

STATE BAR COURT
REVIEW DEPARTMENT

In the Matter of

MARC ANTHONY GUILLORY

A Member of the State Bar

[Nos. 12-C-11576, 12-C-11759, 12-C-12032, 12-C-12883 (Cons.)]

Filed May 19, 2015

SUMMARY

Respondent had one alcohol-related misdemeanor driving conviction prior to his admission to the bar, and three convictions for driving under the influence of alcohol after his admission, while he was employed as a deputy district attorney. The last two convictions arose from incidents that occurred while respondent was on probation for his second offense, and was driving with a suspended license. Respondent repeatedly attempted to use his position as a prosecutor to influence the arresting officers.

The Review Department held that under the facts and circumstances surrounding respondent's crimes, his convictions involved moral turpitude, even though they were misdemeanors and were not committed in the practice of law or against a client. The Review Department further agreed with the hearing judge that the appropriate discipline was actual suspension for two years and until respondent proves his rehabilitation and fitness to practice.

COUNSEL FOR PARTIES

For State Bar: Donald R. Steedman

For Respondent: Marc A. Guillory

HEADNOTES

- [1] **120 Generally Applicable Procedural Issues—Conduct of Trial**
 148 Evidentiary Issues—Witnesses
 162.20 Standards of Proof/Standards of Review—Respondent’s burden in
 disciplinary matters
Where respondent’s therapist chose not to testify, in order to preserve confidential nature of therapeutic relationship, and respondent did not subpoena the therapist and did not identify any other evidence he was prevented from introducing, Review Department rejected respondent’s argument that he was prevented from presenting evidence regarding his abstention from alcohol.
- [2] **159 Evidentiary Issues—Miscellaneous**
 191 Miscellaneous General Issues—Effect of/Relationship to Other Proceedings
 1699 Other Miscellaneous Issues in Conviction Cases
 2603 Issues in Admissions Moral Character Proceedings
 —Special Procedural Issues—Waiver of Confidentiality
Members of the State Bar may be disciplined on the basis of their pre-admission misconduct. State Bar Moral Character Committee’s consideration for moral character purposes of respondent’s pre-admission misdemeanor conviction did not bar State Bar Court from considering it for discipline purposes. Records relating to respondent’s admission to the State Bar were admissible in his post-admission disciplinary proceeding, especially where respondent failed to object at trial to being questioned about such records.
- [3 a-e] **1511 Conviction Proceedings—Nature of Underlying Conviction**
 —Driving Under the Influence
 1523 Conviction Proceedings—Moral Turpitude—Found Based on Facts and
 Circumstances
 1528 Conviction Proceedings—Moral Turpitude—Definition
Misdemeanor convictions for driving under the influence do not establish moral turpitude per se, but may involve moral turpitude depending on the surrounding circumstances. Where respondent repeatedly attempted to leverage his position as a criminal prosecutor to avoid arrest; lied to arresting officers about his alcohol consumption and the conditions of his suspended driver’s license; committed two drunk driving offenses while on probation for an earlier drunk driving conviction; and broke his promise, during his consideration for admission to the State Bar, that he would not drink and drive again, his conduct showed lack of respect for the integrity of the legal system and the profession, contempt for the law, and disregard for public safety, and thus involved moral turpitude.
- [4] **543.10 Aggravation—Intentional misconduct, bad faith, etc. (interim Standard 1.5(d);**
 1986 Standard 1.2(b)(iii))—Found but discounted or not relied on
 —Duplicative of section 6106 charge
 586.31 Aggravation—Harm to Administration of Justice (interim Standard 1.5(f);
 1986 Standard 1.2(b)(iv))—Found but discounted or not relied on
 —Duplicative of other charges
Where State Bar Court, in finding that respondent’s misdemeanor crimes involved moral turpitude, had already considered respondent’s bad faith in making false statements to arresting officers and making improper use of his position as a prosecutor, as well as his harm to the administration of justice in violating the law and his criminal probation, it would be improper to consider those facts in aggravation.

**[5 a,b] 1553.89 Application of Standards in Conviction Cases—Interim Standard 2.11(c)
(misdemeanor involving moral turpitude)—Applied-actual suspension
—Other reason**

Under standard providing that disbarment or actual suspension is appropriate for misdemeanor convictions involving moral turpitude, where respondent had four alcohol-related driving convictions, and did not present persuasive evidence that he understood the extent of his alcohol problem and was truly on path to rehabilitation, appropriate discipline was actual suspension for two years and until respondent proved rehabilitation and fitness to practice.

