January 2001

Domestically Violent Attorneys: Resuscitating and Transforming a Dusty, Old Punitive Approach to Attorney Discipline into a Viable Prescription for Rehabilitation

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DOMESTICALLY VIOLENT ATTORNEYS: RESUSCITATING AND TRANSFORMING A DUSTY, OLD PUNITIVE APPROACH TO ATTORNEY DISCIPLINE INTO A VIABLE PRESCRIPTION FOR REHABILITATION

I. INTRODUCTION

Several cases imposing discipline on attorneys for acts of domestic violence have arisen in the United States. Overall, courts agree that suspension is the appropriate degree of sanction to impose in these cases. Courts further agree that

1 See, e.g., Iowa State Bar Assoc. v. Patterson, 369 N.W.2d 798 (Iowa 1985); In re Nevill, 39 Cal. 3d 729 (1985); In re Runyon, 49 N.E. 2d 189 (Ind. 1986); In re Otto, 48 Cal. 3d 970 (1989); In re Hickey, 50 Cal. 3d 571 (1990); In re Walker, 597 N.E.2d 1271 (Ind. 1992); People v. Wallace, 837 P.2d 1223 (Colo. 1992); People v. Senn, 824 P.2d 1055 (Colo. 1994); In re Magid, 655 A.2d 916 (N.J. 1995); In re Principato, 655 A.2d 920 (N.J. 1995); In re Howard, 673 A.2d 800 (N.J. 1996); Iowa Sup. Ct. Bd. of Prof'l Ethics and Conduct v. Polson, 569 N.W.2d 612 (Iowa 1997); People v. Brailsford, 933 P.2d 592 (Colo. 1997); People v. Shipman, 943 P.2d 458 (Colo. 1997); People v. Reaves, 943 P.2d 460 (Colo. 1997); In re Margrabia, 695 A.2d 1378 (N.J. 1997); People v. Musick, 960 P.2d 89 (Colo. 1998); Attorney Grievance Comm'n of Md. v. Painter, 739 A.2d 24 (Md. 1999); In re Van Buskirk, 981 P.2d 607 (Colo. 1999).

2 See Hickey, 50 Cal. 3d 571 (imposing a 30-day actual suspension); Howard, 673 A.2d 800 (imposing a 3-month actual suspension); Margrabia, 695 A.2d 1378 (imposing a 3-month actual suspension); Wallace, 837 P.2d 1223 (imposing a 3-month actual suspension); Walker, 597 N.E.2d 1271 (imposing a 6-month actual suspension); Shipman, 943 P.2d 458 (imposing a 6-month actual suspension); Knight, 883 P.2d 1055 (imposing a 6-month actual suspension); Reaves, 943 P.2d 460 (imposing a 6-month
imposing discipline on attorneys for non-professional misconduct is appropriate to protect the public, preserve the reputation and integrity of the legal profession, and enhance public confidence in attorneys. However, uniformity in the disciplinary process is lacking. As a result, attorneys who commit acts of domestic violence have no way of anticipating the level of professional discipline that they may receive. More importantly, the public cannot anticipate the level of discipline that domestically violent attorneys will receive; this is important since a primary goal of attorney discipline in these cases is to enhance public confidence in the profession. These are the major shortcomings of the current approach to disciplining attorneys who engage in acts of domestic violence.

Part II of this Comment will discuss (1) the prevalence of domestic violence in America, (2) the governmental responses to domestic violence, and (3) preserving the integrity of the legal profession. This Comment will then focus on how disciplinary courts have treated domestically violent attorneys. Part III examines the murky judicial approach to disciplining domestically violent attorneys, and Part IV criticizes that approach. Finally, Part V sets forth a proposal to cure the ill effects of the current approach, by injecting a greater degree of uniformity, ease, predictability and certainty into the disciplinary process.

II. BACKGROUND

Before focusing specifically on domestically violent attorneys, a general discussion of the prevalence of domestic violence in the United States is necessary to recognize the potential for such disciplinary cases arising in the future. Additionally, an examination of some of the federal and Cali-

actual suspension); Otto, 48 Cal. 3d 970 (imposing a 6-month actual suspension); Brailsford, 933 P.2d 592 (imposing a 1-year-and-1-day actual suspension); Musick, 960 P.2d 89 (imposing a 1-year-and-1-day actual suspension); Polson, 569 N.W.2d 612 (imposing a 2-year actual suspension); Van Buskirk, 981 P.2d 607 (imposing a 3-year actual suspension); Patterson, 369 N.W.2d 798 (imposing an indefinite suspension with eligibility for reinstatement after 3 months).

