STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of ANDREW MICHAEL GANZ, A Member of the State Bar, No. 231601.	)	Case No. 14-O-02363-YDR[1] AMENDED DECISION

Introduction[2]

This is a contested disciplinary matter involving prosecutorial misconduct in a homicide case. Between August 2012 and April 2014, respondent Andrew Michael Ganz (Respondent) was the prosecutor in *The People of the State of California v. Michael Daniels*. The defense sought a dismissal for due process violations and/or sanctions against the prosecution for prosecutorial misconduct. The *Daniels* matter was then referred to the Office of Chief Trial Counsel of the State Bar of California (OCTC) to examine whether the totality of the circumstances justify any disciplinary action.

[1] Judge Pat McElroy was the trial judge in this matter. It has been reassigned to Judge Yvette D. Roland. This Amended Decision is issued pursuant to an Order re corrections which do not constitute substantial changes and do not affect the findings of fact or the degree of discipline in the original decision filed October 29, 2018.

[2] Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

As a result of the referral, Respondent, a former career prosecutor for Solano County, is charged with six counts of alleged professional misconduct in the *Daniels* matter. The charged prosecutorial misconduct includes: (1) suppression of exculpatory evidence; (2) misrepresentation to defense counsel; (3) failure to comply with California law; and (4) violation of defendant's constitutional rights.

This court finds, by clear and convincing evidence, that Respondent is culpable of four of the charged counts of misconduct. In view of Respondent's misconduct and the evidence in aggravation and mitigation, the court recommends, among other things, that Respondent be suspended for one year, execution of that suspension is stayed, be placed on probation for two years, and be actually suspended for the first 90 days of probation.

Significant Procedural History

On April 11, 2018, the OCTC initiated this proceeding by filing a Notice of Disciplinary Charges. Respondent filed a response on April 24, 2018.

An eight-day trial was held on August 22, 23, and 24; and September 5, 6, 12, 13, and 14, 2018. Assistant Chief Trial Counsel Donald R. Steedman and Deputy Trial Counsel Melissa G. Murphy represented OCTC. Attorney Alfred F. Giannini represented Respondent.

Following receipt of closing briefs from the parties, the court took this proceeding under submission on September 24, 2018.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on June 9, 2004, and has been a member of the State Bar of California at all times since that date.

Background

Two years after Respondent was admitted to the practice of law, he was employed as a deputy district attorney with the Solano County District Attorney's Office.

In August 2012, Respondent was assigned to prosecute Michael Daniels for Jessica Brastow's murder in *The People of the State of California v. Michael Daniels*, Solano County Superior Court, case No. VCR218954 (*Daniels* matter). This was Respondent's first homicide case.

The OCTC charges that, during the course of the criminal prosecution of Daniels, Respondent withheld exculpatory evidence, made misleading statements, and failed to turn over witness statements.

This is a detailed, fact-intensive case, supported by the documentary evidence and testimony admitted at trial. The following findings of fact are based on clear and convincing evidence.

Facts

Jessica Brastow's Death

On August 8, 2012, Jessica Brastow (Brastow) died in a motel room in Vallejo, California. Michael Daniels (Daniels), with whom Brastow had a long-standing but troubled relationship, called 911 to report that she had fallen to the floor after choking on food and was unconscious. Daniels stated that he tried giving her CPR but that food started coming out of her mouth. He claimed that she had only been down for about two minutes prior to his calling 911.

First responders found Brastow lying on the floor with a substantial amount of vomit on and around her body. After administering lifesaving efforts for over 20 minutes, paramedics pronounced Brastow dead at the scene. Toxicological testing later revealed that at the time of her death, Brastow had a blood alcohol level of .37 as well as other drugs in her system.

Paramedics and police observed bound marks around both of Brastow's wrists and ankles, which appeared to be consistent with having been tied up or handcuffed; she was cold to the touch. They also observed that Daniels appeared to be intoxicated and was bleeding from fresh

injuries on his forearms. In addition, they found a sock with saliva and vomit in a trash can. DNA analysis later revealed that Brastow's DNA was on the sock. Because the death was suspicious and the room was a possible crime scene, Daniels was arrested.

Autopsy

The following day, August 9, 2012, Dr. Susan Hogan, the forensic pathologist in the coroner's office in the Solano County Sheriff's Office, conducted an autopsy on Brastow.[3]

Detective Matthew Mustard, a Vallejo police officer since 2001, who investigated the case and arrested Daniels, attended the autopsy. Detective Mustard was convinced that Brastow was the victim of a homicide at the hands of Daniels.[4] His theory was that Daniels tied up Brastow and shoved a sock down her throat, causing her to suffocate. Dr. Hogan repeatedly testified that she felt pressured by Detective Mustard to call Brastow's death a homicide.

As Dr. Hogan was finishing up the autopsy and told Detective Mustard that she could not call this a homicide, she recalled that Detective Mustard said, "What will it take for you to call this a homicide?" Dr. Hogan recorded her autopsy for later transcription. During her dictation, Dr. Hogan stated, "Matt Mustard wants this to be a homicide, and there is no way I could call this at this point and I'm not going to be pushed into it, so, he can go kiss my ass." The cause of death was pending toxicology results.

The First Daniels Prosecution

On August 13, 2012, the Solano County District Attorney's Office charged Daniels with murder. After he was arraigned, Deputy Public Defender Meenha Lee (Lee) represented Daniels, who remained in custody. The preliminary hearing was scheduled for October 19,

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[3] Solano County operates under a coroner system where the doctor determines the cause of death, but the responsibility of determining the manner of death is under the jurisdiction of the coroner in the sheriff's department.

[4] To this day, Detective Mustard believes that Daniels killed Brastow.

2012. Since Respondent was engaged in trial on another matter, Deputy District Attorney Karen Jensen (Jensen) agreed to cover the Daniels preliminary hearing. However, Jensen dismissed the case because the final autopsy results were still not available and Dr. Hogan had preliminarily indicated that the manner of death was undetermined. Daniels was released from custody and moved to West Virginia.

January 10, 2013 Meeting

On December 5, 2012, Dr. Hogan emailed Jensen, asking to discuss her concerns about Brastow. She noted that Detective Mustard's attitude was something she had never experienced, as he was exerting a lot of pressure on her to call Brastow's death a homicide. Dr. Hogan emailed Jensen because she thought Jensen was the original prosecutor on the case and she considered her to be a good prosecutor whom she respected. Jensen forwarded the email to Respondent and Respondent's supervisor, Jeffrey Kauffman.

After Dr. Hogan sent the email, she called a meeting with Respondent, Jensen and Detective Mustard. She wanted to "upend" the case by discussing the cause and manner of death. And, she wanted to explain the reasons for her decision not to call Brastow's death a homicide. With the toxicology and DNA testings completed sometime in November 2012, Dr. Hogan determined that she still could not call Brastow's death a homicide because she could not rule out that Brastow drowned in her own vomit and thereby accidently caused her own death. She realized that the members of the prosecution team were going to be unhappy with that conclusion.

On January 10, 2013, the meeting took place in the conference room of the morgue in the sheriff's office. The attendees were Respondent, Dr. Hogan, Jensen, Detective Mustard, Lt. James O'Connell of the Vallejo Police Department, homicide prosecutor Eric Charm, and two

coroner sheriff's deputies, Tenzin Dorji, the coroner detective assigned to the Brastow case,[5] and Sgt. Mel Yarbor, Dr. Hogan's supervisor.

At the meeting, Detective Mustard strongly opined that Daniels had shoved the sock down Brastow's throat, thereby causing her death.

Dr. Hogan painstakingly explained why Detective Mustard's sock-down-the-throat theory was implausible. She scientifically refuted the theory. Not only did Dr. Hogan explain that she did not find any laryngeal edema (a swelling in the larynx), but she also explained why the lack of such finding was important with respect to her determination that a sock was not stuffed down Brastow's throat.

Dr. Hogan also told the attendees that the fact that the sock was discovered in the motel room, and not sealed in the decedent's throat at the time of autopsy, was also significant in rebutting the theory of how the sock could have been used to kill Brastow. She also explained that there were no specific injuries to establish that Brastow was strangled, smothered while conscious, or had something shoved down her throat. She stated, "What I had was injuries to the mouth that could have been caused in many ways. That's what I was repeatedly saying to people and what no one seemed to be hearing." Dr. Hogan later testified that it was possible that Brastow was suffocated while she was unconscious, but that theory was, in her view, "way too speculative to call it a homicide." She was not going to speculate in making her determination as to the manner of death.