ADDITIONAL ANALYSIS

Aggravation

Found

- 521 Multiple Acts of misconduct (1.5(b); 1986 Standard 1.2(b)(ii))
- 591 Indifference to rectification/atonement (1.5(k); interim Std. 1.5(g); 1986 Standard 1.2(b)(v))

Mitigation

Declined to find

- 710.53 Long practice with no prior discipline record (1.6(a); 1986 Standard 1.2(e)(i))
- 725.56 Emotional/physical disability/illness (1.6(d); 1986 Standard 1.2(e)(iv))
- 740.51 Good character references—Insufficient number or range of references (1.6(f); 1986 Standard 1.2(e)(vi))

Discipline

- 1024 Ethics exam/ethics school
- 1613.09 Stayed Suspension—Three years
- 1615.08 Actual Suspension—Two years
- 1617.10 Probation—Four years
- 1630 Standard 1.2(c)(i); (1986 Standard 1.4(c)(ii) Rehabilitation Requirement)

OPINION

PURCELL, P.J.:

This case demonstrates that significant professional discipline may be imposed for multiple misdemeanor convictions of driving under the influence (DUI) where the surrounding facts and circumstances involve moral turpitude. Between 1999 and 2012, Marc Anthony Guillory was convicted of four alcohol-related driving offenses. He appeals the hearing judge's recommendation that he be actually suspended for two years and until he demonstrates his rehabilitation. Guillory also challenges the judge's moral turpitude finding and seeks no more than a six-month actual suspension. The Office of the Chief Trial Counsel of the State Bar (OCTC) does not appeal and submits that the discipline recommendation should be affirmed.

After independently reviewing the record (Cal. Rules of Court, rule 9.12), we agree with the hearing judge that the facts and circumstances surrounding Guillory's convictions involve moral turpitude. We base our conclusion on the following facts: (1) Guillory attempted to use his position as an assistant deputy district attorney to avoid arrest; (2) his cousin died in one of his alcohol-related driving incidents; (3) he repeatedly drove with a blood alcohol concentration (BAC) well above the legal limit; and (4) he violated his criminal probation by driving on a suspended license at the time of his two most recent arrests for DUI.

From the start of his career, Guillory has been on notice that the State Bar considers alcohol-related driving convictions to be a serious matter. His first conviction occurred while he was in law school, and it affected his admission to the Bar. He promised the Moral Character Committee (Committee) during the admissions process that he would not drink and

drive again. Nevertheless, he did so repeatedly after becoming an attorney, evidencing a lack of concern for public safety and respect for the legal system. Given these circumstances, as well as the serious aggravation (multiple acts and indifference) and lack of mitigation, we affirm the hearing judge's recommendation of a two-year actual suspension with conditions, including proof of his rehabilitation and fitness to practice law.

I. FACTUAL BACKGROUND

A. Guillory's Four Alcohol-Related Driving Convictions¹

In June 1999, while in law school, Guillory was driving his cousin home from a party when he collided with a disabled airport shuttle bus on the side of the road. His cousin was killed. Police officers at the scene observed Guillory to be under the influence of alcohol and unable to operate the vehicle. Guillory was arrested for felony DUI after he failed a field sobriety test. Two hours later, his blood test showed a 0.06 percent BAC.² He later pled nolo contendere and was convicted of a "wet reckless" misdemeanor violation of Vehicle Code section 23103, subdivision (a). (See Veh. Code, § 23103.5 [requiring statement as to alcohol or drug involvement when prosecution agrees to reckless driving after charging DUI].)

In seeking admission to the Bar in 2001, Guillory underwent an informal examination by the Committee to discuss his wet reckless conviction and his cousin's death. He told the Committee members that he drank only two beers the night of the accident.³ During the Committee's examination, Guillory characterized the accident and loss of his cousin as tragic, and his drinking and driving as aberrational. Guillory acknowledged to the Committee that alcohol played a role in his arrest, but insisted it did not cause the accident. He promised not to drink and drive again.

¹ Guillory's convictions are conclusive proof, for the purposes of attorney discipline, of the elements of the crimes committed. (See Bus. & Prof. Code, § 6101, subs. (a) & (e); *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813, 820.)

² An expert toxicologist testified at the hearing below that Guillory's BAC would likely have been 0.09 percent at the time of the accident. Since 1990, the legal definition of DUI impairment has been 0.08 percent BAC.

