously ordered consolidated by the Review Department, the court first noted the following circumstances underlying four convictions:

> 1983 incidents
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> In July 1983, an Alameda County deputy sheriff responded to a disturbance call placed by a business in the Hayward area. He noticed respondent inside the business. He was exuding a heavy odor of alcohol and his speech was slurred. Respondent gave the deputy his attorney-at-law business card. He possessed an expired driver's license. The deputy told respondent he appeared to be intoxicated and that he should not drive. The deputy directed respondent to a telephone and told him to call a friend or taxi. Respondent and the deputy left the business separately. A short time later, the deputy observed respondent enter his car and drive away. Unable to follow respondent's car in heavy traffic, the deputy radioed for police assistance. About five minutes later, the deputy learned that a California Highway Patrol unit had stopped respondent's car. The deputy drove to the scene of the stop and observed that respondent was verbally abusive to and uncooperative with the highway patrol officer.
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> After negotiations, in October 1984, respondent was convicted in the Municipal Court, San Leandro-Hayward Judicial District on plea of nolo contendere to two counts of drunk driving, one arising out of the July 1983 incident, discussed herein, and another arrest arising out of a December, 1983 incident, the circumstances of which are not part of our record because the parties did not submit any additional evidence. Also, in October 1984, respondent was convicted of one count of driving without a valid license in July 1983. Based on his pleas, he was sentenced to two days in county jail, with credit for time served, three years of court probation and fined $ 674.

1985 incident

On January 31, 1985, respondent had 10 to 12 alcoholic drinks after work. He then drove and was stopped by a Hayward police officer who saw respondent's car drift into the next traffic lane, causing a car in that lane to swerve across a double yellow line to avoid a collision. When existing his car, respondent stumbled and fell against it. The officer smelled alcohol on respondent's breath and noticed that respondent's eyes were glassy and bloodshot and his speech slurred. As the officer was preparing to administer a sobriety test to respondent, respondent pushed the officer backwards, causing him to fall. Respondent got back into his car and, when the officer tried to turn off the car's ignition, respondent pushed the officer's hand away, put the car in gear and drove off into the night at high speed without headlights. The officer suffered a minor cut to his hand during this incident.

Unable to pursue respondent, the officer obtained his home address and arrested him there without incident. A later chemical test showed respondent's blood alcohol level was 0.20 and respondent knew when he was driving that he was drunk. When stopped, he was still on probation from his 1983 drunk driving incidents. From the 1985 incident, respondent pled guilty to drunk driving, was sentenced to three years' probation and fined $ 900. Specific probation conditions included that respondent not drive with any measurable blood alcohol level and that he not refuse to submit to a chemical test of blood alcohol if arrested for drunk driving. In 1986, respondent's formal probation was converted to an unsupervised community release.

1988 incident

In April 1988, after a felony trial was unexpectedly continued in which respondent was representing the defendant in San Jose, respondent returned to the area of his law office near Hayward. It was lunch time. Respondent had been up since very early in the morning and had no further appointments that day. He went to two nearby restaurants to have lunch but instead drank several glasses of wine in each. He does not recall getting into his car in the shopping center parking lot in which the restaurants were located, but several citizens saw him do that and telephoned the Hayward police. There is no evidence that respondent's vehicle left the shopping center. The responding officer saw that respondent's eyes were watery and bloodshot, smelled alcohol about him and noticed he swayed while standing and his speech was slurred. The officer concluded that respondent was unable to safely care for himself and was subject to arrest for public intoxication. (Pen. Code, § 647 (f).) While the two were talking, respondent reached out and touched the officer's holstered service revolver. The officer told respondent not to do that again. After further discussion, respondent appeared to start leaving the scene and the officer arrested respondent. During the arrest,

> respondent struggled with the officer who had to place respondent on the ground to handcuff him. An assisting officer observed respondent kicking the arresting officer.
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> Respondent was transported to jail and on the way threatened to have the officer's job and home, then started to cry and said he was suicidal. Respondent was uncooperative and aggressive during part of the booking process. When asked to take a chemical test, respondent changed his mind three or four times as to the type of test he would take or whether he would take a test at all. During this process, he again had to be brought to the ground to be handcuffed so that he could be transported for testing. He later ceased his uncooperative behavior, but displayed conduct which resulted in his admission to a psychiatric facility for observation.
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> From this incident, in 1989 respondent pled nolo contendere to drunk driving. He was sentenced to 120 days in county jail with credit for 5 days and the balance stayed. He was also given three years conditional release and the 1988 revocation of his 1985 probation was rescinded and his probation restored.

(*Id.* at pp. 211-212.)