Dr. Hogan said Detective Mustard and Respondent indicated their displeasure with her findings during the January 10th meeting by their body language – specifically, by glaring at her. Dr. Hogan later testified that she did not think she changed anyone's mind during the meeting.

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[5] Dorji is the deputy coroner who determines the manner of death.

At the hearing in this matter, Detective Dorji credibly testified, and the court finds, that Detective Mustard did not like Dr. Hogan's explanation or the fact that she could not call Brastow's death a homicide.

Respondent's purpose in attending the meeting was to determine if the case was going to be recharged; because if it was going to be recharged, it was going to be his case. Yet, Respondent did not take notes at the meeting. After the meeting,[6] Respondent did not ask Detective Mustard to draft a supplemental report documenting Dr. Hogan's statements. Detective Mustard did, however, draft at least four other supplemental reports of other witnesses who made statements inculpating Daniels.

Defense counsel was not invited to the meeting or provided with Dr. Hogan's statements made at that meeting.

Respondent Notified of Discovery Obligations Under Gutierrez

On March 13, 2013, as a California prosecutor, Respondent was sent a blast email alert by Matt Reilly of the Riverside County District Attorney's Office with the subject line "California Case ALERT 3-13-13 - Brady at Prelim," addressed to "ALL-DISATTY-CRIMINAL." The first line of the California Case Alert was "DCA - a prosecutor has a duty to disclose exculpatory evidence prior to a preliminary hearing." The email then discussed the specific holding of *Gutierrez*.[7]

Shortly after that email alert was sent, Charm forwarded Respondent the email and noted, "This is an interesting case."

On the following day, March 14, 2013, Kauffman, a member of the office *Brady* Committee, forwarded the same email to Respondent and others in the office, asking that they

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[6] All of the witnesses at trial testified that the meeting lasted 20 to 40 minutes.

[7] Under *People v. Gutierrez* (2013) 214 Cal. App. 4th 343, a prosecutor has a constitutional duty to disclose evidence favorable to the defense prior to a preliminary hearing.

review *Gutierrez*, and noted that the opinion substantially changed *Brady* obligations with respect to timing. He further stated that office prosecutors needed to do their best to make all *Brady* disclosures in a timely manner. In all, Respondent received this March 13 email three times.

Release of the Brastow Autopsy Report

On March 15, 2013, in an email to Dr. Hogan, copying to Detective Mustard, Respondent asked about the Brastow autopsy report and wrote: "I intend to go forward on it soon." Respondent did not receive a report in March. He then again emailed Dr. Hogan on April 9, 2013, asking: "Can you tell me when this report is going to be sent to my office. Jessica's mom is patiently waiting, and I just would like to give her a timeframe."

On April 10, 2013, Dr. Hogan signed the formal Brastow autopsy report. She opined that decedent died of asphyxia. In that report, she listed the following: alcohol intoxication, post mortem toxicology identified blood alcohol level of 0.37 grams %; sock with deceased's sputum and vomit on it found in a wastebasket near the deceased; facial injuries; and injuries to the tongue. In two separate places, the autopsy report also described the larynx as "normal." It noted that the hyoid bone was intact, and there were no petechial hemorrhages. This indicated that Brastow was neither strangled nor choked.

However, the autopsy report did not contain the specific details as to why the prosecution's "sock-down-the-throat theory" was not plausible, as Dr. Hogan had explained to Respondent and others during their January 10, 2013 meeting. There was no mention of a specific lack of laryngeal edema and its significance, or the importance of the fact that the sock was not sealed in the decedent's throat at the time of autopsy. Her statements regarding the lack of specific injuries to establish strangulation or conscious suffocation also were not included in her autopsy report or disclosed to the defense.

While Dr. Hogan was under no obligation to give a detailed opinion in her autopsy report, she would usually include a detailed opinion in her autopsy reports. In this case, she made a conscious decision not to include a detailed opinion because she felt like this case had "gotten so crazy and no one was listening to me, I didn't want to give anyone any more ammunition."

After reviewing the autopsy report, Respondent never contacted Dr. Hogan to ask her to include her statements from the January 10, 2013 meeting in her report, or draft a supplemental report regarding her opinions on the prosecution team's primary theory of death. Respondent never disclosed to the defense any of Dr. Hogan's January 10, 2013 statements, including statements that the sock could not have been used to kill Brastow.

Coroner's Report

On April 10, 2013, Dorji released the coroner's report. He determined that the cause of death was asphyxia, based on the autopsy report. However, despite his investigation and the circumstances surrounding the case, the manner of death could not be determined. It was inconclusive as to how Brastow was asphyxiated. Dorji thought that the case was a homicide, but Dr. Hogan would not support that conclusion. So he amended the death certificate, showing the cause of death as asphyxia and the manner of death as undetermined.

Sheriff's Investigation of Dr. Hogan's Competency

In June 2013, Respondent learned in an email from Investigator Ken Elliott (Elliott) of the Solano County Sheriff's Office that he was conducting an internal investigation into Dr. Hogan's competency as a pathologist. At the suggestion of Kauffman, Respondent spoke with Elliott about Dr. Hogan's autopsy in the *Daniels* case, and specifically how she omitted the details from the January 10, 2013 meeting. On June 4, 2013, Elliott interviewed Respondent by phone and recorded their conversation, which was later transcribed.

During that interview, Respondent twice noted that Dr. Hogan's undetermined findings as to the manner of death in the Brastow autopsy would make his homicide case "difficult." Respondent and Elliott discussed the January 10, 2013 meeting in which Dr. Hogan made statements negating the sock-in-the-throat theory as the manner of death.

A sergeant, who was at the meeting, told Elliott that Dr. Hogan's position was that she thought it was a homicide, too, but she could not prove it. Respondent agreed. Elliott continued, "Which is sort of funny she'd say that because sh-she shouldn't be saying that unless she's gonna offer that opinion somewhere down the road." Respondent agreed. Elliott then said, "So, it's sort of contradictory." Respondent said, "Right." Then, he listed his problems with Dr. Hogan's autopsy report.

Most significantly, Respondent in the interview said that Dr. Hogan indicated the sock could not be responsible for the asphyxia because she could not show "a fusion between the back of the tongue and that object. Now I forget the term that she used to describe that but it's not in here." Respondent stated, "...but it's not in her report. It's something she told us which was important. It wasn't helpful. I mean it was a - it was a fact that we have to deal with but I mean it's part of what helped her make her decision I think."

Finally, Elliott suggested that if additional evidence was discovered, then the determination of the manner of death could be readdressed. Respondent expressed concern that it might look like Dr. Hogan was pressured into changing her decision. He said, "Does it look like we were kind of bullying her into doing that when it comes to being in front of a jury? Oh, it wasn't until you know, DA or the police told you this that you changed your mind."

Later, he said, "Right. I guess what I'm saying is if - like I keep saying it - it seems fair to me that she's decided for the purpose of her report that she limits it at what she can find at the autopsy ... that if we're supplying her with information outside of that then why is she starting to

consider that outside information as opposed to all the other stuff? You know, th-1 guess that -1 don't know if that makes any sense. It's - are we pushing her to go beyond what she feels comfortable with which is just what she was able to determine at autopsy?"

Respondent's Emails with Brastow's Mother

Respondent was in contact with Brastow's mother, Bou Kilgore, from November 2012 to 2014, when the case went to trial. On June 5, 2013, almost six months after the January 2013 meeting with Dr. Hogan, Respondent and Kilgore had an email exchange in which she stated, "Would any of these drugs be actual prescriptions written for her? It sounds like a lethal mix and I agree that the defense would use that to claim she was in a toxic state BUT could Mike [Daniels] have secured help for her during their last encounter instead of putting a sock in her mouth? Is there a category for heartless, physical assault?"

In his response, Respondent said nothing to the victim's mother to contradict her belief that the sock was used to murder her daughter. Nor did Respondent explain any other theory he might have been considering. Rather, he told her, "1 have no doubt in my own mind that Mr. Daniels did this. It is possible that her use of alcohol and other meds contributed in all sorts of ways to the situation. That doesn't mean that he's any less criminally responsible. I just need to make sure I can prove all of this. I'm almost there. These are just the last questions that I need answered before I feel like I can go forward. One thing I'm sure about is that if I am able to go forward, it will be a TOUGH CASE to say the least. I'll [be] ready for the battle though. Hope you are too."

District Attorney's Office on Brady Policy

On June 13, 2013, District Attorney Donald A. du Bain emailed all his deputies, noting that the *Brady* policy was implemented in January 2012 and providing practical information on how it was being implemented with respect to the California Highway Patrol.