³ Guillory admitted during his hearing in the present case that he had also consumed alcohol-spiked punch. The expert forensic toxicologist who testified below opined that based on Guillory's BAC, he would have had to have consumed the equivalent of four 12-ounce cans of beer with a 0.05 percent alcohol content.

After his June 2001 admission to the Bar, Guillory worked as a criminal prosecutor in San Bernardino from 2002 to 2006 and in San Francisco from 2006 to 2012. Both agencies praised his outstanding performance. He prosecuted an array of crimes, including DUIs and criminal gang activity. While working in San Francisco, he was convicted of three DUIs.⁴

First, in early 2008, Guillory pled *nolo contendere* to a misdemeanor DUI following his December 2007 arrest in El Cerrito, California. At the time, he had a BAC of 0.18 percent.⁵ He was stopped after changing lanes without signaling and forcing other vehicles, including a motorcycle, to maneuver out of his way to avoid a collision. Guillory was sentenced to two days in jail, three years' probation, and three months in the First Offender Program. As a probation condition, he was ordered not to drive with any measurable amount of alcohol in his system.

Second, in March 2010, Guillory pled *nolo contendere* to a misdemeanor DUI (with one prior DUI conviction) following his December 2009 arrest in Oakland, California. His BAC was 0.15 percent.⁶ He was stopped for speeding and weaving his vehicle between lanes while talking on a cell phone. At the time, he was on criminal probation from his 2008 DUI case, and was driving on a suspended license. When an officer asked about his license, Guillory said he was permitted to drive to and from his job on a restricted license. In fact, he was not driving to or from work, nor was he permitted to drive for any reason. Guillory also said he drank only one glass of wine.⁷ He was sentenced to 15 days in jail, three years' probation, and an 18-month Second Offender Program.

Third, in December 2012, Guillory pled *nolo contendere* to a misdemeanor DUI (with two prior DUI convictions) following his December 2011 arrest in Martinez, California. He had a BAC of 0.24 percent.⁸ He was arrested at 2:20 a.m. when an officer found him passed out in the driver's seat of his car in a traffic lane at an intersection. The engine was running with the car in drive and Guillory's foot on the brake. The arresting officer had difficulty waking him. When Guillory finally awoke, he was disoriented and exited the car without placing it in "park" or setting the emergency brake. When asked, he first told the officer he had not been drinking and then admitted he had two beers.⁹ As before, at the time of his arrest, Guillory was on probation and driving with a suspended license. This time, he was sentenced to 180 days' electronic home detention and five years' probation. He was also ordered not to drink alcohol or enter bars.

Before each arrest, Guillory tried to persuade the officers not to arrest him because he was a prosecutor in San Francisco. For example, in the 2007 arrest, the officer testified that Guillory showed his deputy district attorney identification in order to influence him. The officers present at the 2009 arrest testified that they believed Guillory was engaging in "badging," i.e., showing his credentials in an effort to obtain leniency. Further, the 2009 arrest report states that he kept asking one officer to let him go, saying "you don't have to do this, you can just let me go, I work for you guys." Finally, the 2011 arresting officer testified: "[H]e showed me he had a San Francisco district attorney badge [and insisted] that he was well known in San Francisco among police officers, and I should let him go." Guillory could not recall clearly whether he had tried to influence the

⁴ A misdemeanor DUI may be charged under Vehicle Code section 23152, subdivision (a), for driving under the influence of any alcoholic beverage, or under subdivision (b) for driving a vehicle with 0.08 percent or more, by weight, of alcohol in his or her blood, or under both. Guillory entered a plea to subdivision (a) in his first two DUI cases, and to subdivision (b) in his third DUI case.

⁵ OCTC presented the testimony of the arresting officer and the 2007 arrest report.

⁶ OCTC presented the testimony of two officers present at the arrest and the 2009 arrest report.

⁷ The expert witness testified Guillory would have had to have consumed seven 4-ounce glasses of wine with a 0.12 percent alcohol content.

⁸ OCTC presented the testimony of the arresting officer and the 2011 arrest report.

⁹ The expert witness testified Guillory would have had to have consumed a minimum of twelve 12-ounce cans of beer with a 0.05 percent alcohol content.

officers, but admitted: “I was a guy that was almost twice the legal limit, who was trying to not be arrested.”