3 See, e.g., Nevill, 39 Cal 3d at 786.
5 See discussion infra Parts II.A.1, II.B.1.
fornia governmental responses to domestic violence will highlight the important seat this issue has taken in American society.6 Further, a brief introduction to the doctrines underlying the rationale for disciplining attorney misconduct is necessary for a better understanding of the process.7 Finally, a discussion of how disciplinary courts have dealt with domestically violent attorneys will underscore the problems underlying the current approach to the problem, specifically inconsistency and unpredictability.8

A. DOMESTIC VIOLENCE: A NATIONAL GLIMPSE

1. The Prevalence of Domestic Violence in America

The Federal Bureau of Investigation's Uniform Crime Report estimated that in 1995 close to 58,000 of 214,464 victims of violence were related to the offender.9 In 1998, although the ratio remained the same,10 the actual number of incidents almost doubled.11 Victims of reported violence increased to 421,493, while the number of those victims that were related to the offenders increased to 112,042.12 Moreover, a Bureau of Justice Statistics (hereinafter “BJS”) special report estimated that in 1998 about one million violent crimes occurred among persons intimately involved13 with one another.14 These figures indicate that domestic violence is a metastasizing national problem.

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6 See discussion infra Parts II.A.2, II.B.2.
7 See infra notes 68-97 and accompanying text.
8 See discussion infra Part II.D.1-3.
11 See id.
12 See FEDERAL BUREAU OF INVESTIGATION, supra note 9.
13 See CALLIE MARIE RENNISON AND SARAH WELCHANS, U.S. DEP’T OF JUSTICE, INTIMATE PARTNER VIOLENCE, at 8 (2000) (defining intimate partner relationships as those involving former or current spouses, former or current boy/girlfriends that may be of the same gender).
14 See id. at 1 (noting a 21% decrease from the 1993 statistics on intimate partner violence committed against women, whereas intimate violence committed against men stayed about the same).
Even more alarming is the fact that between 1993 and 1998, the BJS estimates that only about half of all domestic violence victims reported the incidents to the authorities. The reason most often given by victims for not reporting the violence was that they considered the incident to be a "private or personal matter." The second-most cited reason for not reporting these incidents was fear of reprisal by the offender. Other reasons given by victims who did not report the incidents included the following: (1) the minor nature of the crime; (2) presumed police apathy; (3) the victim's desire to protect the offender; (4) fear of police bias; (5) inconvenience of filing a report; (6) the victims had already reported the incident to another official; (7) the perception that the police would be ineffective at preventing the offender from abusing again; and (8) the victim's uncertainty as to whether a crime had actually occurred. Based on the BJS statistics and its survey of victims, adding the unreported incidents to the reported incidents could double the number of acts of domestic violence that occur in the United States.

2. The National Effort to Stem the Occurrence of Domestic Violence

In 1984, Congress enacted the Family Violence Prevention and Services Act (hereinafter "FVPSA"). The FVPSA states two goals. Its first goal is to assist states in increasing public awareness of domestic violence. Its second goal is to provide funding for family violence education and training to states, local public agencies, and nonprofit private organizations. Under the FVPSA, the federal government provides grants to

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15 See id. at 7, Table 7.
16 See id. at 7, Table 8 (reporting 35% of female victims and 52% of male victims).
17 See id. (reporting 19% of female victims and not reporting for male victims).
18 See RENNISON & WELCHANS, supra note 13.
19 See id.
21 See id. § 10401 (stating goals of providing shelter and related services to domestic violence victims).
22 See id. § 10401(2) (defining public agencies as including law enforcement, courts, legal and social services and health care professionals).
23 See id.
Continuing its efforts to combat domestic violence, Congress enacted the Violence Against Women Act of 1994 (hereinafter "VAWA"). Under the VAWA, the United States Attorney General provides grants to eligible states for use in the prevention of domestic violence by earmarking funds for state level programs. In total, VAWA provides $3.3 billion in state grants to be used for such purposes as providing social and legal services for domestic violence victims, as well as establishing battered women shelters.

Additional grants are available to states that demonstrate increases in the percentage of either arrests or time served for violent crimes. The Attorney General may also grant

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24 See id. § 10402; see also 42 U.S.C. § 10403(a)(1) (granting to each qualifying state up to $400,000 per year); id. § 10404 (requiring the Secretary of the Department of Health and Human Services to oversee the FVPSA); id. § 10405 (requiring the Secretary to report to congress biannually to assess the FVPSA's efficacy).

