STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

IN BANK

In the Matter of	)	Case No. 14-O-00027
	)	
SANDRA LEE NASSAR,	)	ORDER
	)	
A Member of the State Bar, No. 199305.	)	
	)	

We filed our opinion in this case on August 23, 2018. On September 7, 2018, we issued an order modifying the opinion to correct certain clerical errors. Thereafter, we issued a new opinion with modifications that noted the opinion was modified as of September 7, 2018. However, the modified opinion was incorrectly file-stamped as August 23, 2018. Accordingly, we rescind this incorrect filing, and file our Opinion [As Modified September 7, 2018] in this case.

Our September 7, 2018 modified opinion does not alter any of the factual findings, legal conclusions, or the discipline recommendation set forth in our original August 23, 2018 opinion, and does not extend any deadlines. (See Cal. Rules of Court, rule 9.264(c) [modification of reviewing court that does not change appellate judgment does not extend finality date of decision].)

PURCELL
Presiding Judge

PUBLIC MATTER—DESIGNATED FOR PUBLICATION

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. 14-O-00027
	)	
SANDRA LEE NASSAR,	)	OPINION
	)	[As Modified September 7, 2018]
A Member of the State Bar, No. 199305.	)	
	)	

Sandra Lee Nassar, a deputy district attorney in the Orange County District Attorney's Office, appeals a hearing judge's decision finding her culpable of three counts of misconduct for her failure to produce evidence in a felony criminal trial. While the Office of Chief Trial Counsel of the State Bar (OCTC) recommended that Nassar be actually suspended for six months, the judge recommended that Nassar be suspended for two years, that execution of that suspension be stayed, and that she be placed on probation for three years subject to an actual suspension of one year and until she provides proof to the State Bar Court of her rehabilitation, fitness to practice, and present learning and ability in the general law. Nassar asserts that discipline is not warranted as she acted appropriately. OCTC does not appeal and supports the judge's decision and discipline recommendation.

Upon independent review of the record (Cal. Rules of Court, rule 9.12), we reject Nassar's arguments, and affirm the hearing judge's culpability findings, but not her discipline recommendation. In light of the comparable case law, we recommend an actual suspension of six months to protect the public, the courts, and the legal profession.

I. PROCEDURAL BACKGROUND

On March 3, 2017, OCTC filed a Notice of Disciplinary Charges (NDC), charging Nassar with violating Business and Professions Code section 6068, subdivision (a) (failure to support laws),[1] section 6106 (moral turpitude—suppression of evidence), and rule 5-220 of the California Rules of Professional Conduct (suppression of evidence).[2] On June 28, 2017, the parties filed a Stipulation as to Facts and Admission of Documents (Stipulation). Trial was held on June 28 and 29 and July 21, 2017, and posttrial briefing followed. On October 10, 2017, the hearing judge issued her decision.

II. FACTUAL BACKGROUND[3]

Nassar was admitted to practice law in California on December 9, 1998. In June 2011, Nassar filed criminal charges in *People v. Carmen Iacullo and Lori Pincus*, Orange County Superior Court Case No. 11NF1839 (*Iacullo*), alleging child abuse and torture of a five-year-old victim. Iacullo was in custody prior to the filing of these charges. Pincus, the victim's mother and Iacullo's codefendant, was arrested on June 11, 2011.

After Nassar filed *Iacullo*, she directed that a "mail cover" be imposed on Iacullo's and Pincus's mail while both were in custody.[4] Nassar received and reviewed copies of the

---

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

[2] All further references to rules are to the California Rules of Professional Conduct unless otherwise noted.

[3] The factual background is based on the Stipulation, the trial testimony, documentary evidence, and factual findings by the hearing judge, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).)

[4] Testimony at trial from both parties established that when a mail cover is in use, jail personnel intercept and copy all mail sent to and from the prisoner at the request of the prosecuting attorney. Attorney-client communications are excluded. Copies are held for the district attorney to review, and after the mail is copied, it is forwarded to the addressee. Nassar asked the jail to implement the mail cover. The decision to do so was entirely within her discretion.

intercepted mail before it was forwarded to the addressee. Iacullo, Pincus, and their attorneys were unaware of the mail cover.

Pursuant to a plea agreement Nassar negotiated with Pincus, Pincus pled guilty on July 10, 2012, to violations of Penal Code section 273a, subdivision (a) (child abuse), and Penal Code section 32 (accessory after the fact). As a part of her plea, Pincus signed a factual basis statement[5] and a cooperation agreement that she would testify at Iacullo's trial. Pincus was released soon after her plea, thereby ending the mail cover on her correspondence. Iacullo's mail cover remained in place.