After his third DUI, Guillory was terminated from the San Francisco District Attorney’s Office. He is now a sole practitioner in Oakland, California.

B. Guillory’s Personal Problems and Alcohol Abuse

From 2007 through 2011, Guillory dealt with significant personal problems. His beloved grandmother died. He also went through a contentious divorce and child custody dispute that required him to fly to and from Los Angeles frequently for visitation and to attend custody hearings. His divorce was emotionally and financially draining. And he experienced considerable stress on the job as a gang prosecutor. Guillory maintains that these trying circumstances caused his alcohol abuse, which led to his three DUI convictions, the loss of his job, and the present disciplinary charges.

Despite the toll alcohol has taken, Guillory equivocated at his discipline hearing as to whether he considers himself an alcoholic; however, he now declares he abstains from drinking. After his third DUI, Guillory completed a one-month outpatient rehabilitation program and joined the State Bar’s monitored Lawyer Assistance Program (LAP), which supports and verifies sobriety. Yet, while in the program, Guillory tested positive for an unauthorized substance in December 2012, missed two lab tests around the same time, and dropped out of the program for more than a month before returning for several months. Ultimately, in June 2013, Guillory chose to formally leave the monitored LAP, but claims he continued with the support aspect of the program. The acting director of LAP testified that he could confirm only four months of sobriety for Guillory, and opined that three years of continuous sobriety and stability is “the gold standard.” Guillory did not present other evidence to demonstrate his efforts to maintain his sobriety.¹⁰

II. PRE-ADMISSION CONVICTION IS ADMISSIBLE

On review, Guillory challenges the admission and use of his 1999 wet reckless conviction and evidence relating to his 2001 moral character proceeding. His argument lacks merit.

[2] The Supreme Court has established that members may be disciplined on the basis of pre-admission conduct. (*Stratmore v. State Bar* (1975) 14 Cal.3d 887, 891 [“[W]e have authority to discipline [a member] for his pre-admission misconduct”].) In addition, the doctrine of res judicata does not bar us from considering Guillory’s 1999 conviction because the Committee previously addressed that conviction *only* for admission purposes, not for discipline. (*Ibid.* [admitting member to practice is adjudication of requisite moral character for admission, not disciplinary proceeding].) Finally, contrary to Guillory’s contention, we may consider evidence relating to his admissions process as “[a]ll State Bar records pertaining to admissions . . . shall be available to [OCTC] for use in the investigation and prosecution of complaints against members of the State Bar.” (Bus. & Prof. Code, § 6086.2.) Notably, in the hearing below, OCTC extensively questioned Guillory about his testimony before the Committee, and Guillory did not object on confidentiality grounds. (*In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509, 522 [objections waived if not timely raised when evidence offered at trial].)

III. FACTS AND CIRCUMSTANCES INVOLVE MORAL TURPITUDE

[3a] After the State Bar transmitted Guillory’s conviction records to us, we referred this matter to the hearing department to determine whether the facts and circumstances surrounding Guillory’s crimes involve moral turpitude or other misconduct warranting discipline and, if so, the appropriate level of discipline. (See Bus. & Prof. Code, § 6102, subd. (e).) Guillory challenges the hearing judge’s moral turpitude finding, arguing that “the courts have spe-

¹⁰ [1] We reject Guillory’s claim that he was prevented from presenting evidence regarding his abstention from alcohol. His LAP therapist chose not to testify to preserve the confidential

nature of their therapeutic relationship. Guillory did not subpoena her testimony, and has failed to identify other evidence he claims he was prevented from introducing.

cifically held that DUI crimes do not involve moral turpitude.” In fact, while the California Supreme Court established that misdemeanor DUI convictions do not establish moral turpitude *per se*, it also held that the circumstances surrounding a misdemeanor DUI *may* involve moral turpitude. (*In re Kelley* (1990) 52 Cal.3d 487, 494.)

[3b] The issue before us is whether the facts and circumstances surrounding Guillory’s crimes, which were not committed in the practice of law or against a client, reveal moral turpitude. We are guided by the California Supreme Court’s most recent definition of moral turpitude: “a deficiency in any character trait necessary for the practice of law (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) or if it involves such a serious breach of a duty owed to another or to society, or such a flagrant disrespect for the law or for societal norms, that knowledge of the attorney’s conduct would be likely to undermine public confidence in and respect for the legal profession.” (*In re Lesansky* (2001) 25 Cal.4th 11, 16.) We find that the facts and circumstances surrounding Guillory’s four alcohol-related driving offenses meet this definition of moral turpitude.