Investigation Report of Dr. Hogan's Performance and Credibility

On July 12, 2013, the Sheriff Investigator completed his investigation of Dr. Hogan. The investigation included an examination of several cases, including the *Daniels* case. Because it was a confidential personnel matter, it was not disclosed to the district attorney and his staff. Respondent at this point was unaware of the findings or that the report had even been completed.

Respondent's Decision to Move Forward

On September 16, 2013, when more than three months passed without any contact from Respondent, Kilgore emailed him: "Your silence says a lot - the case is probably too cold to go forward. I appreciate all you tried to do."

Approximately seven minutes after receiving Kilgore's email, Respondent forwarded it to Detective Mustard. He expressed doubts about his ability to prove the case, "I don't know what to do about this one. Truth is, I've just been in trial non-stop and this is one of many cases I haven't gotten to.[8] But I also know in the back of my mind this would not go well. Want to weigh in before I make a final decision? I'm completely on the fence between giving it a shot and just letting it go."

Mustard responded within 11 minutes: "My opinion is that if we do nothing else he gets away with murder and he knows what he did and becomes empowered and another victim of his violence is just a matter of time. I think that we have done cases that have more obstacles than this one and we need to throw it against the wall and see what sticks."

Respondent replied within one minute saying, "I'm with you. When do you want to do this?"

[8] It should be noted that this email corroborates Respondent's testimony that he was carrying a more than full case load of serious and violent felonies for a prosecutor.

He then emailed Kilgore to tell her that the case was going forward, saying, "In the end, we all know what happened, and even if it will be extremely hard to prove, I made a promise to you that I would try. He shouldn't get away with it without a fight."

Refiling Murder Charges Against Daniels

On September 23, 2013, Respondent brought a felony homicide complaint against Daniels. Detective Mustard hand-delivered the arrest warrant to Judge Allan Carter for his signature and ultimately travelled to West Virginia to question Daniels, who was then arrested on the warrant. Kauffman authorized Daniels' extradition from West Virginia.

Defense Request for Discovery

On October 2, 2013, Deputy Public Defender Lee emailed Respondent regarding Daniels: "I was informed you refiled the case. Can you please forward whatever reports/information you have to re-file, including Dr. Hogan's report."

A series of emails between Respondent and Lee followed that day. Respondent did attach to an email the coroner's report, the toxicology report, and the autopsy report. Further, Respondent promised to get any reports regarding the arrest as soon as he received them.

After Lee got the reports, she sent Respondent another email, stating, "Just scanning this report I see Dr. Hogan concluding 'undetermined' cause of death so I was puzzled as to the re-filing." In response, Respondent stated: "There isn't anything new that I know of, and that is certainly a major hurdle for me."

But Respondent did not disclose to Lee regarding the January 2013 meeting and Dr. Hogan's statements made on the manner of death.

Reminder of Office Brady Policy

On October 9, 2013, Kauffman, on behalf of the *Brady* Committee, sent an email, reminding Respondent and all deputy district attorneys about their *Brady* obligations. He

provided copies of the Ventura DA's *Brady* and *Pitchess* outlines. He urged care in complying with the *Brady* policy, specifically with respect to *Brady/Alford* motions, and noted that the district attorney would be discussing the office *Brady* policy as it related to those motions at an upcoming staff meeting.

Daniels Preliminary Hearing

On November 25, 2013, Respondent emailed San Mateo County Sheriff's Office Criminalist Annie Hoang regarding testifying at the *Daniels* preliminary hearing about her DNA analysis of the *Daniels* evidence. As he prepared for the preliminary hearing, Respondent revealed his theory of the case with his singular evidentiary focus: "I'm really just interested in the 'sock.' You did that analysis, correct?" He expressed no interest in the analysis of the pillow or any other evidence.

On November 26 and 27, 2013, a preliminary hearing was heard in the *Daniels* case. Respondent offered evidence regarding the discovery of the sock, its location and condition in the motel room, as well as photographs of the sock. Although several items were seized at the scene, he only offered DNA evidence on the sock. He then sought, received and offered a stipulation that Brastow's DNA was found on the sock. After hearing the evidence, Judge Carter held the defendant to answer for the charge of murder. Detective Mustard sat with Respondent as he questioned Dr. Hogan. Dr. Hogan testified that the cause of death was asphyxiation, and that although she listed the manner of death as "undetermined," she thought it "most likely is a homicide."

On cross examination, Dr. Hogan testified, "I think that, based on the entirety, this is most probably a homicide. But I can't call it, because I felt I could not completely eliminate the possibility that it was due to the deceased vomiting." She then testified, "I think the most likely

scenario is that she passed out and was smothered." She then acknowledged that she never opined anywhere in her report that Brastow was smothered.

Respondent maintains that the smothering theory and not the sock-down-the-throat theory was the prosecution's theory of the case.

Towards the end of the hearing, Lee asked Dr. Hogan when was the last time she spoke with Respondent prior to coming to court about the facts of the case:

> Q: All right. And when is the last time, Dr. Hogan, that you spoke with this DA, prior to coming to court about the facts of this case?
> A: I believe - didn't - I called him - I called him last week to let him know that I knew I was needed today.
> Q: Did you and DA Ganz discuss the – any facts in the police report prior to coming to court?
> A: I don't think so.

It is unclear how Dr. Hogan interpreted that question. Did she think Lee was referring to the last time she spoke to the Respondent at all, rather than the last time she discussed the facts of the case?

At any rate, the January 10, 2013 meeting was never mentioned at the preliminary hearing. Lee cross-examined both Dr. Hogan and Detective Mustard without having any information about either the January 10 meeting or their statements made during that meeting.

At the preliminary hearing, Lee asked Dr. Hogan if she was still employed by the Solano County Sheriff's Office as a pathologist:

> A: I'm retiring next Tuesday, so...
> Q: Was there an occasion with a different case and a different autopsy where you were asked to resign by the Sheriff's Office?
> A: No.
> Q: And were you ever contacted by the DA's office of Solano County about a problem with a case in Fairfield where they indicated to you that they were not going to assign you additional autopsies?
> A: No.
> Q: So your retirement, you said it's upcoming next month?
> A: Tuesday.
> Q: Is that in any way influenced by any problem with a case with a deputy DA for Solano County and your opinions on that case?

A: Not that I know of, no.
The court: Anything else?
A: I'm old.

At the end of the preliminary hearing, Respondent offered a stipulation that the sock contained Brastow's DNA. He did not offer any DNA evidence regarding any other item that was taken from the scene and subsequently analyzed for DNA matches.

Finally, in asking for Daniels to be held to answer, Respondent conceded that it was an uphill battle for him, at this stage of the proceeding, to prove a case where the medical examiner could not say for certain whether it was a homicide or alcohol poisoning. He went on to argue that Dr. Hogan testified that she was almost certain it was a homicide and that she left little room for the possibility of some sort of alcohol-related death.

Daniels was held to answer based on the testimony of Dr. Hogan, ligature marks on Brastow, the fact that Brastow had been dead hours before Daniels called 911, Daniels' prior acts of domestic violence, and Daniels' inconsistent statements. Daniels was then arraigned in superior court and assigned to Judge Daniel J. Healy.

Dr. Hogan Revealed that She Was Terminated

On January 7, 2014, Dr. Hogan emailed Jensen and disclosed that she had not left the Sheriff's Office voluntarily (as she had testified at the *Daniels* preliminary hearing), but had been terminated. Moreover, she stated that she thought Respondent was partially responsible for her firing.

On January 13, 2014, Kauffman informed all deputies that the *Brady* Committee had decided to add Dr. Hogan to their Impeachment List and that if one intended to call her as a witness, one should disclose potentially exculpatory materials to the defense as soon as possible.

On that same day, Respondent sent Lee the standard information regarding Dr. Hogan's impeachment as determined by the *Brady* Committee. Respondent still did not disclose to the

defense the exculpatory statements Dr. Hogan made to him on January 10, 2013 - specifically about the autopsy of Brastow.[9] In fact, on January 14, Respondent, in an email, stated he may be able to show that Dr. Hogan's inconclusive finding was flawed.

Lee's Request for Further Information re: DA Complaints about Dr. Hogan

On January 15, 2014, Respondent received an email from Lee, asking if Respondent would provide, "pursuant to *Brady:* All information that led up to Dr. Susan Hogan's firing from the Sheriff's office" and "All information from the DA's office which contributed to complaints regarding Dr. Hogan's work."

Respondent replied: "As to the second request, I just don't understand it. What sort of 'information' should I be looking for as it related to what 'complaints'?" Respondent made those statements after he himself had made complaints about Dr. Hogan's work in the *Daniels* case, and after his interview about those complaints with Elliott as part of the Sheriff's Office investigation of Dr. Hogan. Respondent did not provide Lee with information regarding his complaint to Investigator Elliott that Dr. Hogan left material and relevant information out of the autopsy report in the *Daniels* case.