In rejecting the State Bar's contention that the history and circumstances of the respondent's convictions constituted moral turpitude, the Review Department provided the following analysis:

> There is no question as to the extreme risk of danger to our society posed by the drunk driver. In our earlier opinion in this proceeding, we cited the Supreme Court's own expression of concern in this regard. (*In the Matter of Anderson*, *supra*, 1 Cal. State Bar Ct. Rptr. at p. 44, fn.10.) Yet despite this risk to society, in recent times, our Supreme Court has held that an attorney's conviction of drunk driving even with prior convictions of that offense does "not per se establish moral turpitude." (*In re Kelley*, *supra*, 52 Cal.3d at pp. 492, 494.) The Supreme Court has also determined that the more serious crime of gross vehicular manslaughter while intoxicated is not one per se involving moral turpitude. (See *Matter of Van Dusen* (1989) SO09736 (minute order) [conviction of Pen. Code, § 191.5].)
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> Since respondent's offenses do not involve moral turpitude per se, our first step of analysis of the culpability issue is whether the facts and circumstances surrounding respondent's convictions involved moral turpitude or other misconduct warranting discipline. The principles and definitions of moral turpitude for attorney convictions of crime have been discussed and applied often by our Supreme Court over many years.

Moral turpitude determinations are a matter of law. (*In re Higbie* (1972) 6 Cal.3d 562, 569.) Moral turpitude is not a concept that fits a precise definition (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 110), but has been consistently described as an "act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." (*In re Craig* (1938) 12 Cal.2d 93, 97.) The Court has characterized the moral turpitude prohibition as a flexible, "commonsense" standard (*In re Mostman* (1989) 47 Cal.3d 725, 738) with its purpose not the punishment of attorneys, but the protection of the public and the legal community against unsuitable practitioners. (*In re Scott (*1991) 52 Cal.3d 968, 978.) It is measured by the morals of the day (*In re Higbie, supra,* 6 Cal.3d at p. 572) and may vary according to the community or the times. (*In re Hatch* (1937) 10 Cal.2d 147, 151.)

Although the Supreme Court's definitions of moral turpitude have been consistent over time, the determination of whether an attorney's conviction of certain crimes not involving moral turpitude per se should give rise to discipline, and on what basis, has not always been an easy task. Indeed, it has been one of the few issues of attorney regulation to sharply divide our Supreme Court over the years. (*In re Kelley, supra,* 52 Cal.3d 487 [drunk driving]; *In re Rohan* (1978) 21 Cal.3d 195 [wilful failure to file income tax returns].) The parties to this proceeding and this Department recognize that the hearing judge appreciated the difficulty of this question, devoting over eight pages of her decision to its analysis.

When we are asked by the Supreme Court to decide after hearing whether an attorney's conviction is one involving moral turpitude, we must base our determination on the facts and circumstances surrounding the conviction. (*In re Carr* (1988) 46 Cal.3d 1089, 1091.) As noted by the hearing judge, there are few Supreme Court disciplinary opinions to guide us on this question in the area of vehicle-related criminal convictions. We recognize that the specific facts in a case may influence the legal analysis and make drawing general principles for future cases much more difficult. The hearing judge's careful delineation of the similarities and contrasts of this case to *In re Alkow* (1966) 64 Cal.2d 838; *In re Kelley, supra,* 52 Cal.3d 487, and *In re Carr, supra,* 46 Cal.3d 1089, demonstrates the struggle entailed in arriving at a reasoned determination of the issue of moral turpitude.

When we remanded this case for consolidation and rehearing, we noted in passing some apparent similarities between the stipulated facts and the facts in the *Alkow* case and suggested there might be some differences as well which the hearing judge might take into account. (*In the Matter of Anderson, supra,* 1 Cal. State Bar Ct. Rptr. at pp. 44-45, fns. 10, 12.) After our remand, the Supreme Court decided *In re Kelley, supra,* 52 Cal.3d 487, holding that the facts and circumstances of that attorney's conviction of drunk driving, with a prior such conviction, did not involve

moral turpitude, but did involve misconduct warranting discipline. The hearing judge concluded that the facts of the present case were closer to *Kelley* than to *Alkow*. As we shall discuss, we agree with the hearing judge.

In *Alkow*, the attorney was convicted of vehicular manslaughter after running down a pedestrian, an accident which was caused in part by Alkow's defective vision. Prior to the accident, Alkow had been denied renewal of his driver's license because of his impaired vision, and in the little more than three years from his license expiration to the fatal accident, Alkow was convicted of more than 20 traffic violations. At the time of the accident, Alkow was on probation for three separate incidents, all three finding that Alkow drove without a license and in two cases, he failed to observe a right of way or a stop sign. Alkow was subject to probation conditions requiring him to obey the law and not to drive without a license. The Supreme Court determined that Alkow showed "a complete disregard for the conditions of his probation, the law and the safety of the public . . ." and concluded, that under its applicable definitions, respondent's criminal conduct involved moral turpitude. (*In re Alkow*, *supra*, 64 Cal.2d at p. 841.)