[3c] In particular, we are troubled by Guillory’s repeated attempts to leverage his position as a criminal prosecutor to avoid arrest and his lies to the officers about his alcohol consumption. He incorrectly characterizes this behavior as typical conduct for a person facing arrest. In fact, Guillory’s persistent efforts to exploit his insider status as an attorney in the criminal justice system demonstrate a disturbing lack of respect for the integrity of the legal system and the profession. (See *In re Rohan* (1978) 21 Cal.3d 195, 203 [conscious decision to not file income tax returns “evinces an attitude on the part of the

attorney of placing himself above the law”]; *In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406, 416 [discipline system is responsible for preserving integrity of legal profession as well as protection of public].)

[3d] Guillory exhibited further contempt for the law by twice violating his probation, twice driving with a suspended license, and falsely asserting to an officer that he was permitted to drive without a license. This behavior compounds his three arrests, each time with a high BAC, and shows disdain for the law and for societal norms. He also demonstrated complete disregard for public safety given his most recent arrest where he was found unconscious and then incoherent behind the wheel of his stopped vehicle on a public street, with a 0.24 percent BAC. Guillory should be well aware of the harm that can result from drinking and driving, considering his cousin’s death, the extensive court-ordered alcohol education he underwent after his DUI conviction, and his firsthand experience with DUI offenders. (See *Seide v. State Bar* (1989) 49 Cal.3d 933, 938 [applicant’s conduct surrounding conviction for drug trafficking more egregious due to prior law enforcement background].)

[3e] We view Guillory’s three post-admission DUIs through the lens of his first wet reckless conviction, which affected his consideration for admission. During that process, the State Bar made clear to him that illegal drinking and driving is contrary to an attorney’s professional obligations. Guillory acknowledged as much by promising not to drink and drive again. Nevertheless, he broke that promise. We agree with the hearing judge that Guillory’s “repeated alcohol-related criminal conduct, which has spanned a period of 12 years or more, shows a wanton disregard for the safety of the public Such conduct clearly involves moral turpitude.”¹¹

¹¹ We distinguish *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208, a case in which we found that the circumstances surrounding multiple misdemeanor DUI convictions did not involve moral turpitude. *Anderson* involved a *former* criminal prosecutor who had prosecuted drunk drivers and then had four DUI convictions and multiple convictions for driving without a valid license over nine years.

Anderson, however, did not involve an *active* criminal prosecutor attempting to use his position to evade criminal responsibility or an attorney with firsthand knowledge from his admissions process that his drinking and driving was within the State Bar’s purview and concern. Most notably, we decided *Anderson* before the Supreme Court articulated its definition of moral turpitude in *Lesansky* — upon which we rely here.

IV. SERIOUS AGGRAVATION AND NO MITIGATION¹²

A. Aggravation

The hearing judge found that multiple acts (std. 1.5(b)) and indifference toward rectification or atonement for the consequences of the misconduct (std. 1.5(g)) were aggravating factors. We agree. Guillory's four alcohol-related driving convictions are multiple acts that constitute significant aggravation, and his indifference is a serious aggravating factor for several reasons.

First, he minimizes the extent of his alcohol abuse problem, characterizing it as "situational" rather than chronic. This perspective conflicts with his multiple DUI convictions and his inability to stop abusing alcohol for years despite increasingly negative criminal and professional consequences. (See *Kelley, supra*, 52 Cal.3d at p. 495 [two convictions for alcohol-related driving offenses and surrounding circumstances "are indications of a problem of alcohol abuse"].)

Second, he has not demonstrated a sustained period of abstinence from alcohol, having relapsed in December 2012, a year after his last DUI arrest and less than a year before his discipline hearing. Nor has he offered proof of his commitment to a recovery program.

Third, he minimizes the harm caused by his drinking and driving. At the hearing below, he steadfastly denied the role his drinking played in his cousin's death. He emphasized that he was never

held criminally liable for the death, and pointed to the comparative negligence of the bus company. But two officers at the scene in 1999 observed Guillory to be under the influence of alcohol and concluded that he could not operate a vehicle. One officer testified at the hearing below: "I would say the driver being under the influence of alcohol would be the primary cause of the crash."