Between July 2011 and August 2012, Iacullo's attorney, Joe Dane, repeatedly requested discovery documents from Nassar. Iacullo's case was scheduled for jury trial five times during April 2012 to June 2013. Each time, the defense filed a motion to continue the trial shortly before the scheduled date. The superior court granted each motion on the first day of trial, except the first one, which was granted the week before trial was to start.[6]

In April 2013, Nassar was transferred out of the Family Protection Unit as part of the customary rotation practice in the district attorney's office. Deputy District Attorney Jennifer Duke took over the *Iacullo* prosecution, after which the next trial date was set for June 17, 2013.

When Nassar told Duke about the mail cover in the *Iacullo* case, Duke asked if any of the more than 1,000 pages of collected material had been produced. Nassar had not produced any of it, and replied, "Why would I?" Duke then spoke to her supervisor, Ted Burnett, who confirmed that the mail cover materials should have been provided to Dane in response to his earlier

---

[5] Pincus admitted in the statement that she "willfully and unlawfully harbored, concealed, and aided [Iacullo], knowing he had committed the crimes of child abuse and torture upon [her] son . . . with the intent that [Iacullo] might avoid and escape from arrest, trial, conviction, and punishment for the felony crimes he committed against [her] son."

[6] Trial was initially set for June 20, 2012. On June 13, the trial date was moved to October 10. On that date, and on each successive scheduled trial date of January 16, 2013, March 20, April 17, and June 17, 2013, the trial was continued.

requests. On June 6, 2013, Duke produced all collected materials to Dane and canceled the mail cover.

On July 3, 2013, Dane filed a motion to dismiss or, in the alternative, to recuse the Orange County District Attorney's Office based on, among other issues, its withholding of the mail cover materials. On July 17 and 29, the superior court held a hearing on the motion, at which Nassar testified. She testified that she was familiar with her duty to produce exculpatory and mitigating information, even without a request from the defense. Nassar admitted that she received statements written by Pincus through the mail cover. She testified that she considered only one letter to be exculpatory,[7] but believed she did not have to produce it since it was sent to Iacullo, and was in his possession.[8]

At the hearing, Dane asked Nassar why she did not provide the mail cover materials when Pincus pled guilty. She answered that, at that time, she "had not finished turning over all of the discovery on the case." She then explained that she did not produce the mail cover materials because "[i]t relates to trial strategy."

---

[7] This letter from Pincus to Iacullo was dated October 23, 2011, and stated, in part, "I know you didn't do what they're saying. You couldn't have! I told them you hadn't been home for that last week other than to grab your tattoo equipment, but they accused me of lying to protect you." It was the only letter discussed in detail at the hearing.

[8] Other letters written by Pincus were admitted into evidence at Nassar's disciplinary trial and were described in the hearing judge's decision. They were obtained through the mail cover on Pincus while she was incarcerated and included (1) a letter to "Alex" stating that she did not sign a statement from the district attorney because it was "bullshit" and wanted her to admit to "concealing a crime covering his ass"; (2) a letter to an unknown individual stating that Pincus did not sign a factual basis statement from the district attorney because it was "bullshit"; (3) a letter to "Teresa" stating that Pincus did not sign the factual basis statement because it points the finger at Iacullo and she was "not physically present when it happened"; and (4) a letter to "Andrew" stating that the factual basis statement was not right because Pincus was not there and could not say that she knows what happened.

The superior court found no due process violation and denied the motion to dismiss. However, the court determined that Nassar committed a "willful *Brady* violation,"[9] and recused her from the case. The court found that Nassar did not produce "obviously exculpatory material," and her justification was not reasonable, adding that "It wasn't even close to a reasonable excuse." The judge noted that Dane could use the letter from Pincus to Iacullo to impeach Pincus's testimony at trial and that the defense could call Nassar as a witness. Neither side appealed the court's ruling.

In January 2014, Iacullo and Duke negotiated a plea agreement. Iacullo pled guilty to a violation of Penal Code section 273a, subdivision (a), with enhancements for great bodily injury and prior convictions. On January 24, 2014, Iacullo was sentenced to 12 years in state prison.[10]

III. NASSAR FAILED TO DISCLOSE DISCOVERABLE EVIDENCE

A. Count One: Section 6068, Subdivision (a) (Failure to Support Laws)[11]

In count one of the NDC, OCTC alleged that Nassar failed to comply with her "obligation under Penal Code sections 1054.1, et seq." when she did not produce discoverable evidence to Iacullo's defense counsel. Penal Code section 1054.1 requires, in relevant part, that a prosecuting attorney disclose to the defense statements of all defendants (subdivision (b)), any exculpatory evidence (subdivision (e)), and relevant written or recorded statements of witnesses (subdivision (f)). Penal Code section 1054.1 is "designed to promote truth in trials by requiring timely pretrial discovery." (*In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr.