Respondent also had a prior conviction record of three driving offenses, one in 1979 and two in 1983, all involving alcohol. In contrast, they are not as numerous as the more than twenty citations in the *Alkow* case, they are not as proximate to each other (over five years from January 1979 to December 1983) and there is more time between them and the incidents here.

Both Alkow and respondent were aware of the circumstances which should have prevented either from driving and thus endangering the public. Alkow's impaired vision was well-known to him and resulted in the denial of his driving privileges. He was cited repeatedly for driving without a license, the last time two months before he killed the pedestrian. Respondent had prosecuted drunk drivers early in his legal career, demonstrating his general awareness of the issue and exacerbating the impact of his own misconduct. (See *Seide v. State Bar* (1989) 49 Cal.3d 933, 938 [applicant's conduct surrounding conviction for drug trafficking more egregious due to prior law enforcement background]; *In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 251 [prior employment of attorney as deputy district attorney and FBI agent aggravated tax fraud conviction].) Further, respondent was conscious of his own drinking and driving problem because of his arrests; but, as noted by the hearing judge, alcohol use impairs judgment. Respondent's decision on occasion to drive when intoxicated is neither condoned nor excused, but it differs to a significant degree from Alkow's conscious, unimpaired decision to continue to drive with inadequate eyesight and without a license after numerous motor vehicle citations.

The fact that respondent's drunk driving did not result in serious injury or death to another was merely fortuitous. It does not render respondent's conduct any less serious. While the death of the pedestrian appears to have been a factor in the moral turpitude determination in the *Alkow* case, we would not state that specific harm must always be shown to support a moral turpitude conclusion. As we found in *In the Matter of Frascinella* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 543, 550, physical harm was not required to show moral turpitude where an attorney brandished a replica firearm in a life-threatening manner, through deliberate conduct demonstrating his flagrant disregard for human life.[court footnote 3][3]

The Court's limited discussion in *In re Carr*, *supra*, 46 Cal.3d 1089, a 1988 consolidated case of two convictions for drunk driving, provides little guidance. In that case, there is little factual recitation or discussion; and, on the issue of moral turpitude, a succinct adoption of the State Bar Court's recommended conclusion that moral turpitude was not involved. Carr was on criminal probation at the time of his second drunk driving offense. Respondent was on unsupervised probation at the time of his 1988 arrest. Carr had prior discipline from two consolidated cases of recent vintage, which was considered by the Court on the issue of degree of discipline. The Court adopted the review department's recommended discipline of six months' actual suspension consecutive to Carr's then current suspension. Respondent's prior attorney misconduct was proximate to his drunk driving arrests in 1983 and was not as serious, resulting only in reprovals.

As we stated, ante, since our remand of this matter, the Supreme Court has issued its opinion in *In re Kelley*, *supra*, 52 Cal.3d 487. We believe the present case to be closer to *Kelley* than to *Alkow*. In *Kelley*, an attorney was referred for State Bar hearing after she had been convicted twice of drunk driving within a 31-month period and had violated her probation in the first case by virtue of her second arrest. On her first arrest, Kelley had driven her car into an embankment and was arrested at the scene. Her probation conditions included obeying all laws and participating in an alcohol abuse program. While on probation, she was stopped by a police officer while driving home, initially refused a field sobriety test, and attempted to try to talk the officer out of that arrest. A second officer was called to the scene, assisted in the field sobriety test of Kelley, and arrested Kelley when she failed it. Her blood alcohol on the second arrest was noticeably above legal limits (in the range of 0.16 - 0.17). No one was injured in either of her drunk driving offenses.

At the discipline hearing, Kelley presented evidence that she lacked any prior discipline or criminal record, had participated in extensive

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[3] [Court footnote 3]: In contrast, in *In the Matter of Carr* (1992) 2 Cal. State Bar Ct. Rptr. 108, there were insufficient facts in the record regarding the circumstances of the offenses to conclude that moral turpitude was involved. (*Id.* at p. 116.)

community service and complied with all her probationary terms since her second conviction. The Court found that Kelley's conduct did not involve moral turpitude, but rather constituted other misconduct warranting disciplinary action. In response to Kelley's challenge to discipline for conduct not constituting moral turpitude, the Court found the circumstances of her misconduct were linked in two ways to her fitness to practice law. Kelley acted in violation of a court order setting forth the conditions of her probation in the first case by her second arrest and conviction, actions which the Court found were contrary to her duties as an officer of the court and as a practitioner. The circumstances of her two arrests and convictions within 31 months demonstrated to the Court's satisfaction an alcohol abuse problem which had entered into Kelley's personal life and which the Court found to have a potentially damaging effect on Kelley's practice and clients. These two grounds were sufficient support for the Court's exercise of disciplinary authority to protect the public. Noting that there had been no specific harm caused to the public or the courts, as well as Kelley's significant mitigating evidence, the Court ordered Kelley publicly reproved and directed her to participate in the State Bar's program on alcohol abuse.