Finally, Guillory claimed that his DUIs caused no harm because they did not result in actual bodily harm or property damage. This attitude shows a lack of insight into the inherent danger in drinking and driving, and the evasive action required by motorists to avoid his reckless driving. (*People v. Eribarne* (2004) 124 Cal.App.4th 1463, 1467 [The "very reason why driving with a blood-alcohol level of 0.08 percent or higher has been criminalized is precisely because such conduct presents a threat of physical injury to other persons"]; see also *People v. Ford* (1992) 4 Cal.App.4th 32, 38-39 ["The Legislature has declared 'that problems related to the inappropriate use of alcoholic beverages adversely affect the general welfare of the people of California. These problems, which constitute the most serious drug problem in California, include . . . substantial fatalities, permanent disability, and property damage which result from driving under the influence of alcoholic beverages and a drain on law enforcement, the courts, and penal system which result from crimes involving inappropriate alcohol use.' [Citation.]"]¹³)

B. Mitigation

Guillory seeks credit for his unblemished career before his first DUI in 2007 (std. 1.6(a)),¹⁴ the

¹² The Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 1.5 requires OCTC to establish aggravating circumstances by clear and convincing evidence (hereafter standards). Standard 1.6 requires Guillory to meet the same burden to prove mitigation.

¹³ [4] The hearing judge found aggravation for Guillory's bad faith for making false statements to the officers and the improper use of his badge (std. 1.5(d)), and for significant harm to the administration of justice (std. 1.5(g)) for his violations of the law and his probation. However, the judge properly

declined to assign aggravating weight to these factors because they were already considered in assessing culpability. (See *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 68 [improper to consider factual findings in aggravation already used to determine culpability].)

¹⁴ Standard 1.6(a) provides mitigation credit for an "absence of any prior record of discipline over many years of practice coupled with present misconduct, which is not deemed serious."

personal problems which contributed to his misconduct (std. 1.6(d)),¹⁵ and his ethics and good character during his tenure as a district attorney (std. 1.6(f)).¹⁶ The hearing judge found that Guillory did not prove any mitigating factors. We agree.

When Guillory committed his first DUI, he had been an attorney for only six years, an insufficient period of time to qualify for mitigation under standard 1.6(a). (See *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 417 [six or seven years of unblemished practice insufficient period to consider as substantial mitigation].) As for his personal problems, we accept that Guillory's emotional and financial difficulties contributed to his alcohol abuse and DUIs. But absent evidence of a sustained commitment to sobriety, he is at risk of committing misconduct if faced with future stressors. (Std. 1.6(d) [must prove that problems no longer pose risk that attorney will commit future misconduct].) Also, the two attorney witnesses who testified to his good character do not represent a wide range of references in the legal and general communities required to demonstrate extraordinary good character. Finally, while Guillory's hard work and success as a deputy district attorney are commendable, they do not entitle him to mitigation credit under standard 1.6(f).

V. A TWO-YEAR ACTUAL SUSPENSION IS PROPER DISCIPLINE

We begin our disciplinary analysis in this conviction proceeding by acknowledging that our role is not to punish Guillory for his criminal conduct, but to recommend professional discipline. (*In re Brown* (1995) 12 Cal.4th 205, 217 [The "aim of attorney discipline is not punishment or retribution; rather, attorney discipline is imposed to protect the public, to

promote confidence in the legal system, and to maintain high professional standards"]; std. 1.1.) We do so by following the standards whenever possible and balancing all relevant factors, including mitigating and aggravating circumstances, on a case-by-case basis to ensure that the discipline imposed is consistent with its purpose. (*In re Young* (1989) 49 Cal.3d 257, 266, 267, fn. 11.)

Standard 2.11(c) states that disbarment or actual suspension is appropriate for criminal convictions involving moral turpitude. OCTC submits that a two-year actual suspension with conditions, including proof of rehabilitation, should be affirmed. Guillory seeks a revised discipline recommendation of a six-month actual suspension.

Our review of the case law reveals no published cases recommending discipline for misdemeanor DUIs involving moral turpitude.¹⁷ Accordingly, we have considered cases involving other types of misdemeanors where the surrounding facts involve moral turpitude.

In *In re Alkow* (1966) 64 Cal.2d 838, the Supreme Court imposed a six-month suspension for misdemeanor vehicular manslaughter involving moral turpitude where the attorney had a history of driving while visually impaired and violating his probation, and had received more than 20 traffic violations. Before the accident, he tried to renew his license, but failed the eye examination. The Supreme Court stated that Alkow "must have known that injury to others was a possible if not probable result of his driving" due to his poor vision. (*Id.* at p. 840.)