On January 17, 2014, in response to an email from Respondent, Lee also advised him that she would be seeking a subpoena duces tecum regarding Dr. Hogan's personnel file. Ultimately, both Lee and Respondent filed subpoenas for Dr. Hogan's personnel records and Judge Healy agreed to review those records in camera.

Plea Offer and Negotiations

Beginning on January 8, 2014, Respondent and Lee entered into plea negotiations in the *Daniels* case. On February 5, 2014, Respondent formally offered a plea to voluntary manslaughter for a term of six years. Respondent said the offer was open for Daniels to take on

[9] Evidence of Brastow's autopsy, later discovered and disclosed by Judge Healy, was ultimately used to impeach both Dr. Hogan and Detective Mustard at trial.

or before February 20, 2014 - the same day Judge Healy was scheduled to reveal the results of his in camera review of Dr. Hogan's personnel records. On February 14, Lee, in turn, offered involuntary manslaughter for a two-year term. No plea agreement was reached.

February 8, 2014 - Deadline for Discovery Compliance

The *Daniels* matter was scheduled for trial on March 10, 2014. Penal Code section 1054.7 requires discoverable evidence be disclosed 30 days before trial. Respondent did not turn over all discoverable evidence by February 8, 2014.

Pretrial Hearing on Request for In Camera Review of Dr. Hogan's Personnel Files

Respondent's subpoena produced more than 800 pages of materials from the Sheriff's Office concerning the investigation of Dr. Hogan's performance. Both Lee and Respondent requested Judge Healy to conduct an in camera review of Dr. Hogan's personnel records.

During the hearing on February 13, 2014, Respondent told the court that the cause of death was central to the case: "I agree with Ms. Lee, we both agree cause of death is an issue, if not the central issue in this case." Respondent also told the court that "My main concern, as a prosecutor, is my *Brady* obligation."

Court's Review of Dr. Hogan's Personnel Files

On February 20, 2014, after an in camera review, Judge Healy issued an order releasing documents regarding the investigation into Dr. Hogan's professional performance by the Sheriff's Office.

Judge Healy indicated that the records revealed that Respondent had participated in a January 2013 meeting with Dr. Hogan and members of the prosecution team, after Dr. Hogan conducted the autopsy but before she issued the autopsy report.

Judge Healy also indicated that the records showed that Investigator Elliott interviewed Respondent regarding his complaints about Dr. Hogan.

Lee indicated that she was unaware of the existence of the autopsy recording, records regarding the criticisms of Dr. Hogan, the Dr. Scott Luzi report,[10] and evidence of a meeting between Dr. Hogan and the prosecution team.

When faced with evidence of the January 10, 2013 meeting he and others had with Dr. Hogan, Respondent stated, "Thinking about it now, she was a witness in the case and she made statements during that meeting. So, those are witness statements and I didn't consider it that way at that time. That's all I can say."

Respondent Acknowledged That He Should Have Turned Over Statements

The following day, on February 21, 2014, Respondent emailed Lee, saying, "I regret not informing you about my meeting with Dr. Hogan." He stated, "I was not trying to hide it from you. In retrospect, I realize that this was a statement by a witness in the case, and even though she didn't provide me with any information that seemed new, inconsistent or exculpatory, I should have told you about it and summarized her statements for you."

But his email also contained this misleading statement: "It did not occur to me at any time that she [Dr. Hogan] may potentially feel pressured in any way." In truth, during his June 4, 2013 interview with Investigator Elliott concerning Dr. Hogan, as previously discussed, Respondent expressed exactly the fear that the meeting might be seen as "bullying her into doing that when it comes to being in front of a jury."

Dr. Scott A. Luzi

On February 21, 2014, Respondent sent an email to Dr. Scott A. Luzi, asking him to be an expert in this case because Dr. Hogan had declined to find Brastow's death a homicide. Dr. Luzi reminded Respondent that he had reviewed the case on September 16, 2013, which Lee was unaware of.

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[10] Dr. Scott A. Luzi was a possible expert witness, as discussed below.

Further Hearing on Motion to Compel Production of Discovery

On February 27, 2014, Respondent disclosed the discovery of additional records from the coroner's office: (1) There were at least 30 audio recordings of autopsies that had not been revealed or provided to the parties, including an audio recording by Dr. Hogan of the Brastow autopsy; and (2) For an unspecified period of time, the coroner's office had been obtaining consultation reports from Dr. Luzi in "10 percent" of all of Dr. Hogan's autopsies.

Respondent made the consultation reports and audio recordings available to Lee.

Motion to Disqualify Judge Healy

On March 7, 2014, the Solano County District Attorney's Office moved to disqualify Judge Healy for cause from the *Daniels* case, arguing that, based on the numerous statements made by Judge Healy, the district attorney believed that Judge Healy had prejudged the facts of the case before he had heard any evidence.

On March 11, 2014, Judge Healy filed his verified answer, denying the prosecution's assertions that he had prejudged the case and attesting to the fact that he did not believe his recusal would serve the interest of justice.

Defense Motion to Dismiss Hearing for Due Process Violations and Prosecutorial Misconduct

On March 3, 2014, Lee filed a Non Statutory Motion to Dismiss for Due Process Violations and Prosecutorial Misconduct, seeking various sanctions against the prosecution for both failing to disclose information about Dr. Hogan and for allegedly seeking to wrongfully influence her testimony.

On March 11, 12, and 14, 2014, evidentiary hearings were held. Respondent provided sworn testimony regarding the *Daniels* case. He was asked about his interview with Investigator Elliott. Respondent acknowledged that the transcript of his Elliott interview was accurate.

Lee: "Okay. So back in June of 2012, you did say that Dr. Hogan said important things that were not helpful to your prosecution; would you agree with that?"
Respondent: "That's what I said."

Lee: "Just one more thing about this issue of importance. On my last question, when I asked you to remember the statement to Ken Elliot 'It's something she told us which was important, it wasn't helpful.' That statement you made was referring to Dr. Hogan's discussion about the sock theory; is that right?"
Respondent: "About the sock attaching to the tongue kind of thing, yes."
Lee: "And the fact that she didn't find that in the autopsy, is that what you are referring to when you said it wasn't helpful?"
Respondent: "I think that's accurate."

Lee: "So, in fact when you were talking about the statement of the piece of information that was not helpful, it is in fact referring to the sock theory, according to this interview; is that right?"
Respondent: "That would be my reading of that statement that I made."

Lee: "And I know, Mr. Ganz, you were talking about your reading of the statement, but as you sit here right now, would you also agree, independently from this transcript, would you also agree that Dr. Hogan's assessment about the sock theory is not helpful to your case. Would you agree with me on that?"
Respondent: "I find it difficult to answer that question. It's not a piece of evidence that would help me prove a murder. So her saying that on the stand would not assist me in proving a murder."

Lee: "And would you agree with me right now, as you sit here, aside from the transcript, that piece of information and her refuting the [sock] theory is an important piece of information for the trial? Would you agree with me on that?"
Respondent: "It's relevant. It is relevant. I would agree with you."

Court of Appeal Denied People's Petition for Writ of Mandate

On March 17, 2014, the First District Court of Appeal stayed the case, pending a hearing on the district attorney's Petition for Writ of Mandate to remove Judge Healy from the case.

On March 21, 2014, the Court of Appeal ruled that although Judge Healy should not have heard the motion, he should not be disqualified from the *Daniels* case. The appellate court stated, "[B]ased on a review of the record, in particular the transcripts of the relevant hearings,

the court concludes as a matter of law that the statements by Judge Healy cited by petitioner, when read in context, do not rise to a level requiring disqualification."

Judge Healy's Findings and Order re: Defense Motions for Discovery Compliance and Non Statutory Motion to Dismiss for Due Process Violations and Prosecutorial Misconduct

On March 24, 2014, Judge Healy filed Findings and Order re: Defense Motions for Discovery Compliance and Non Statutory Motion to Dismiss for Due Process Violations and Prosecutorial Misconduct. The court specifically found that members of the Solano County District Attorney's Office and the prosecution team failed to disclose evidence in a timely manner in violation of Penal Code section 1054.1 and withheld exculpatory evidence in violation of *Brady*.

The court stated in its Findings and Order, "As to the January meeting, [Respondent's] continued insistence that his failure to disclose his detailed discussion of exculpatory material with Dr. Hogan was not violative of Penal Code section 1054.1 and *Brady*, simply stated, suggests a prosecutorial attitude either incapable of or disinterested in maintaining the minimum ethical standards that all prosecutors are sworn to uphold."