The criminal violations in *Kelley*, *Carr* and the instant matter are the same, and such factors as a prior conviction for drunk driving, the violation of court-ordered probation and a high blood alcohol level at arrest, were insufficient in the Court's view to warrant a finding of moral turpitude. But the nature of the incidents and their greater number in this case indicate a more serious threat to the public and to respondent's fitness to practice and pose a closer question than in *Kelley* as to whether moral turpitude might be involved. Kelley's history of alcohol abuse is much shorter than respondent's and was not coupled with a prior awareness of the problem through professional, prosecutorial experience, as is the case with respondent. Kelley's crash into the embankment on her first arrest and her refusal to cooperate with arresting officers in her second arrest were not as threatening to the peace and safety nor as confrontational as in three of respondent's arrests. [court's footnote 4][4]

On balance, we agree with the hearing judge that this case, while more serious than the *Kelley* and *Carr* matters, approaches, but does not yet cross, the moral turpitude line. For the reasons we have discussed, ante,

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[4] [Footnote 4]: As we have recited, in July 1983, respondent disregarded a police officer's warning not to enter his car and drive. In 1985, his driving almost caused a collision with a car in the opposite lane of traffic. When he was stopped, he engaged in an altercation with the arresting officer, causing a minor injury to the officer, and fled the scene at high-speed flight without headlights at night. As to respondent's 1988 arrest, his conduct appeared so seriously threatening to safety that citizens who saw respondent get in his car called the police and were ready to make a citizens' arrest. Respondent tried to place his hand on the arresting officer's revolver, then tried to elude him; and, when finally arrested, resisted, requiring another officer to intervene. On his way to jail, respondent threatened one of the officers and was uncooperative.

> we have concluded on balance that this case is more akin to the Supreme Court's more recent *Kelley* decision than to its *Alkow* case. We therefore adopt the hearing judge's conclusion that the facts and circumstances surrounding respondent's drunk driving convictions involved other misconduct warranting discipline.

(*Id.* at pp. 214-217.)

In *In the Matter of Respondent O, supra,* 2 Cal. State Bar Ct. Rptr. 581, the Respondent had been convicted of criminal felony assault with a firearm. The respondent there, an attorney who was also a reserve police officer, had fired a pistol at another car during the course of a road rage incident, hitting and seriously injuring a 15-year old girl sitting in the rear passenger seat of the other vehicle. In a published decision, the Review Department rejected the State Bar's contention that the incident involved moral turpitude. In doing so, it provided the following analysis and prior cases involving convictions of criminal assault:

> Thus, respondent is conclusively presumed to have committed the elements for the crime of assault with a firearm. Those elements are that a person was assaulted and that the assault was committed with a firearm. (CALJIC No. 9.02.) An assault is defined as an unlawful attempt to apply physical force upon the person of another at a time when the accused had the present ability to apply such physical force. (CALJIC No. 9.00.) An attempt to apply physical force is not unlawful when done in lawful self-defense. (*Id.*) Respondent's conviction therefore conclusively establishes that he unlawfully attempted to apply physical force upon the victim. As the assault was by definition unlawful, it was not done in self-defense.
> . . .
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> The Office of Trial Counsel contends that respondent's conduct involves moral turpitude. The crime for which respondent was convicted does not in and of itself constitute a crime of moral turpitude for attorney discipline purposes. (*In re Rothrock* (1940) 16 Cal.2d 449, 459.) If moral turpitude exists in this case, it must be based on the particular circumstances surrounding the conviction. (*In re Kelley, supra*, 52 Cal.3d at p. 494.) Moral turpitude has been defined in many ways, including as an act contrary to honesty and good morals. (*In re Scott* (1991) 52 Cal.3d 968, 978.) The foremost purpose of the moral turpitude standard is not to punish attorneys but to protect the public, courts, and the profession against unsuitable practitioners. (*Ibid.*) Finding that an attorney's conduct involved moral turpitude characterizes the attorney as unsuitable to practice law. (*In re Strick* (1983) 34 Cal.3d 891, 902.)