25 See 42 U.S.C. §§ 13701-13712 (2000). The purpose of the VAWA is reflected in its subtitle: "Violent Offender Incarceration and Truth-In-Sentencing Incentive Grants." See id. § 13708 (a) (1) (A-E) (2000) (providing appropriations of over $997 million in authorized appropriations to eligible states for the 1996 fiscal year and providing for these amounts to increase yearly until 2000. For the 1997 fiscal year, over $1.3 billion were made available to states. In 1998, that amount increased to over $2.5 billion. In the 1999 fiscal year over $2.6 billion were available. In 2000, the final fiscal year provided for in the VAWA, over $2.75 billion were made available to states to subsidize the incarceration of violent offenders to facilitate a greater amount of prison time actually served.)

26 These grants will continue under VAWA 2000, which was passed by Congress on October 12, 2000. VAWA 2000 provides $3.3 billion in state grants, through 2005 for the following purposes "$200 million to provide civil and legal services to victims of domestic and sexual violence; $875 million for shelter services for battered women; $140 million to address violence against women on college campuses; programs to fund transitional housing for women fleeing domestic violence; grant programs to help service providers address the needs of women with disabilities who are victims of domestic and sexual violence; and significant protections for battered immigrant women, who can face immigration law consequences if they seek to flee from or support prosecution of their abuser." See VAWA Passes!, The Family Violence Prevention Fund Website, (visited October 12, 2000) <http://www.fvpf.org/newsflash>. To qualify for these grants, a state must apply to the U.S. Attorney General. See 42 U.S.C. § 13703(b) (2000). In doing so, the state must declare that its correctional policies and programs ensure the following: (1) violent offenders serve a substantial portion of their sentences, (2) severe punishment for violent offenders, and (3) the prison time served reflects the determination that the offender is violent. See 42 U.S.C. § 13703(a).

funds to states that demonstrate an increase in the combined percentage of persons arrested and prison time served for violent crimes. States become eligible for additional VAWA grants by demonstrating increases of 10% or more in the number of offenders convicted of violent crimes and sentenced to prison within the most recent 3-year period. Accordingly, funding for state programs, such as the one proposed by this Comment, that strike at domestic violence is available.

States may also qualify for truth-in-sentencing grants under the VAWA. These grants are available to states that have implemented sentencing laws that require violent offenders to serve at least 85% of the sentence imposed. Grants are also available to states that plan to implement sentencing laws requiring persons convicted of violent crimes to actually serve at least 85% of the sentence imposed. Finally, states that prescribe indeterminate sentences may qualify for truth-in-sentencing grants by showing that violent offenders serve, on average, at least 85% of either “the prison term established under the State’s sentencing and release guidelines” or “the maximum prison term allowed” under the court imposed sentence. Giving needed support to the national fight against domestic violence, states, such as California, have also committed resources to that cause.

B. DOMESTIC VIOLENCE: A CALIFORNIA GLIMPSE

1. The Prevalence of Domestic Violence in California

California’s Criminal Justice Statistics Center (hereinafter “CJSC”) reported 56,892 arrests for domestic violence in

28 See id. § 13703(c)(1).
29 See id. § 13703(c)(2).
30 See infra Part V.
31 Although truth-in-sentencing legislation does not directly combat domestic violence, when states adopt such sentencing guidelines, and thus qualify for federal funds under VAWA, that money is earmarked for use in preventing and treating domestic violence. See Family Violence Prevention Fund, supra note 26.
33 See id. § 13704(a)(1)(B) (suggesting that states may qualify intentionally or by happenstance).
34 See id. § 13704(a)(2).
35 See id. § 13704(a)(3)(A).
36 See id. § 13704(a)(3)(B).
1998. That number grew from 31,886 arrests in 1988. In 1988, approximately 114 out of every 100,000 persons of California's total population were arrested for domestic violence. In 1998, that ratio grew to nearly 170 arrests per 100,000 persons. Accordingly, domestic violence arrests in California are on the rise at a rate of over 3% per year. The CJSC suggests that "public awareness influenced by high profile cases, women's resource centers and shelters, and new legislation" may be factors behind this rise in arrests.

2. California's Fight against Domestic Violence

California has taken an active role to eliminate domestic violence. In 1986, California's legislature enacted Senate Bill (hereinafter "SB") 1472, requiring police officers to: (1) treat domestic violence as a criminal act; (2) create new guidelines for handling domestic violence cases; (3) attend domestic violence training programs; and (4) track domestic violence incidents. This legislation seeks to improve police response to domestic violence.