---

[9] All references to "*Brady*" refer to the United States Supreme Court case *Brady v. Maryland* (1963) 373 U.S. 83. *Brady* held "that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution." (*Id.* at p. 87.) The court emphasized that this decision was necessary to promote fairness in criminal trials and to comport with the standards of justice. (*Id.* at pp. 87–88.)

[10] Under the complaint, Iacullo was facing a possible life sentence.

[11] Under section 6068, subdivision (a), an attorney's duty is "[t]o support the Constitution and laws of the United States and of this state."

171, 181, fn. 10; see also *People v. Superior Court* (*Pearson*) (2010) 48 Cal.4th 564, 570 [discussing purpose of discovery statutes under Pen. Code §§ 1054–1054.9].) Additionally, Penal Code section 1054.7 requires the prosecuting attorney to make disclosures under Penal Code section 1054.1 "at least 30 days prior to the trial, unless good cause[12] is shown why a disclosure should be denied, restricted, or deferred." Any decision to deny, restrict, or defer disclosures belongs to the court. (*Alvarado v. Superior Court* (2000) 23 Cal.4th 1121, 1125 [trial court has broad discretion to deny, restrict, or defer disclosures under Pen. Code § 1054.7].)

The hearing judge found Nassar culpable because she willfully failed to disclose Pincus's statements obtained from the mail cover at least 30 days prior to trial, in violation of Penal Code sections 1054.1 and 1054.7, and that the October 23, 2011 letter was discoverable because it was exculpatory *and* a witness statement. (Pen. Code, § 1054.1, subds. (e) & (f).) Noting that Pincus had agreed to testify at trial and her letters contradicted the cooperation agreement that she signed, the judge also found that Nassar was required to disclose at least four additional letters from the mail cover that Pincus wrote to others because they constituted witness statements by her that pertained to the charges against Iacullo.[13]

Nassar appeals, arguing that her duty to disclose never arose while she was the prosecutor in *Iacullo*.[14] OCTC asserts that Nassar violated Penal Code sections 1054.1 and 1054.7 when she failed to turn over Pincus's statements from the mail cover 30 days before the trial dates scheduled for October 10, 2012; January 6, 2013; March 20, 2013; and April 17, 2013.

---

[12] Penal Code section 1054.7 states, "'Good cause' is limited to threats or possible danger to the safety of a victim or witness, possible loss or destruction of evidence, or possible compromise of other investigations by law enforcement," and a party may request to make its good cause showing in camera.

[13] *Ante*, fn. 8.

[14] Under count one, Nassar also objects to the hearing judge's analysis under *Brady*. However, the judge correctly held that the issue was whether Nassar complied with the Penal Code, not whether there was a *Brady* violation. *Brady* has nothing to do with Nassar's culpability as alleged in the NDC, and Nassar's argument regarding *Brady* is without merit.

First, we need not determine if the October 23, 2011 letter was exculpatory under Penal Code section 1054.1, subdivision (e), since we find Nassar culpable for her failure to disclose Pincus's written statements under subdivision (f) of that section. Nassar did not timely produce the October 23, 2011 letter or Pincus's four other written statements that Nassar received under the mail cover, in violation of Penal Code section 1054.1, subdivision (f).

We also reject Nassar's argument that she did not have to produce the four additional letters because they were not "material." This argument is misplaced as the case law she cites interprets federal standards under *Brady*, not law dictating disclosure requirements under the Penal Code. As the hearing judge found, Pincus had agreed to testify and her letters were clearly written statements by a witness that were relevant and required to be disclosed under Penal Code section 1054.1, subdivision (f). We agree with the judge's conclusion that Nassar was obligated to provide those additional letters.

Nassar asserts that a duty to disclose evidence did not arise while she was the prosecutor because no "actual trial date" triggered the 30-day requirement under Penal Code section 1054.7. She attempts to distinguish the holding of *Field* by asserting that the superior court judge never set a discovery cutoff date nor had the parties announced that they were ready for trial and, therefore, no violation of Penal Code section 1054.7 occurred. However, *Field* did not hold that a discovery cutoff date had to be set to determine the trial date for Penal Code section 1054.7 purposes. Instead, the court relied on the plain language of that section and stated:

> Absent express language in section 1054.7 dictating otherwise, we do not presume the Legislature intended to allow parties in criminal proceedings to disregard discovery deadlines associated with trial dates merely because they think they can successfully predict that a trial date will be continued. [Citation.]