Essentially, the Office of Trial Counsel argues that respondent's conviction involves moral turpitude because the surrounding circumstances demonstrate a flagrant disregard for human life. Criminal convictions not involving moral turpitude per se have been determined to involve moral turpitude where the circumstances surrounding the conviction indicate a flagrant disregard for human life. (*In re Alkow* (1966) 64 Cal.2d 838, 840-841; *In the Matter of Frascinella* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 543, 550.) On the other hand, drunk driving, while inherently dangerous to human life, has been classified as a crime which may or may not involve moral turpitude. (*In re Kelley, supra*, 52 Cal.3d at p. 494.) Even repeated convictions of driving under the influence by an attorney with experience prosecuting such crimes was characterized by the Office of Trial Counsel in another case as a crime which did not involve moral turpitude. (*In the Matter of Anderson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 39, 43.) On remand of *Anderson*, we determined that the facts and circumstances of the criminal conduct demonstrated that the misconduct approached but did not cross the moral turpitude line. (*In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208, 217.)

While we agree with the Office of Trial Counsel that the commission of respondent's crime on a crowded freeway is inherently dangerous to human life and that respondent's status as a police officer makes his crime more serious than otherwise might be the case, we cannot conclude that these factors necessarily demonstrate moral turpitude, in light of the other facts and circumstances found by the hearing judge. Respondent was found to have honestly believed that he had been shot or shot at and was in immediate danger of being shot at again; he considered his escape options before using his firearm; and he fired only once as safely as he could from a moving vehicle. In addition, there is no evidence that respondent intended to injure the victim. In view of the findings below with respect to respondent's subjective beliefs, we cannot conclude that his unlawful assault of the victim renders him morally unfit to practice law.

The Office of Trial Counsel argues in the alternative that respondent's felony conviction "impugn[s] the integrity of the profession" and that the conviction together with the facts and circumstances therefore constitute other misconduct warranting discipline. We agree.

Where the crime does not inherently involve moral turpitude we must review comparable case law and examine the particular facts and circumstances of the criminal conduct in order to determine if cause for professional discipline exists. The Supreme Court has repeatedly imposed discipline on attorneys for violent behavior that did not rise to the level of moral turpitude. In *In re Larkin, supra*, 48 Cal.3d 236, the Supreme Court concluded that an attorney's conviction for misdemeanor assault with a deadly weapon and conspiracy to commit the assault involved other misconduct warranting discipline. Larkin conspired with a client to

assault a man who was dating Larkin's estranged wife. The victim was struck on the chin with a metal flashlight by the co-conspirator/client. The charges were filed as felonies but were thereafter reduced to misdemeanors. Larkin "assaulted the victim not in the 'heat of anger,' but in the course of a premeditated and conspiratorial plan. It was no spontaneous reaction out of anger or passion." (*Id.* at p. 245.)

In *In re Otto* (1989) 48 Cal.3d 970, the Supreme Court concluded that the attorney's felony conviction for assault by means likely to produce great bodily injury and infliction of corporal punishment on a cohabitant of the opposite sex involved other misconduct warranting discipline. The criminal court reduced Otto's convictions to misdemeanors. The facts and circumstances surrounding the convictions are not stated in the opinion. However, the Supreme Court agreed with the State Bar that the matter involved other misconduct warranting discipline.

In *In re Hickey* (1990) 50 Cal.3d 571, the Court also found other misconduct warranting discipline. Hickey was convicted of carrying a concealed weapon, a misdemeanor, and was found culpable of violating former rule 2-111 of the Rules of Professional Conduct in a client matter. The circumstances surrounding the conviction included Hickey's repeated acts of violence toward his wife and others, which arose from his abuse of alcohol. The victims' injuries were apparently not serious.

Respondent asserts that *In re Otto* and *In re Hickey* are distinguishable because the criminal conduct in those cases involved repeated acts of violence and was at least partly attributable to alcohol abuse. We also note that *In re Larkin* involved the attorney's assault in the course of a premeditated and conspiratorial plan. Nevertheless, the convictions in *Hickey* and *Larkin* were misdemeanors and in *Otto*, the conviction was reduced to a misdemeanor. Also, the criminal conduct in these cases did not involve the discharge of a firearm or serious injury to the victim. We further note that criminal offenses involving violence are set forth in the official comment to rule 8.4 of the American Bar Association, Model Rules of Professional Conduct, as the type of crime for which a lawyer should be professionally answerable. (See discussion in *In the Matter of Respondent I, supra*, 2 Cal. State Bar Ct. Rptr. at p. 270.) Finally, respondent's status as a law enforcement officer sworn to uphold the law makes his crime particularly egregious. (Cf. *Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933.)