In *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111-112, the Supreme Court imposed a one-year

¹⁵ Standard 1.6(d) provides mitigation credit for "extreme emotional difficulties or physical or mental disabilities suffered by the member at the time of the misconduct and established by expert testimony as directly responsible for the misconduct, provided that such difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the member established by clear and convincing evidence that the difficulties or disabilities no longer pose a risk that the member will commit misconduct."

¹⁶ Standard 1.6(f) provides mitigation credit for "extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct."

¹⁷ Misdemeanor cases not involving moral turpitude generally result in minimal discipline. (See e.g., *Kelley*, *supra*, 52 Cal.3d 487 [public reproof for attorney's second DUI conviction and violation of criminal probation]; *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260 [two DUI convictions warranted no discipline]; but see *In re Carr* (1988) 46 Cal.3d 1089 [six-month suspension for two DUI convictions].)

actual suspension for a misdemeanor conviction involving moral turpitude and dishonesty. The attorney in *Chadwick* conspired with another to lie to the Securities and Exchange Commission about his stock purchase, but presented compelling mitigation that justified the one-year suspension.

Although aspects of *Chadwick* and *Alkow* are similar to this matter, those cases considered discipline for a single, albeit serious, conviction that did not involve illegal alcohol-related driving. Moreover, *Alkow* was decided in 1966 and, as the hearing judge correctly noted, “discipline imposed in 1966, is no longer applicable, in light of current societal rejection of impaired driving, especially drunk driving, and the implementation of standards for attorney sanctions that were adopted in 1986.” (See *People v. Ford*, *supra*, 4 Cal.App.4th at p. 38 [“The community’s interest in prosecuting driving under the influence cases has increased dramatically”].) Additionally, the facts here reveal Guillory’s unacceptable attempts to corrupt the legal process to preserve his own interests — such instances of his dishonesty permeated his arrests. (*In re Glass* (2014) 58 Cal.4th 500, 524 [“Honesty is absolutely fundamental in the practice of law; without it ‘ ‘ ‘ ‘the profession is worse than valueless in the place it holds in the administration of justice.’ ’ ’ ’ [Citation.]”].)

[5a] After considering the relevant factors and the range of discipline suggested by standard 2.11(c) (actual suspension to disbarment), we conclude Guillory should be suspended for a lengthy period and thereafter prove he is rehabilitated. “We cannot and should not sit back and wait until [Guillory’s] alcohol abuse problem begins to affect [his] practice of law.” (*Kelley*, 52 Cal.3d at p. 495.) Despite four alcohol-related driving convictions, Guillory has not presented persuasive evidence that he understands the extent of his alcohol problem and is truly on a path to rehabilitation. Therefore, discipline should be imposed now in an effort to protect the public from potential harm and to preserve the integrity of the profession.

[5b] We agree with the hearing judge’s recommendation: a two-year actual suspension and a requirement that Guillory present proof at a formal hearing of his rehabilitation and fitness to practice law, pursuant to standard 1.2(c)(1). This discipline

sends the proper message that DUIs involving moral turpitude, depending on the facts and circumstances, may result in severe professional sanctions. (See generally *Kelley*, *supra*, 52 Cal.3d at p. 496 [“Although it is true that petitioner’s misconduct caused no harm to her clients, this fact alone does not insulate her from discipline aimed at ensuring that her potentially harmful misconduct does not recur”].)

VI. RECOMMENDATION

For the foregoing reasons, we recommend that Marc Anthony Guillory be suspended for three years, that execution of that suspension be stayed, and that he be placed on probation for four years with the following conditions:

1. He must be suspended from the practice of law for a minimum of the first two years of the period of his probation and until he provides proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)
2. He must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation.
3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, he must report such change in writing to the Membership Records Office and the State Bar Office of Probation.
4. Within 30 days after the effective date of discipline, he must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, he must meet with the probation deputy either in person or by telephone. During the period of probation, he must promptly meet with the probation deputy as directed and upon request.

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

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

7. Within one year after the effective date of the discipline herein, he must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and he shall not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

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

VII. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Marc Anthony Guillory be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners during the period of his actual suspension in this matter and to provide satisfactory proof of such passage to the Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

VIII. RULE 9.20

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

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.

WE CONCUR:

EPSTEIN, J.

HONN, J.