(*In the Matter of Field, supra*, 5 Cal. State Bar Ct. Rptr. at p. 182.) Similar to Nassar, Field argued that the set trial date was not "real" because it had been continued and an attorney must use his "predictive ability" to determine if a case is actually going to trial for the purpose of

timely producing discovery. (*Ibid.*) We rejected Field's argument and found that he was culpable under section 6068, subdivision (a), when he did not make the required disclosures pursuant to Penal Code section 1054.7 at least 30 days prior to the first scheduled trial date without any showing of good cause for delay. (*Id.* at pp. 181–182.)

We see no reason to change our approach here.[15] The first trial date was scheduled for June 20, 2012. In May 2012, 30 days before the set trial date when she was required to disclose information, Nassar knew that the mail cover materials contained discoverable evidence because she admitted at trial that they included witness statements. Further, she stated that she planned to produce the materials once the mail cover was terminated. Finally, she made no showing of good cause for her failure to make the disclosures.[16] Accordingly, we find clear and convincing evidence[17] that Nassar is culpable under count one because she violated Penal Code

---

[15] Nassar cites *People v. Superior Court (Lavi)* (1993) 4 Cal.4th 1164, which discusses the deadline for filing preemptory challenges under Code of Civil Procedure section 170.6. She argues that the trial date used to calculate the deadline under Penal Code section 1054.7 should be calculated similarly to the date under the master calendar rule. As discussed above, the plain language of Penal Code section 1054.7 does not support such an interpretation and neither does our holding in *Field*. Accordingly, we reject Nassar's argument.

[16] A party must show good cause to defer a disclosure and can request that the court permit the showing of good cause in camera. (*Alvarado v. Superior Court*, *supra*, 23 Cal.4th at p. 1134.) Nassar claims that she delayed in producing the mail cover materials for two reasons. First, she asserts that a mail cover is an investigation and, as such, is privileged under Penal Code section 1054.6 and Evidence Code section 1040. However, she points to no authority, and we can find none, to support this broad assertion. Second, she argues that she needed to protect the victim. She stated that Pincus and Iacullo were attempting to locate the victim, but the only evidence supporting that claim is Nassar's own testimony. She cites *People v. Acevedo* (2012) 209 Cal.App.4th 1040 for the proposition that she could withhold the mail cover materials because "the need for confidentiality outweighs the necessity for disclosure." However, that decision is not hers to make; it belongs to the court under Penal Code section 1054.7. (*Alvarado v. Superior Court*, *supra*, 23 Cal. 4th at p. 1134; see also *People v. Acevedo*, *supra*, 209 Cal.App.4th at pp. 1052–1054.) Nassar cannot make her own good cause determination.

[17] Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

sections 1054.1 and 1054.7 when she failed to timely produce witness statements to Iacullo's attorney.

B. Count Two: Section 6106 (Moral Turpitude—Suppression of Evidence)[18]

In count two of the NDC, OCTC alleged that Nassar committed an act of moral turpitude, dishonesty, or corruption when she knew, or was grossly negligent in not knowing, that she was required to provide the defense with discoverable evidence secured via a mail cover. OCTC charged that Nassar failed to produce that evidence "in order to secure a strategic trial advantage." The hearing judge stated that Nassar "adopted an unreasonably narrow view" of what should be disclosed and concluded that Nassar did not fulfill her obligations under the Penal Code. The judge held that Nassar's belief that she was not required to disclose the mail cover materials was unreasonable because it directly conflicted with the requirements of Penal Code sections 1054.1 and 1054.7. As such, the hearing judge found that Nassar violated section 6106 and committed an act of moral turpitude because Nassar was grossly negligent when she willfully failed to produce the discoverable mail cover evidence to the defense. (See *In the Matter of Dale* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798, 807 [gross negligence may be basis for finding of moral turpitude].)

Nassar again asserts that she did not fail to produce discoverable evidence as no duty arose while she was the prosecutor in *Iacullo* and, therefore, she did not commit an act of moral turpitude. As discussed above, Nassar had a duty to produce the mail cover materials to Dane 30 days before trial, which she did not do. OCTC supports the hearing judge's culpability finding. We agree with the judge's holding that Nassar was grossly negligent in her failure to produce discoverable evidence to the defense. Nassar's belief that she did not need to disclose the mail

[18] Section 6106 states, "The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension."

cover materials was unreasonable as it directly conflicted with her clear obligations under Penal Code sections 1054.1 and 1054.7.