At the time of his criminal conduct, respondent had been a reserve police officer for approximately nine years and had extensive training in the use of firearms. The tragic incident in this matter began with an altercation between two motorists on a crowded freeway. Despite respondent's contrary testimony, our review of the record indicates that respondent was not blameless in the confrontation with the Mazda. Upon initial contact with the Mazda, respondent refused to allow the Mazda to pass him even

> though he had ample opportunity to do so. Thereafter, instead of slowing down and allowing the Mazda to pass, he pulled over onto the paved center median to prevent the Mazda from passing him.
>
> Despite his training and experience as a police officer, respondent did not use his car telephone to inform the CHP about the erratic and illegal driving by the Mazda. Despite his training and experience as a police officer, he participated in a dangerous confrontation with another automobile on a crowded freeway, endangering not only himself and the occupants of the Mazda, but innocent third party motorists. This confrontation precipitated the even more dangerous altercation that resulted in respondent unlawfully firing his weapon from his automobile at an occupied automobile while both cars were traveling on a crowded freeway at night.
>
> That death or more serious injury to human life did not occur is indeed fortuitous. The occupants of the Mazda clearly were not blameless in these events. Nevertheless, respondent, a trained and experienced reserve police officer, engaged in a confrontation that put innocent third parties at great risk of injury and ultimately resulted in serious injury to Karen Phillips. We find that the acts which are conclusively established by respondent's conviction and the circumstances surrounding the conviction, demonstrate a reckless disregard for the safety of others and warrant professional discipline. (See *In the Matter of Respondent I, supra*, 2 Cal. State Bar Ct. Rptr. at p. 270.) We therefore conclude that respondent's conviction involved other misconduct warranting discipline.

(*Id.*, at pp. 589-591.)[5]

In 1994, the Review Department again addressed the issue of whether the circumstances leading to a criminal conviction of assault or battery constituted an act of moral turpitude in *In the Matter of Stewart, supra,* 3 Cal. State Bar Ct. Rptr. 52. In that case, the respondent had been convicted of misdemeanor battery on a police officer. The circumstances of that case and the Review Department's conclusion that those circumstances did not entail moral turpitude are as follows:

[5] In 1995, the Review Department issued a second published decision involving this case, concluding that the appropriate discipline was two years suspension, stayed, and two-years' probation, but with no prospective actual suspension due to the period of interim suspension already served by the respondent. (*In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406.)

On the evening of Sunday, May 27, 1990, respondent lived in an apartment in West Los Angeles separated from his wife, who lived with her family members in another apartment in the same building. His wife had custody of the couple's 18-month-old son, Logan, and respondent was scheduled to visit with Logan. Shortly before respondent picked up Logan, he had been drinking one or two drinks of "Yukon Jack," a 100-proof alcoholic drink he had never tried before. The electricity in his apartment had been turned off and Logan was upset at the darkness. Respondent took Logan upstairs to his wife's apartment to see if she would allow respondent to continue visiting Logan there. She refused and when respondent told his wife he would take Logan back to his apartment, his wife protested, grabbed Logan from respondent and attempted to close the apartment door. Respondent firmly told his wife he had a legal right to visit Logan in her apartment. By citing Penal Code sections, respondent intimidated his way into his wife's apartment. Unknown to respondent, someone in his wife's apartment called the Los Angeles Police Department.

Two uniformed police officers responded. After speaking with respondent's wife, the officers saw respondent in his wife's apartment and one of the officers, McNally, told respondent he was not welcome in the apartment and would have to leave. At first, respondent cooperated with the officers but refused to leave his wife's apartment without Logan. When McNally reached for respondent's arm to escort him from the wife's apartment, respondent jerked away from McNally. When McNally again reached for respondent's arm, respondent grabbed McNally's upper body in a "bear hug." The two struggled while respondent continued to hold onto McNally. To free himself from respondent, McNally forcibly pushed respondent away. Respondent stumbled several feet, striking his face on a door bell attached to the apartment's front door. The two continued to struggle on the floor for about ten seconds until respondent was finally handcuffed either by McNally or his partner. McNally and respondent each sustained cuts and bruises in the struggle and McNally's uniform shirt was torn.

Respondent was placed in the police car in handcuffs for transport to a hospital and then jail booking. While waiting for the officers to depart, respondent became abusive, directing profanities toward both officers. These included racial epithets toward McNally, who was African-American. When respondent arrived at the hospital, he again became abusive at the officers and was asked by a hospital staffer to quiet down. After departure from the hospital, respondent remained calm and was booked at a jail facility without further incident.

. . .

We start with the well-settled principle that respondent's conviction of violation of Penal Code section 243, subdivision (c) is conclusive

evidence of guilt of the elements of that crime. (See. e.g., *In re Larkin* (1989) 48 Cal.3d 236, 244; *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581, 588.) Thus there can be no doubt that respondent committed battery on a police officer engaged in the performance of official duties. (See *People v. Delahoussaye* (1989) 213 Cal.App.3d 1, 7.) As the Court of Appeal observed in *Delahoussaye*, if, in arresting a person, a peace officer uses excessive force, that officer is not engaged in the performance of official duties within the meaning of Penal Code section 243. (*Ibid.*) In our view, respondent's final conviction, after he had an opportunity to press his claim of excessive police force, does not allow us to consider his principal defense in this proceeding. (Compare *In the Matter of Respondent O*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 589 [claim of self-defense inconsistent with elements of conviction of assault with a firearm].) Even if we could consider such claim, there is no convincing evidence to support it.