However, Judge Healy found that, in these specific circumstances, further sanctions such as dismissal were not necessary or appropriate.

Daniels Trial - Failure to Disclose DNA Witness Materials

As a result of the late discovery of the Dr. Hogan evidence, Judge Healy repeatedly asked prosecutors if they had checked to insure that all discoverable evidence had been disclosed. Yet, during the *Daniels* trial on April 9, 2014, criminalist Hoang, a DNA expert, testified that she had 150 pages of notes and photographs about her testing of crime scene evidence that Respondent failed to disclose to defense counsel.

When asked for an explanation, Respondent attempted to shift the blame and said:

> I never received any sort of request that 1 can recall from Ms. Lee saying hey, where are any raw data notes, or anything by the DNA analyst in this case. So, I guess because I didn't find it particularly important to look for them, I never ...
>
> Judge Healy responded:
>
> Help me with that part, because it's not like in this case this issue -1 suspect on the record, if I were to go back through, that either you or Ms. Jensen, on numerous occasions specifically represented, after in response to my specific questions, have you gone back and looked for everything so there's nothing else there. I was told that several times. ... And now, here we are. We have another witness who you are going to call and it turns out that, I mean, you're saying you didn't know because you didn't ask, is that basically what you're saying? That you didn't know she had any of these things?
>
> Respondent replied:
>
> No. I mean, I've done cases, although very few before with DNA, and I have been asked before to request all raw data and those sorts of things. There's this whole defense request that I normally get that alerts me to get those things. I understand 1054. I didn't get a request in this case. I had all the reports. I didn't [sic] the report that we always get [sic] the DNA reports, without further requesting all this other raw data and notes. I just didn't go out and get it. I didn't know they were there - I know they are generally there, I just didn't in this case.

Respondent then personally drove from Solano County to San Mateo County where Hoang had her lab. He then retrieved copies of all her notes and turned them over to defense counsel.

Denial of Penal Code Section 1118.1 and Jury Instructed on Untimely Disclosure of Evidence

On April 16, 2014, Judge Healy denied a motion pursuant to Penal Code section 1118.1 (entry of judgment of acquittal for insufficient evidence), finding that even with the "sock" refutation before the jury, there would be sufficient evidence for a reasonable jury to find the defendant guilty of murder beyond a reasonable doubt.

Having denied the Penal Code section 1118.1 motion, Judge Healy instructed the jury, as follows:

> Both the People and the defense must disclose their evidence to the other side before trial, with the time limits set by law. Failure

to follow this rule may deny the other side the chance to produce all relevant evidence, to counter opposing evidence, or to receive a fair trial.

In this case an attorney for the People failed to disclose the following information:

1. The People failed to disclose the fact and details of a meeting that occurred on January 10, 2013 between Dr. Hogan, three members of the District Attorney's Office, several Sheriff's Deputies, and Vallejo Police detective Matt Mustard where Dr. Hogan shared with those persons her views that she [] did not deem the cause of death to be a homicide.

2. The People failed to disclose to the defense certain materials contained in the coroner office files, including the audiotape of Dr. Hogan's autopsy in this case and Dr. Hogan's notes from that autopsy.

3. The People failed to disclose to the defense certain materials, including notes and photographs, contained in the file of [criminalist] Annie Hoang.

In evaluating the weight and significance of that evidence, you may consider the effect, if any, of that late disclosure.

Closing Arguments

On April 16, 2014, Respondent, in his closing argument, specifically highlighted the sock theory and argued that the sock could have been used to murder Brastow:

> Then there's the sock that's located in the waste basket area of the kitchen of this small motel room. The sock has her saliva, her blood, her DNA. Two socks rolled up together in a garbage can for some reason, thrown away soaking wet and heavy. No explanation for how that got there. No mention of, you know, using some socks in any way to help her out. There's only one good reason or explanation for that, and I'll get to it in a moment.

After additional references to the sock in his closing argument, Respondent argued the prosecution theory as to how Brastow was murdered:

> There's some sort of violent struggle, she's tied up at a certain point, he inhibits her ability to breathe somehow, we don't know exactly how, maybe it was the sock, maybe it was a pillow, it's not exactly clear because there were only two people in that hotel room.

Thus, any evidence negating how the sock could have been used as the murder weapon was exculpatory evidence.

Verdict

On April 17, 2014, the jury found Daniels not guilty of all charges.

Conclusions of Law

Count 1 - (§ 6106 [Moral Turpitude - Suppression of Evidence])

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. A violation of section 6106 may result from intentional conduct or grossly negligent conduct.

The OCTC alleges that Respondent intentionally, or through gross negligence, committed acts of moral turpitude and dishonesty in violation of section 6106: (1) by concealing exculpatory evidence; (2) by concealing the fact that the January 10, 2013 meeting occurred; (3) by failing to correct the record when Dr. Hogan gave false testimony at the preliminary hearing; and (4) by encouraging the defense to accept a plea bargain while at the same time withholding the above-mentioned information.

Respondent contends, among other things, that he never entertained the intent or desire to deliberately suppress evidence in this case. He argues that he is never a "win at all costs" prosecutor and that the January 10 meeting was not material and exculpatory within the *Brady* rule. Respondent further claims that Dr. Hogan's testimony required no correction and that he did not deliberately hide any evidence during his plea bargain negotiations with the defense.

A violation of the *Brady* rule does not require that the prosecutor act in bad faith. The Supreme Court summarized the "no fault" principle of the *Brady* rule best in *United States v. Agurs* (1976) 427 U.S. 97, 110, where the Court stated: "If the suppression of evidence results in

constitutional error, it is because of the character of the evidence, not the character of the prosecutor."

Moral turpitude has been 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.) It has been described as any crime or misconduct without excuse (*In re Hallinan* (1954) 43 Cal.2d 243, 251) or any dishonest or immoral act. Crimes which necessarily involve an intent to defraud, or dishonesty for personal gain, such as perjury (*In re Kristovich* (1976) 18 Cal.3d 468, 472); grand theft (*In re Basinger* (1988) 45 Cal.3d 1348, 1358); and embezzlement (*In re Ford* (1988) 44 Cal.3d 810) may establish moral turpitude. Although an evil intent is not necessary for moral turpitude, at least gross negligence or some level of guilty knowledge is required. (*In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.)

In this case, the court finds that Respondent was grossly negligent in not disclosing to the defense the January 10, 2013 meeting, and more importantly, the statements that were made at the meeting. Once Respondent saw that Dr. Hogan left the details from the meeting out of her report, Respondent should have made the disclosure himself or had someone on the prosecution team memorialize the details from the meeting.

The prosecution team discussed specific details of Dr. Hogan's opinion not otherwise provided to the defense, including specific forensic findings which undermined the prosecution's theory of the manner of death and the discussion that the sock could not have been used to kill Brastow. The prosecution's theory of the case was not that the sock was shoved down the throat of the victim that caused her death, but that the sock was a likely murder weapon and that probably it was used to smother her.

Since that was their theory, the fact that Dr. Hogan made statements that amplified how, in medical terms, she did not believe the sock caused the death, her statements were exculpatory and should have been disclosed.

Even Respondent acknowledged that he should have disclosed Dr. Hogan's statements made at the January 10, 2013 meeting in his February 21, 2014, email to Lee, saying, "I regret not informing you about my meeting with Dr. Hogan." He stated, "I realize that this was a statement by a witness in the case, and even though she didn't provide me with any information that seemed new, inconsistent or exculpatory, I should have told you about it and summarized her statements for you."

Moreover, Respondent was fully aware of his *Brady* obligations, as District Attorney du Bain and Kaufman sent out several emails to him and other deputy district attorneys, noting that the *Brady* policy was implemented in January 2012 and urging care in complying with the *Brady* policy.

However, the court finds that there is no clear and convincing evidence that Respondent failed to correct the record when Dr. Hogan gave false testimony at the preliminary hearing or that he encouraged the defense to accept a plea bargain while concealing evidence. During that hearing, Respondent had no specific knowledge of Dr. Hogan's employment status. And when Dr. Hogan was asked when was the last time she spoke with Respondent, she interpreted the question as asking "the last time," which was a week before the preliminary hearing in November 2013, and not asking the last time she discussed the facts of the case, which would be in January 2013.

Likewise, Respondent did not encourage the defense to accept a plea bargain while withholding information. During their negotiations, the defense counteroffered to a plea of

involuntary manslaughter for a two-year term. If Respondent wanted a plea before Judge Healy reviewed the records, he could have accepted defendant's offer on February 14.