We also find that Nassar withheld the mail cover materials to secure a strategic trial advantage. At the hearing on the motion to dismiss, she admitted that she did so because "[i]t relates to trial strategy." The superior court judge found that Nassar's trial strategy was to not disclose the evidence, which was not a legitimate reason to withhold it. Nassar later testified at her disciplinary trial that when she used the term "trial strategy," she meant that her intent was to protect the victim. The hearing judge found that her credibility on this subject was diminished because Nassar never mentioned victim safety when she and Duke discussed the mail cover materials. Specifically, Nassar and Duke both testified that she replied, "Why would I?" when Duke asked if the mail cover materials had been produced. At that time, Nassar did not tell Duke that she was concerned about protecting the victim. We defer to the hearing judge's credibility findings because "[she] alone is able to observe the witnesses' demeanor and evaluate their veracity firsthand." (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032.)

The hearing judge gave no additional weight in culpability for this count as it is based on the same misconduct that constituted the violation in count one. We agree. (See *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127 [no additional weight for same misconduct that forms basis of separate violation].)

C. Count Three: Rule 5-220 (Suppression of Evidence)

OCTC also charged Nassar with violating rule 5-220, which provides, "A member shall not suppress evidence that the member or the member's client has a legal obligation to reveal or produce."[19] The hearing judge found that Nassar violated this rule by failing to produce the

[19] Count three also contains the charge that Nassar committed a violation "in order to secure a strategic trial advantage." As discussed under count two, we find that Nassar's

discoverable mail cover evidence in her possession that she was obligated to produce to the defense under Penal Code sections 1054.1 and 1054.7.

Nassar maintains that she did not suppress evidence because she was "merely waiting for the case to reach the trial stage before taking down the mail cover and providing the mail cover materials to defense counsel." OCTC asserts that Nassar had an obligation under Penal Code sections 1054.1 and 1054.7 to produce those materials.

As discussed above, Nassar was obligated under the Penal Code to disclose items contained within the mail cover 30 days before the first scheduled trial date of June 20, 2012. By withholding that evidence, she violated rule 5-220. As with count two, the hearing judge assigned no additional weight in culpability since the basis of misconduct for this count is the same as in count one. We agree with the judge's culpability finding and the weight assigned for this violation. (See *In the Matter of Sampson*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 127.)

IV. AGGRAVATION AND MITIGATION

Standard 1.5[20] requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Nassar to meet the same burden to prove mitigation.

A. Aggravation

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

The hearing judge found that Nassar's "failure to turn over exculpatory and impeachment evidence, as required by law, significantly undermines the public's trust in the criminal justice system and warrants substantial consideration in aggravation." We agree.

The superior court judge stated that Nassar had no excuse for her actions and found that her conduct fell "painfully below the standard of care provided or required of a prosecutor in any

---

admission at the hearing on the motion to dismiss establishes that she violated this rule in order to secure a strategic trial advantage.

[20] Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct. All further references to standards are to this source.

case." Nassar's failure to produce required evidence in her role as a prosecutor "erodes confidence in law enforcement and the criminal justice system." (*In the Matter of Murray* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 479, 489; see also *In the Matter of Field, supra*, 5 Cal. State Bar Ct. Rptr. 171 [abuse of prosecutorial power negatively impacts reputation of district attorney's office and public's trust in criminal justice system].) Thus, we find that Nassar's actions significantly harmed the administration of justice and assign substantial weight in aggravation.

2. Lack of Insight (Std. 1.5(k))

The hearing judge found that Nassar demonstrated a lack of insight regarding her present misconduct because she testified that she did nothing wrong and would engage in the same conduct if a similar situation arose. The judge concluded that Nassar's attitude and unwillingness to acknowledge her own misconduct were reasons to believe that she might commit future misconduct. The judge assigned significant weight in aggravation.

Nassar argues that she was acting as a diligent prosecutor by obtaining the mail cover to protect the victim. She argues that she was aware of her duty to disclose the materials she obtained and planned to produce them. However, she believes that the disclosure deadline did not arise while she was the assigned prosecutor. She contends that her "honest belief in her innocence" demonstrates that she should not receive aggravation for lack of insight.

We agree with the hearing judge that Nassar lacks insight, but we assign less aggravating weight. Nassar was faced with two competing duties as prosecutor—to disclose certain evidence to the defense and to protect the safety of the victim. Nassar allowed her duty to the victim to overshadow her duty to the defendant. As a result, she took an unreasonable view of Penal Code sections 1054.1 and 1054.7, two clearly worded statutes, and she still firmly holds to this view.

She testified at her trial that she would undertake the same actions again, and that she fully complied with her legal and ethical obligations. She is simply wrong.

Nassar, "like any attorney accused of misconduct, ha[s] the right to defend [herself] vigorously." (*In re Morse* (1995) 11 Cal.4th 184, 209.) However, her steadfast opposition in light of her clear legal and ethical duties as a prosecutor demonstrates that she has not fully acknowledged her wrongdoing. (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511 ["The law does not require false penitence . . . . But it does require that the respondent accept responsibility . . . and come to grips with . . . culpability"].) Accordingly, we assign moderate aggravation for lack of insight.