OCTC accepts the hearing judge's conclusion that the facts and circumstances surrounding respondent's crime do not involve moral turpitude but do involve misconduct warranting discipline. We agree with the judge that moral turpitude was not involved based on our analysis in *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208, 214-217, in which that attorney was convicted of several drunk driving offenses some of which involved assaultive or uncooperative conduct toward arresting officers.

However, we also agree with the hearing judge that the entire course of respondent's conduct surrounding his conviction demonstrates an adequate basis for finding misconduct warranting this discipline. Respondent admitted that he had drunk a 100-proof alcoholic beverage prior to visiting with his 18-month-old son, Logan. Although this is the first time respondent drank such a strong beverage, he consumed alcoholic beverages daily. He appeared not to be drunk when he was with Logan but was under the influence of alcohol. Respondent trespassed on his wife's apartment and when she requested he leave, he berated her with a citation of code sections designed to intimidate her. Instead of acceding to the authority of the police officers who arrived, respondent grabbed Officer McNally in a bear hug and continued to struggle with the officer while both were on the ground. Respondent continued to be hostile to the officers when being driven away from the scene. His use of racial epithets toward McNally was inexcusable.

In *In the Matter of Respondent O*, *supra*, 2 Cal. State Bar Ct. Rptr. at pp. 590-591, we concluded that the facts and circumstances of the attorney's offense of assault with a firearm involved misconduct warranting discipline but not moral turpitude. In that case, we observed that the attorney, who was himself a trained, experienced reserve police officer, engaged in a confrontation placing innocent parties at great risk of harm and a passenger in another vehicle was seriously injured. Although a

> firearm was not involved in this case, and McNally's injuries were minor, even cursory legal research reveals the great risk of injury to persons in family disputes in which police are called to try to restore order when those police officers are threatened with harm. (See, e.g., *People v. White* (1991) 227 Cal.App.3d 886; *Dyer v. Sheldon* (D.Neb. 1993) 829 F.Supp. 1134, affd. mem. (8th Cir. 1994) 21 F.3d 432.) As an experienced attorney who had handled 200 family law matters, respondent was undoubtedly well aware of such risk. Instead of using his experience and knowledge to defuse a very risky domestic incident, he created one with serious risk of harm. His conduct was disciplinable. (See also *In re Otto* (1989) 48 Cal.3d 970 [attorney's convictions for assault by means likely to produce great bodily injury and infliction of corporal injury on a cohabitant of the opposite sex involved misconduct warranting discipline].)

(*Id.* at pp. 56, 60.)

The misconduct of Respondent here was no more egregious in nature that that of the respondents in the above three cases. Nor did Respondent cause more harm than that caused by the misconduct of the respondents above, especially the respondent in *In the Matter of Respondent O, supra,* 2 Cal. State Bar Ct. Rptr. 581. Using those cases as a guideline, this court concludes that the circumstances of Respondent's misconduct did not involve moral turpitude. At the same time, each of the above cases make clear, and this court finds, that her actions warrant attorney discipline.

Aggravating Circumstances

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,[6] std. 1.5.) The court finds the following with respect to aggravating circumstances.

Multiple Acts of Misconduct

Respondent's three criminal convictions evidence multiple acts of misconduct and constitute an aggravating factor. (Std. 1.5(b).)

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[6] All further references to standards(s) or std. are to this source.

Dishonesty/Lack of Candor

While this court agrees that much of Respondent's testimony regarding the events of December 19, 2011, lacks credibility, it does not find that testimony to result from dishonesty or a lack of candor. Rather, after observing Respondent's demeanor and assessing her credibility, the court concludes that Respondent's descriptions and explanations of her actions reflect her own distorted and/or delusional view of her actions and the events of that day.

Harm to the Public

Respondent's conduct caused physical pain to Tapel by dispersing pepper spray in her eyes. Additionally, Respondent's conduct necessitated the expenditure of public resources, including but not limited to numerous police officers and a police helicopter, as she drove through the streets with her mother and the caregiver. Such is an aggravating circumstance. (Std. 1.5(j).)

Lack of Insight and Recognition

Respondent demonstrated a lack of insight regarding her misconduct. (See *In the Matter of Wyshak* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70, 83.) Despite her criminal convictions and the verified injury to Tapel, Respondent continues to justify her actions, including claiming that she was acting pursuant to her attorney's advice and suggesting that her use of pepper spray was warranted. This is a significant aggravating factor. "The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for [her] acts and come to grips with [her] culpability. [Citation.]" *(In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct Rptr. 502, 511.)

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6.) The court finds the following with regard to mitigating factors.