In conclusion, there is clear and convincing evidence that Respondent was grossly negligent and culpable of moral turpitude, in willful violation of section 6106, by failing to disclose exculpatory evidence of the discussion that took place at the January 10, 2013 meeting to the defense, such as the analysis and opinion voiced by Dr. Hogan as to why she would not list the manner of death as a homicide.

Count 2 - (§ 6106 [Moral Turpitude] - Misrepresentation to Defense Counsel)

The OCTC alleges that Respondent, intentionally or through gross negligence, committed an act of moral turpitude and misrepresentation in violation of section 6106, when he made false and misleading statements to Lee on October 2, 2013, and January 17, 2014. Specifically, he told the defense: (1) that he was not aware of any new evidence in the case, when he knew that there were detailed and specific reasons as to why Brastow's death was listed as undetermined; and (2) that he did not understand Lee's request for all information regarding complaints about Dr. Hogan's work when in fact, he had participated in the internal investigation of Dr. Hogan's professional competence.

Again, Respondent argues that Dr. Hogan's statements were not material and exculpatory, which the court has rejected in count one. Respondent also claims that he honestly believed that he had provided all the discoverable material available and that he had no intent to cover up the investigation of Dr. Hogan.

The court finds that Respondent's failure to disclose those statements and complaints about Dr. Hogan's work, in response to Lee's October 2, 2013 and January 15, 2014 requests, was grossly negligent.

On October 2, 2013, Lee asked Respondent, "Can you please forward whatever reports/information you have to re-file, including Dr. Hogan's report." Respondent believed that he had nothing more to disclose since he provided the autopsy report, toxicology report, and updated police reports. He believed that those documents covered all of the available evidence. While there may have been no intent to deceive, his response was manifestly incorrect as he failed to disclose Dr. Hogan's statements made at the January 10, 2013 meeting.

On January 15, 2014, Lee asked Respondent to provide, "pursuant to *Brady:* All information that led up to Dr. Susan Hogan's firing from the Sheriff's office" and "All information from the DA's office which contributed to complaints regarding Dr. Hogan's work."

Respondent replied: "As to the second request, I just don't understand it. What sort of 'information' should I be looking for as it related to what 'complaints'?" Respondent knew or should have known that he himself had made complaints about Dr. Hogan's work in the *Daniels* case, and that he had been interviewed about those complaints by Elliott as part of the Sheriff's Office investigation of Dr. Hogan back in June 2013. His reply was misleading, but there is no clear and convincing evidence that he did it with intent. But he clearly committed misrepresentation as a result of gross negligence.

Therefore, Respondent committed acts of moral turpitude and misrepresentation, in willful violation of section 6106, through gross negligence, by making misleading statements in his October 2, 2013 and January 17, 2014 emails to Lee.

Count 3 - (§ 6068, subd. (a) [Attorney's Duty to Support Constitution and Laws of United States and California])

Section 6068, subdivision (a), provides that an attorney has a duty to support the Constitution and laws of the United States and California.

California Penal Code section 1054.1 provides, in part, that the prosecuting attorney must disclose to the defendant all of the following materials and information, if it is in the possession

of the prosecuting attorney or if the prosecutor knows it to be in the possession of its investigating agencies:

> (c) All relevant real evidence seized or obtained as a part of the investigation of the offenses charged.
>
> (e) Any exculpatory evidence.
>
> (f) Relevant written or recorded statements of witnesses or reports of the statements of witnesses whom the prosecutor intends to call at the trial, including any reports or statements of experts made in conjunction with the case, including the results of physical or mental examinations, scientific tests, experiments, or comparisons which the prosecutor intends to offer in evidence at the trial.

California Penal Code section 1054.7 requires that the prosecutor disclose exculpatory evidence and relevant written or recorded statements of witnesses whom the prosecutor intends to call at trial at least 30 days prior to the trial. One of the purposes of the discovery statutes is to promote the ascertainment of truth in trials by requiring timely pretrial discovery. (Pen. Code, § 1054.)

Prosecutors have a constitutional mandate to disclose material, exculpatory evidence to defendants in criminal cases. *Brady v. Maryland* (1963) 373 U.S. 83 and subsequent cases interpreting *Brady* require prosecutors to disclose, prior to trial, impeaching evidence and evidence favorable to the defense. "[T]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecutor." (*Id.* at p. 87.)

Similarly, in *People v. Ruthford* (1975) 14 Cal.3d 399, 406, the California Supreme Court summarized the duty of the prosecutor as follows: there is a "duty on the part of the prosecution, even in the absence of a request therefor, to disclose all substantial material evidence favorable to an accused, whether such evidence relates directly to the question of guilt, to matters relevant to punishment, or to the credibility of a material witness" (emphasis in original).

The State Bar charges that Respondent violated section 6068, subdivision (a), by violating California Penal Code sections 1054.1, subdivision (f), and 1054.7, when he failed to disclose reports, notes and/or statements made by criminalist Hoang, an expert in the *Daniels* case, to the defense 30 days prior to trial.

Respondent argues that he was as surprised as anyone else that Hoang's notes were not provided to either the prosecution or defense. He contends that it is unclear exactly what happened. The court finds that his arguments do not excuse his duty as a prosecutor under California Penal Code sections 1054.1, subdivisions (f), and 1054.7.

Respondent intended on calling Hoang to testify as an expert on DNA evidence. A trial date of March 10, 2014, was set. There is clear and convincing evidence that Respondent failed to disclose 150 pages of documents relating to Hoang's expert report to the defense 30 days prior to March 10, 2014. The defense did not learn of the existence of these documents until Hoang testified at trial on April 9, 2014. She was Respondent's expert and he had a duty to timely disclose those notes. He negligently failed to do so and ignored his duty as a prosecutor.

Therefore, by failing to disclose reports, notes and/or statements made by Hoang in conjunction with the case to the defense 30 days prior to trial, Respondent violated Penal Code sections 1054.1, subdivision (f), and 1054.7. Respondent thereby willfully violated section 6068, subdivision (a), by failing to obey the law, as mandated by Penal Code sections 1054.1, subdivision (f), and 1054.7.

Count 4 - (§ 6068, subd. (a) [Attorney's Duty to Support Constitution and Laws of United States and California])

The OCTC alleges that by not disclosing the statements made by Dr. Hogan at the January 10, 2013 meeting to the defense before or during the preliminary hearing in November 2013, Respondent violated Daniels' due process rights under the 14th Amendment to the U.S. Constitution and the corresponding provisions of the California Constitution.

Respondent argues that the evidence is not exculpatory.

Again, the court must reject Respondent's contention. As found in previous counts, the evidence is exculpatory.

Under *Gutierrez,* Respondent has a constitutional duty to disclose evidence favorable to the defense prior to a preliminary hearing. In addition to his seven years' experience as a prosecutor at the time and all his attendant *Brady* training and experience in considering his *Brady* duties, on March 13 and 14, 2013, Respondent was specifically advised of his obligation under *Gutierrez.* A colleague also underscored the importance of this obligation in an email to Respondent on March 13, 2013. Yet, despite his training, long-standing experience, and this clear professional directive regarding his most significant ethical obligation, Respondent failed to disclose evidence favorable to the defense before the *Daniels* preliminary hearing.

The primary prosecution theory in *Daniels*, from the night the defendant was first arrested until the case was submitted to the jury, was that a sock, found at the scene, was the likely murder weapon. The day before the preliminary hearing, in a November 25, 2013 email to criminalist Hoang, Respondent revealed his theory of the case with his singular evidentiary focus: "I'm really just interested in the 'sock.'" He expressed no interest in the analysis of the pillow or any other evidence.

During the preliminary hearing, Respondent offered evidence regarding the discovery of the sock, its location and condition in the motel room, as well as photographs of the sock. Significantly, he offered DNA evidence on only one item - the sock. Moreover, Respondent sought and received a stipulation that Brastow's DNA was found on the sock.

Further, during the trial in April 2014, Respondent again offered testimony regarding the discovery of the sock and its condition at the scene, as well as photographs of the sock and evidence that the victim's DNA was found on the sock. In his closing argument, Respondent

referenced the sock in offering the prosecution theory as to how Brastow was murdered: "There's some sort of violent struggle, she's tied up at a certain point, he inhibits her ability to breathe somehow, we don't know exactly how, maybe it was the sock, maybe it was a pillow, it's not exactly clear because there were only two people in that hotel room." Thus, any evidence negating how the sock could have been used as the murder weapon was exculpatory evidence and should have been turned over prior to the preliminary hearing.