B. Mitigation

1. No Prior Discipline (Std. 1.6(a))

Absence of a prior record of discipline over many years, coupled with present misconduct that is not likely to recur, is a mitigating circumstance. The hearing judge credited Nassar with significant mitigation for her approximately 13 years of discipline-free practice. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [more than 10 years of misconduct-free practice given significant weight in mitigation].)

We assign less than full mitigation credit, however, because Nassar did not establish that her misconduct is unlikely to recur. (*Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [where misconduct is serious, long discipline-free practice is most relevant where misconduct is aberrational and unlikely to recur].) As discussed above, Nassar testified that she did nothing wrong, that she fully complied with her legal and ethical duties, and that she would do the same thing again. Her attitude reduces the weight of her lack of a prior disciplinary record.

2. Cooperation (Std. 1.6(e))

Nassar stipulated to a short set of facts and did not stipulate to the admission of any exhibits nor culpability. The hearing judge correctly gave minimal consideration to Nassar's Stipulation because it contained easily provable facts. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive weight in mitigation accorded those who admit culpability as well as facts].) We agree.

3. Extraordinary Good Character (Std. 1.6(f))

Nassar may obtain mitigation for "extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct." The hearing judge stated that Nassar's character evidence was diminished because her references were all from the legal community and did not represent a "wide range." (*In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469, 476 [weight of character evidence reduced where wide range of references lacking].) Despite this finding, the judge assigned significant weight in mitigation for Nassar's six witnesses and 28 character declarations.

On appeal, OCTC states that Nassar received the appropriate amount of mitigation. Nassar does not specifically argue for increased weight in mitigation, but asserts that her character references do represent a "wide range." She had numerous witnesses, consisting of judges, criminal defense attorneys, a law professor, and her fellow prosecutors and other employees of the Orange County District Attorney's Office. All were aware of Nassar's misconduct and had known Nassar for a long time (most ranging from 10 to 20 years). The character evidence from the attorneys and judges is impressive and deserves great consideration because they 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.) However, for

mitigation purposes in a disciplinary proceeding, the weight of this evidence is tempered when a "wide range of references is absent." (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50.) Since she offered no character evidence from the general community, we assign less than full mitigation weight for Nassar's good character evidence.

4. Good Faith (Std. 1.6(b))

On appeal, Nassar argues that she should be given mitigation credit because "she acted in good faith in delaying discovery" based on case law and the Penal Code.[21] An attorney may be entitled to mitigation credit if he or she can establish a "good faith belief that is honestly held and objectively reasonable." (*In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 653 [good faith established as mitigating circumstance when attorney proves belief was honestly held and reasonable].) However, her belief that she could wait to produce evidence until a "real" trial date was set was not objectively reasonable based on the clear wording of Penal Code section 1054.7. (*In the Matter of Field, supra*, 5 Cal. State Bar Ct. Rptr. at p. 182.) We find that Nassar does not deserve mitigating credit for good faith.

V. DISCIPLINE[22]

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

---

[21] Citing *People v. Salazar* (2005) 35 Cal.4th 1031, Nassar asserts that she was not required to turn over the October 23, 2011 letter because it was in the defense's possession. *Salazar* dealt with the materiality of evidence under *Brady* and has no bearing on whether Nassar was obligated to make certain disclosures under the Penal Code.

[22] The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys. (Std. 1.1.)

In analyzing the applicable standards, we first determine which standard specifies the most severe sanction for the at-issue misconduct. (Std. 1.7(a) [most severe sanction must be imposed where multiple sanctions apply].) Here, standard 2.12(a) is the most severe and specific, providing that disbarment or actual suspension is the presumed sanction for a violation of section 6068, subdivision (a).[23]

The hearing judge considered standard 2.12(a) and also looked to the case law for guidance. Specifically, the judge looked to two recent cases involving prosecutorial misconduct: *In the Matter of Murray*, *supra*, 5 Cal. State Bar Ct. Rptr. 479 and *In the Matter of Field*, *supra*, 5 Cal. State Bar Ct. Rptr. 171.

In *Murray*, a district attorney added fabricated lines to the transcribed statement of a defendant that made it seem the defendant had confessed to having sexual intercourse with a child. Murray sent the false document to the public defender, failed to correct the record despite several opportunities to do so, and then ultimately claimed it was all a "joke." He was culpable of an act of moral turpitude under section 6106 for knowingly creating and transmitting a false confession to the public defender.[24] In aggravation, we found that Murray caused significant harm to the victim, the defendant, and the administration of justice. He received limited mitigation for his stipulation to facts and his delayed remorse and recognition of his wrongdoing. We assigned significant mitigation weight for Murray's lack of prior discipline, extraordinary character evidence, and community service, and recommended an actual suspension of one year.