No Prior Record of Discipline (Std. 1.6(a))

Respondent has no prior record of discipline. Even though Respondent's misconduct must be considered serious, her 27 years of discipline-free practice is significant mitigating circumstance. (*In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, fn. 13 [noting that the Supreme Court has repeatedly applied former standard 1.2(e)(1) in cases involving serious misconduct].)

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; std. 1.1.) It is not the role of this court to punish Respondent for her crimes. That was the role of the superior court, which did, in fact, punish Respondent for her criminal acts. Here, this court's primary role is to recommend the appropriate level of discipline that will advance the goals of attorney discipline.

In determining the appropriate level of discipline, this court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The court then looks to the decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.) As the Review Department noted more than 20 years ago in *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 419, even though the standards are not to be applied in a talismanic fashion, they are to be followed unless there is a compelling reason that justifies not doing so. (Accord, *In re Silverton* (2005) 36 Cal.4th 81, 91; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.) Ultimately, in determining the appropriate level of discipline, each case must he decided on its own facts after a balanced

consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Smithwick* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 320, 326.)

Standard 1.7 provides that if a member commits two or more acts of misconduct and the standards specify different sanctions for each act, the most severe sanction must be imposed. In the present proceeding, the most severe sanction for Respondent's misconduct is found in standard 2.16(a), which provides that actual suspension is the presumed sanction for final conviction of a felony not involving moral turpitude, but involving other misconduct warranting discipline.

Respondent's illegal acts constituted a felony and two separate misdemeanors. In perpetrating those acts, she violated her obligation as an attorney to uphold the law, ignored an order issued by a court, disobeyed an order made by the police, and disregarded the safety of her own mother, the caretaker, and many others. Of greatest concern, she still does not fully recognize the impropriety of her actions.

The State Bar has requested that Respondent be disbarred for her conduct or, at minimum, be given a two-year actual suspension. Respondent, on the other hand, has urged that an 18-month suspension with a requirement that the suspension continues until she proves her rehabilitation, fitness to practice, and present learning and ability in the general law would satisfy the goals of attorney discipline. Both parties acknowledge that there are no published discipline cases directly on point with the instant matter.

This court does not find that disbarment is required here to protect the public, the profession, or the courts, especially given the very limited circumstances of her misconduct and Respondent's many years of discipline-free practice. Instead, it concludes that a three-year suspension, stayed, and a lengthy period of probation, with conditions including actual suspension for a minimum of two years (with credit for the period of Respondent's interim

suspension) and until Respondent proves her rehabilitation, fitness to practice, and present learning and ability in the general law pursuant to standard 1.2(c)(1), will be sufficient. An additional condition of that probation, considered especially significant by this court, will be the requirement that Respondent comply with the conditions of her criminal probation, including, inter alia, the protective order referred to in the sentencing order and the mental health conditions, quoted above.

RECOMMENDED DISCIPLINE

For all of the above reasons, it is recommended that **Jeannie E. Tanaka**, State Bar No. 116289, be suspended from the practice of law for three years; that execution of that suspension be stayed; and that Respondent be placed on probation or four years, with the following conditions:

1. Respondent must be suspended from the practice of law for the first two years of probation (with credit given for the period of interim suspension which commenced on March 29, 2013), and she will remain suspended until she provides proof to the State Bar Court of her rehabilitation, fitness to practice, and present 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. 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 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.

4. 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 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.

5. She must submit written quarterly reports to the Office of Probation on or before 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. Respondent must comply with all conditions of probation imposed in the underlying criminal matter, including but not limited to the requirements that she seek on-going treatment with a psychiatrist and that she comply with the protective order referred to in the sentencing order. Respondent must declare under penalty of perjury her compliance with her criminal probation in conjunction with any quarterly report to be submitted to the State Bar's Office of Probation.

8. 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 will 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 Respondent has complied with all conditions of probation, the stayed suspension will be satisfied and that suspension will be terminated.

Multistate Professional Responsibility Examination

It is further recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination within one year after the effective date of the Supreme Court order imposing discipline in this matter, or during the period of her actual suspension, whichever is longer, and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

California Rules of Court, Rule 9.20

The court further recommends that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter. Failure to do so may result in disbarment or suspension.[7]

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

Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that such costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. It is also recommended that Respondent be ordered to reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and that such payment obligation be enforceable as provided for under Business and Professions Code section 6140.5.

Dated: December 30, 2015

DONALD F. MILES
Judge of the State Bar Court

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disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on December 30, 2015, I deposited a true copy of the following document(s):

DECISION

in a sealed envelope for collection and mailing on that date as follows:

☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

KEVIN P. GERRY
711 N SOLEDAD ST
SANTA BARBARA, CA 93103

☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

SHERELL MCFARLANE, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 30, 2015.

Johnnie Lee Smith
Case Administrator
State Bar Court