Despite having Dr. Hogan's exculpatory statements made at the January 10, 2013 meeting in his possession, Respondent failed to disclose evidence scientifically refuting one method the sock could have been used as the murder weapon prior to the preliminary hearing, in violation of his obligations under *Gutierrez*.

Rather, on February 20, 2014, just days before trial, the exculpatory information was disclosed by Judge Healy after reviewing Dr. Hogan's personnel records. Those personnel records revealed both an internal investigation of Dr. Hogan by the Sheriff's Office, and the existence and substance of the January 10, 2013 meeting she had with police, Respondent, and others regarding the *Daniels* case. The subpoenas for Dr. Hogan's personnel records were issued well after the *Daniels* preliminary hearing, and only after Dr. Hogan revealed to Jensen that she had not retired from the Sheriff's Office, but had been fired. Had Dr. Hogan not admitted, months after the preliminary hearing, that she had been fired, Judge Healy would not have reviewed her employment records, and her exculpatory statements at the January 10th meeting would never have been revealed.

Dr. Hogan gave the prosecution team specific, additional forensic information which she used to rebut the prosecution theory of homicide that was not otherwise disclosed or contained in the autopsy report. This was information that was not only favorable to the defense in refuting a possible way the sock could have been used as the murder weapon, but, if it had been properly

disclosed, could have been used to impeach both Dr. Hogan and Detective Mustard during their testimony at the preliminary hearing.

Respondent's failure to disclose evidence favorable to the defendant prior to the preliminary hearing was in violation of the requirements in *Gutierrez* and of his *Brady* duties required of all California prosecutors. Such failure violated the defendant's due process rights. Respondent thereby willfully violated section 6068, subdivision (a), by failing to support the Constitution and laws of the United States and the State of California.

However, there is no clear and convincing evidence that Respondent violated section 6068, subdivision (a), by failing to correct Dr. Hogan's testimony when she testified that she had not met with the prosecution team and that she thought the manner of death was most likely a homicide and the victim was smothered, because both the questioning by Lee and the responses by Dr. Hogan were open to interpretation.

Count 5 - (§ 6068, subd. (a) [Attorney's Duty to Support Constitution and Laws of United States and California])

The OCTC alleges that Respondent violated section 6068, subdivision (a), by violating Penal Code sections 1054.1, subdivisions (e) and (f), and 1054.7, in that Respondent failed to disclose statements by Dr. Hogan made at the January 2013 meeting to the defense 30 days before trial.

There is clear and convincing evidence that Respondent failed to disclose exculpatory evidence of the discussion that took place at the January 10, 2013 meeting to the defense 30 days before the trial date of March 10, 2014, in violation of Penal Code sections 1054.1, subdivisions (e) and (f), and 1054.7. Thus, Respondent violated section 6068, subdivision (a), by failing to support the laws of the State of California.

However, because these facts also support the culpability findings in count 1, the court dismisses count 5 with prejudice as a duplicative allegation of the section 6106 charge. (*Bates v.*

State Bar (1990) 51 Cal.3d 1056, 1060 [Little, if any, purpose is served by duplicate allegations of misconduct].)

Count 6 - (Rule 5-220 [Suppression of Evidence])

Rule 5-220 provides that an attorney must not suppress any evidence that the attorney or the attorney's client has a legal obligation to reveal or to produce.

There is clear and convincing evidence that Respondent suppressed the exculpatory evidence of the January 10, 2013 meeting that he was obligated to produce to the defense in violation of rule 5-220.

As discussed in count 5, because these facts also support the culpability findings in counts 1[11] and 4, it is not necessary to find him culpable of these same violations. Therefore, the court dismisses count 6 with prejudice as duplicative.

Aggravation[12]

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Std. 1.5.) The court finds the following with respect to aggravating circumstances.

Significant Harm to Client/Public/Administration of Justice (Std. 1.5(j).)

Respondent significantly harmed the public and the administration of justice by failing to uphold his duties as a prosecutor to reveal exculpatory evidence.

However, the court does not find that there is additional clear and convincing aggravating evidence to support a finding of other aggravating factors.

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[11] The OCTC acknowledges in its closing brief that count 6 may be dismissed as duplicative of count 1.

[12] All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Under standard 1.5(b), Respondent's *Brady* violations did not constitute multiple acts of misconduct as an aggravating factor.

Under standard 1.5(k), Respondent did not demonstrate indifference toward rectification of or atonement for the consequences of his misconduct since he has admitted, in hindsight, that he should have disclosed the January 10 meeting to the defense.

Under standard 1.5(l), Respondent has already been found culpable of making misrepresentations to Lee by gross negligence. Thus, no additional aggravation is found.

Mitigation

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 circumstances.

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

Respondent was admitted to the practice of law in 2004 and has no prior record of discipline. Respondent's nine years of discipline-free practice at the time of his misconduct in 2013 is given some weight as mitigation.

Candor/Cooperation to Victims/State Bar (Std. 1.6(e).)

Respondent was candid and cooperative to the State Bar throughout the investigations and during these proceedings. This is a significant mitigating factor.

Good Character (Std. 1.6(f).)

Respondent presented some evidence of good character. Twenty-one witnesses testified as to his good character, including two judges, five criminal defense attorneys, 13 deputy district attorneys, and one victim advocate. Favorable character testimony from employers and attorneys are entitled to considerable weight. (*Feinstein v. State Bar* (1952) 39 Cal.2d 541, 547.) Because judges and attorneys have a "strong interest in maintaining the honest administration of justice"

(*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319), "[t]estimony of members of the bar . . . is entitled to great consideration." (*Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403.)

The witnesses all attested to his good moral character, ethics, honesty, and professionalism. However, most of the character witnesses had not known him for a lengthy period of time and others had lost contact with him in recent years. Moreover, they came from a narrow cross-section of the legal community and not from a sufficiently wide range of references. Thus, the evidence was entitled to some but not significant weight in mitigation. (*In the Matter of Wittenberg* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 418.)

Discussion

The primary purposes of attorney discipline are 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.)

In determining the appropriate level of discipline, the 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 Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.) Standards 1.7, 2.11, and 2.12(a) apply in this matter.

Standard 1.7 provides that if aggravating or mitigating circumstances are found, they should be considered alone and in balance with any other aggravating or mitigating factors. And, if two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. (Std. 1.7(a).)

Standard 2.11 provides that "[d]isbarment or actual suspension is the presumed sanction for an act of moral turpitude, dishonesty, fraud, corruption, intentional or grossly negligent misrepresentation, or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the member's practice of law."

Standard 2.12(a) provides that the presumed sanction for violation or disobedience of a court order related to the member's practice of law, the attorney's oath, or the duties required of an attorney under Business and Professions Code section 6068, subdivisions (a), (b), (d), (e), (f), or (h) is actual suspension or disbarment.

The OCTC argues that Respondent should be actually suspended for six months, as he has displayed a lack of insight into his misconduct and a failure to appreciate his ethical and professional responsibilities as a prosecutor. To provide guidance in determining the appropriate level of discipline, the OCTC cited four cases involving prosecutorial misconduct: *In the Matter of Murray* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 479 [one year's actual suspension for intentionally altering evidence, a manner wholly inappropriate and unbecoming of an experienced prosecutor]; *In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171 [four years' actual suspension for prosecutorial misconduct in four criminal matters over a 10-year period]; *Price v. State Bar* (1982) 30 Cal.3d 537 [two years' actual suspension for

altering evidence at a murder trial in order to obtain a conviction]; and *Noland v. State Bar* (1965) 63 Cal.2d 298 [30 days' actual suspension for tampering with a jury list].

Respondent admits that he unknowingly committed errors when failing to disclose statements made by Dr. Hogan and the report by criminalist Hoang. But in mitigation, he contends that, at the time, he had a huge caseload; that *Daniels* was his first homicide case; and that he was not a win-at-all-costs prosecutor. He testified that he does what is right and makes his best effort. Respondent's life has been miserable for something he did not intend to do. He submits that a public reproval is the greatest discipline warranted under these facts and circumstances.

The discipline in case law for prosecutorial misconduct ranges from 30 days to four years of actual suspension.

In *Noland*, a prosecutor counseled and aided in the unauthorized removal of the names of "pro-defense" prospective jurors from the official jury list. His ex parte tampering with the selection of potential jurors to gain advantage at subsequent trials constituted the calculated thwarting of objective justice. The Supreme Court actually suspended the attorney for 30 days, finding that he had achieved no insight into the grave significance of his actions and that he must be discouraged from attempting any further zealous abuses of judicial administration. The Supreme Court decided this case some 53 years ago. There is "a changing trend toward greater discipline." (See *In the Matter of Murray, supra,* 5 Cal. State Bar Ct. Rptr. 479, 491, fn. 10.)