---

[23] The hearing judge noted that the same range of discipline would have applied for a violation of section 6106 under standard 2.11. Standard 2.19 applies to a violation of rule 5-220 and provides a less severe sanction than standard 2.12(a).

[24] Murray was also charged with a violation of section 6068, subdivision (a), based on the same facts, but that charge was dismissed as duplicative. (*In the Matter of Murray*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 488.)

The prosecutor in *Field* was culpable of misconduct in four criminal prosecutions over a 10-year period. His violations included failing to obey a court order, in violation of section 6103; moral turpitude violations under section 6106 for suppression of evidence, disrespect to the court, and an improper closing argument; and failing to comply with laws, in violation of section 6068, subdivision (a). Overall, we found compelling mitigation for Field's cooperation, extraordinary good character evidence, and community service. In aggravation, he committed multiple acts of misconduct and caused significant harm to the administration of justice. We did not find that Field displayed indifference toward rectification because he admitted he used poor judgment and should have produced certain evidence. Field stated that he would make changes to the way he handled discovery in the future. We recommended an actual suspension of four years.

We agree with the hearing judge's reliance on standard 2.12(a) along with *Murray* and *Field*. In comparing Nassar's misconduct to the two cases, she wrote, "[T]he misconduct in *Murray* was more outrageous and the misconduct in *Field* was more extensive." Nonetheless, Nassar's failure to timely produce discoverable evidence to the defense is extremely serious misconduct because she failed to fulfill her prosecutorial duty to promote justice. (See *In the Matter of Murray*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 488 [serious misconduct for prosecutor's failure to live up to standard imposed on him by virtue of his unique role in the administration of justice] and *In the Matter of Field*, *supra*, 5 Cal. State Bar Ct. Rptr. at pp. 186–187 [prosecutors are held to elevated standard and have special duty to promote justice and seek truth].) However, her misconduct is not as serious as that committed by the attorney in *Murray*. That prosecutor deliberately altered evidence and compromised the prosecution, resulting in the dismissal of charges. Also, Nassar's misconduct involved only one matter, unlike the misconduct in *Field*, which was prolonged and involved several violations. The discipline in *Murray* was an actual

suspension of one year and it was four years in *Field*. We find that a discipline including less than one year of actual suspension is warranted here.[25]

As discussed in *Field* and *Murray*, prosecutors have an elevated standard of candor and impartiality as compared to other attorneys. (*In the Matter of Field, supra*, 5 Cal. State Bar Ct. Rptr. at p. 186; *In the Matter of Murray, supra*, 5 Cal. State Bar Ct. Rptr. at p. 491.) Prosecutors exercise the sovereign power of the state and must be zealous in their representation, but not at the cost of justice. (*United States v. Young* (1985) 470 U.S. 1, 7.) The "ultimate goal [of the criminal justice system] is the ascertainment of the truth, and where furtherance of the adversary system comes in conflict with the ultimate goal, the adversary system must give way to reasonable restraints designed to further that goal." (*In re Ferguson* (1971) 5 Cal.3d 525, 531.)

We find that Nassar lost sight of her prosecutorial duties when she failed to disclose the mail cover materials. She shifted her focus away from her duty to shield against injustice and concentrated on the adversarial nature of the job. She repeatedly failed to make the disclosures, despite Dane's repeated requests, before each of the scheduled trial dates, in violation of the Penal Code. Nassar admitted that she withheld discoverable evidence to obtain a strategic advantage at trial. Further, she did not avail herself of the remedy permitted under Penal Code section 1054.7. Instead of requesting the judge to look at the materials in camera to determine if good cause existed to defer producing the materials, Nassar improperly made that determination

---

[25] The case precedent for circumstances similar to Nassar's is "limited." (*In the Matter of Field, supra*, 5 Cal. State Bar Ct. Rptr. at p. 186.) Apart from *Field* and *Murray*, discipline imposing actual suspension has ranged from 30 days to two years. (*Ibid.*) In *Noland v. State Bar* (1965) 63 Cal.2d 298, a prosecutor was given a 30-day actual suspension when he committed an act of moral turpitude by attempting to delete potential pro-defense jurors from the jury list to gain advantage at trials. In *Price v. State Bar* (1982) 30 Cal.3d 537, a prosecutor was given a two-year actual suspension for altering evidence at a murder trial to obtain a conviction. The prosecutor's misconduct involved moral turpitude. The Supreme Court concluded that the mitigation evidence presented weighed against the prosecutor's disbarment. We note that both *Noland* and *Price* are pre-standards cases.

herself. Her misconduct was serious and her actions fell substantially below the standards required of a prosecutor.

In sum, we find that Nassar's failure to produce discoverable evidence to the defense warrants a term of actual suspension above the 30-day minimum described in standard 1.2(c)(1).[26] The aggravation and mitigation factors in this case are on balance and do not merit either a longer or shorter term of suspension.[27] We find that the comparable case law is most useful in determining the appropriate discipline recommendation. We believe that the purposes of attorney discipline and prosecutorial accountability will be met by recommending discipline that includes a six-month actual suspension. The hearing judge's recommendation of a one-year actual suspension and until Nassar provides proof of her rehabilitation, fitness to practice, and present learning and ability in the general law is not necessary as our recommendation should convey to Nassar the gravity and consequences of her actions.

VI. RECOMMENDATION

For the foregoing reasons, we recommend that Sandra Lee Nassar be suspended from the practice of law for two years, that execution of that suspension be stayed, and that she be placed on probation for two years with the following conditions:

1. Nassar must be suspended from the practice of law for the first six months of her probation.
2. Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Nassar must (1) read the California 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 her compliance with this requirement, to the State Bar's Office of Probation in Los Angeles with her first quarterly report.

---

[26] Standard 1.2(c)(1) provides, "Actual suspension is generally for a period of 30 days, 60 days, 90 days, six months, one year, 18 months, two years, three years, or until specific conditions are met."

[27] Under standard 1.7, the net effect of the aggravating and mitigating circumstances can determine if a greater or lesser sanction than that specified in a given standard should be imposed. Here, those circumstances do not meet the requirements under standard 1.7(b) or (c).

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

4. Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Nassar must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has her current office address, email address, and telephone number. If she does not maintain an office, she must provide the mailing address, email address, and telephone number to be used for State Bar purposes. She must report, in writing, any change in the above information to ARCR, within 10 days after such change, in the manner required by that office.

5. Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Nassar must schedule a meeting with her assigned probation case specialist to discuss the terms and conditions of her 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, she may meet with the probation case specialist in person or by telephone. During the probation period, she 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. During Nassar's probation period, the State Bar Court retains jurisdiction over her to address issues concerning compliance with probation conditions. During this period, she must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to her official membership address, as provided above. Subject to the assertion of applicable privileges, Nassar must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

   a. Deadlines for Reports. Nassar 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, Nassar must submit a final report no earlier than ten days before the last day of the probation period and no later than the last day of the probation period.

   b. Contents of Reports. Nassar must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether she 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. Nassar is directed to maintain proof of her 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 her actual suspension has ended, whichever is longer. She is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

7. Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Nassar must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and she will not receive MCLE credit for attending Ethics School. If she provides satisfactory evidence of completion of Ethics School after the date of this decision but before the effective date of the Supreme Court's order in this matter, she will nonetheless receive credit for such evidence toward her duty to comply with this condition.

8. For a minimum of one year after the effective date of discipline, Nassar is directed to maintain proof of her compliance with the Supreme Court's order that she 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 which notification was sent pursuant to rule 9.20; copies of the notification letter sent to each such intended recipient; the original receipt and tracking information provided by the postal authority for each such notification; and the originals of all returned receipts and notifications of non-delivery. Nassar is required to present such proof upon request by OCTC, the Office of Probation, and/or the State Bar Court.

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

VII. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Nassar be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) 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 Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal.

Rules of Court, rule 9.10(b).) If Nassar provides satisfactory evidence of taking and passage of the MPRE after the date of this opinion but before the effective date of the Supreme Court's order in this matter, Nassar will nonetheless receive credit for such evidence toward her duty to comply with this condition.

VIII. RULE 9.20

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

IX. COSTS

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

McGILL, J.

WE CONCUR:

PURCELL, P. J.

HONN, J.

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 Los Angeles, on September 18, 2018, I deposited a true copy of the following document(s):

ORDER FILED SEPTEMBER 18, 2018
AND OPINION [As Modified September 7, 2018]

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

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

BLITHE E. CRAVENS
SALT LAKE COUNTY DISTRICT ATTORNEY
35 E 500 S
SALT LAKE CITY, UT 84111 – 3200

BRENTFORD JOSEPH FERREIRA
5318 E 2ND ST
PMB 399
LONG BEACH, CA 90803 - 5324

STEPHEN L COOLEY
STEVE COOLEY & ASSOCIATES
46E PENINSULA CTR STE 19
ROLLING HILLS ESTATES, CA 90274-3506

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

Danielle A. Lee, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 18, 2018.

Julieta E. Gonzales
Court Specialist
State Bar Court