In *Price*, a prosecutor altered evidence in a criminal trial and attempted to prevent discovery of his misconduct by discussing the alteration with the judge in the absence of opposing counsel and communicating to the defendant – after conviction but before sentencing – an offer to seek favorable sentencing in exchange for defendant's agreement not to appeal the conviction. Because the attorney had no prior record of discipline in 11 years of practice, he was

under mental and emotional stress, he was cooperative and remorseful throughout the proceedings, and witnesses testified to his good reputation as a lawyer and his active involvement in civic affairs, the Supreme Court found that the mitigating evidence militated against disbarment. Thus, he was suspended for five years, stayed, placed on probation for five years, and actually suspended for two years.

In *Field*, an overzealous deputy district attorney abused his prosecutorial power, concealed evidence and violated the constitutional rights of defendants in favor of winning cases. Because of his compelling mitigation, he was not disbarred but was actually suspended for four years with five years' probation and five years' stayed suspension, which is basically the longest period of suspension short of disbarment.

Finally, in *Murray*, a prosecutor intentionally altered a defendant's statement to add a false confession in a felony child molestation case, resulting in significant harm to the administration of justice and dismissal of all charges against the defendant. His conduct was found to be deliberate and egregious. His discipline included a one-year actual suspension.

In this matter, Respondent's misconduct is far less serious than that of *Field*, *Price*, or *Murray* and is therefore distinguishable, particularly since Respondent did not intentionally commit any act of moral turpitude, dishonesty or corruption. He failed to timely produce the exculpatory evidence of Dr. Hogan's statements and criminalist Hoang's report; he was culpable of grossly negligent conduct amounting to moral turpitude. Respondent did not lie about the facts and circumstances surrounding the discovery of the exculpatory evidence. He did not purposefully alter evidence to gain advantage at trial. But, he admitted that he was sloppy and accepted responsibility for the part he played in this debacle.

Upon analyzing the evidence, this court finds that Respondent did not intentionally "render the trial fundamentally unfair" or that he used "deceptive or reprehensible methods to

attempt to persuade either the court or the jury." (*People v. Hill* (1998) 17 Cal. 4th 800, 819.) When he discovered that he neglected to produce criminalist Hoang's report to the defense at trial, Respondent immediately retrieved the report, in an attempt to remedy the *Brady* mistake, albeit too late. He also belatedly revealed the January 10 meeting, but only after Judge Healy had notified the parties. His dealings with opposing counsel demonstrate that he did not fully comprehend his special duty as a prosecutor to promote justice and seek the truth.

While Respondent's prosecutorial misconduct was not outrageous, he did fail to fully uphold his *Brady* obligations in his eager attempt to find justice for the victim. As Respondent told Brastow's mother, "[E]ven if it will be extremely hard to prove, I made a promise to you that I would try. [Daniels] shouldn't get away with it without a fight."

Despite the defense's multiple requests for discovery materials, he was not diligent in compliance at the evidentiary hearings. At the time when he was assigned the *Daniels* matter, Respondent had no previous experience with homicide cases and might have been overwhelmed with a heavy caseload. Yet, Respondent's inexperience does not excuse his *Brady* violations; he was fully versed of his obligations.

The *Brady* offense might not have been intentional, but nevertheless, the public and the administration of justice were significantly harmed. Such a violation is serious. Respondent had negatively impacted the public trust in the justice system. Prosecutors are held to an elevated standard of conduct because of their "unique function ... in representing the interests, and in exercising the sovereign power, of the state." (*People v. Hill, supra,* 17 Cal.4th 800, 820.) "The duty of the district attorney is not merely that of an advocate. His duty is not to obtain convictions, but to fully and fairly present to the court the evidence material to the charge upon which the defendant stands trial ... In the light of the great resources at the command of the district attorney and our commitment that justice be done to the individual, restraints are placed

on him to assure that the power committed to his care is used to further the administration of justice in our courts and not to subvert our procedures in criminal trials designed to ascertain the truth." (*In re Ferguson* (1971) 5 Cal.3d 525, 531.)

Here, in the absence of compelling mitigation, a public reproval would not further the objectives of attorney discipline and would not be an appropriate disposition of this matter. Standard 2.11 is the most apt as it addresses the presumptive discipline for acts of moral turpitude, which provides that disbarment or actual suspension is the presumed sanction for an act of moral turpitude.

Respondent's suppression of exculpatory evidence does not involve personal benefit or pecuniary gain. But, the case law and the standards provide that placing Respondent on a period of actual suspension would be appropriate to protect the public, to preserve public confidence in the profession and to maintain the highest possible professional standards demanded of a prosecutor. In his findings and order, Judge Healy noted that Respondent's failure to disclose specific autopsy materials and Dr. Hogan's statements was the fault of not only the prosecutors but also the sheriff/coroner. He wrote that they "were obligated to have in place policies and procedures to appropriate[ly] handle the materials at issue. Their abject failure to adequately handle and disclose these materials is troubling, and their public effort to blame each other for what was a joint obligation is nothing short of disgraceful."

After balancing all relevant factors, including the underlying misconduct and the mitigating and aggravating circumstances, the court concludes that a 90-day actual suspension would be commensurate with the gravity of Respondent's acts and is necessary for the protection of the public, the courts and the legal profession. The court is mindful that any period of actual suspension would be detrimental to Respondent's legal career as a prosecutor. But the need to uphold the administration of justice and the "professional keeping of lawyers," and not let those

with power go "sloppy" in violation of the constitutional rights of defendants, guilty or not, preempts Respondent's personal career.

Recommendations

It is recommended that Andrew Michael Ganz, State Bar Number 231601, be suspended from the practice of law for one year, that execution of that suspension be stayed, and that Respondent be placed on probation for two years with the following conditions:

Conditions of Probation

1. **Actual Suspension**

Respondent must be suspended from the practice of law for the first 90 days of the period of Respondent's probation.

2. **Review Rules of Professional Conduct**

Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to Respondent's compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.

3. **Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions**

Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's probation.

4. **Maintain Valid Official Membership Address and Other Required Contact Information**

Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer

Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR, within ten (10) days after such change, in the manner required by that office.

5. Meet and Cooperate with Office of Probation

Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in person or by telephone. During the probation period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.

6. State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court

During Respondent's probation period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with probation conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official membership address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

7. **Quarterly and Final Reports**

a. Deadlines for Reports. Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten (10) days before the last day of the probation period and no later than the last day of the probation period.

b. Contents of Reports. Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.

c. Submission of Reports. All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).

d. Proof of Compliance. Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after

either the period of probation or the period of Respondent's actual suspension has ended, whichever is longer. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

8. Proof of Compliance with Rule 9.20 Obligations

Respondent is directed to maintain, for a minimum of one year after the commencement of probation, proof of compliance with the Supreme Court's order that Respondent comply with the requirements of California Rules of Court, rule 9.20(a) and (c). Such proof must include: the names and addresses of all individuals and entities to whom Respondent sent notification pursuant to rule 9.20; a copy of each notification letter sent to each recipient; the original receipt or postal authority tracking document for each notification sent; the originals of all returned receipts and notifications of non-delivery; and a copy of the completed compliance affidavit filed by Respondent with the State Bar Court. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

9. State Bar Ethics School Not Recommended

It is not recommended that Respondent be ordered to attend the State Bar Ethics School because he has completed the State Bar Ethics School and passage of the test given at the end of that session on July 10, 2018. Respondent will not receive Minimum Continuing Legal Education (MCLE) credit for attending this session.

Commencement of Probation/Compliance with Probation Conditions

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

Multistate Professional Responsibility Examination Within One Year

It is further recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).) If Respondent provides satisfactory evidence of the taking and passage of the above examination after the date of this decision, but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward his duty to comply with this requirement.

California Rules of Court, Rule 9.20

It is further recommended 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.[13] Failure to do so may result in disbarment or suspension.

Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in

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[13] For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c), affidavit even if Respondent has no clients to notify on the date the Supreme Court filed 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, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

Business and Professions Code section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to section 6086.10, subdivision (c), costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

Dated: January 11, 2019

Yvette D. Roland
Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Court Specialist 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 San Francisco, on January 11, 2019, I deposited a true copy of the following document(s):

AMENDED 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 San Francisco, California, addressed as follows:

ALFRED FRANCIS GIANNINI
2323 WOOSTER AVE
BELMONT, CA 94002

☐ by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

☐ by overnight mail at , California, addressed as follows:

☐ by fax transmission, at fax number . No error was reported by the fax machine that I used.

☐ By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Melissa G. Murphy, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on January 11, 2019.

George Hue
Court Specialist
State Bar Court