In 1988, the state assembly followed the senate's lead by enacting Assembly Bill (hereinafter "AB") 1599. AB 1599 requires the presiding judge of the Superior Court in each county to designate at least one judicial official to issue temporary restraining orders to protect victims, and their chil-

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37 See BUREAU OF CRIM. INFO. AND ANALYSIS, CAL. DEPT OF JUSTICE, REPORT ON ARRESTS FOR DOMESTIC VIOLENCE IN CALIFORNIA, 1998, 1 CRIM. JUST. STAT. CENTER REPORT SERIES 3, at 7, Table 1 (1999).
38 See id.
39 See id.
40 See id.
41 See id. Note that 1994, the year of the O.J. Simpson murder trial, hosted the largest increase (10.3%) in the rate of arrests for domestic violence from the previous year, whereas 1998 hosted the largest decrease (12%) in the rate of domestic violence arrests from the previous year.
42 See The Your Family's Health Website (visited February 15, 2001) <http://www.yourfamilyshealth.com/community_health/dome stic/> (pointing out that the O.J. Simpson and Warren Moon cases have raised public awareness of domestic violence to a new level.).
43 See BUREAU OF CRIM. INFO. AND ANALYSIS, supra note 37, at 5.
44 See id.
45 See id. at 5-6.
46 See id. at 6.
dren, from domestic violence during periods when court is not in session. A potential victim of domestic violence may seek this protective order by informing the police of a recent incident or threat of domestic violence that has occurred. The judicial official may then issue the order after a police officer “asserts reasonable grounds to believe that a person is in immediate and present danger of domestic violence.”

Further, in 1987, the state legislature amended California Penal Code Section 12028.5 to authorize police officers to seize firearms found at domestic violence scenes. When the police have reasonable cause to believe that returning the weapon will endanger someone within the household, they may petition the court, within 30 days of the confiscation, to determine whether the firearm should be returned. Thus, the legislature has empowered local law enforcement agencies with the means to prevent more serious, perhaps even fatal, injuries to domestic violence victims.

Enacted in 1995, SB 132, amended California Penal Code Section 13519. This amendment requires patrol officers to attend domestic violence training sessions biannually.


48 See sources cited supra note 47.

49 See sources cited supra note 47.

50 See CAL. PEN. CODE § 12028.5(b), amended by S.B. 2025, Regular Sess. 1999-2000 (Cal. 2000). (allowing the seizure of a firearm when the firearm is in plain sight of the police officer or after a consensual search necessary to protect the officer or others).

51 See BUREAU OF CRIM. INFO. AND ANALYSIS, supra note 37, at 6.


53 See id.


55 See BUREAU OF CRIM. INFO. AND ANALYSIS, supra note 37, at 6.

56 See CAL. PEN. CODE § 13519(e) (2000). The instruction stresses the following: the importance of enforcing domestic violence laws; the accessibility of civil remedies, such as temporary restraining orders, and community resources, such as battered women shelters; and victim protection. Id. Police officers, the California State Bar Association, the California Women Lawyers' Association, domestic violence experts and at least one former victim of domestic violence, among others, developed these lessons. Id. at § 13519(d). This law seeks to improve police empathy for responding to,
That same year, the California legislature amended California Penal Code § 13701 to require law enforcement agencies to create written domestic violence response policies encouraging arrest of offenders.\(^{57}\) Therefore, police officers' sensitivity to domestic violence is heightened.

California has also received grants under VAWA to further its efforts to prevent and respond to domestic violence.\(^{58}\) In addition to the 1999 VAWA funds, California allocated approximately $6.8 million for domestic violence programs to its Office of Criminal Justice Planning.\(^{59}\) For example, in 1999 the state legislature allocated over $5.5 million for rape prevention efforts.\(^{60}\)

C. PRESERVING THE INTEGRITY OF THE LEGAL PROFESSION

In addition to federal and state legislative efforts to stem domestic violence, the state bar associations and courts (hereinafter "disciplinary officials") have adopted active roles as well. When a perpetrator of domestic violence is an attorney, these disciplinary officials treat this as misconduct that negatively impacts on an attorney's fitness to practice law.\(^{61}\) California has developed an attorney disciplinary system to address attorney misconduct.

California's State Bar Court (hereinafter "State Bar Court") preventing, and remedying domestic disputes on a continuing basis. See BUREAU OF CRIM. INFO. AND ANALYSIS, supra note 37, at 6.

\(^{57}\) See BUREAU OF CRIM. INFO. AND ANALYSIS, supra note 37, at 6. Under this law, police must attempt to ascertain the most significant aggressor of the domestic dispute. The officer must consider the following factors in deciding who that aggressor is: (1) protecting the victim from continuing abuse; (2) threats of physical injury; (3) the history of domestic disputes between the parties involved; and (4) whether either person involved acted in self-defense. Although police may arrest both parties involved, they are discouraged from doing so by having to decide who is the most significant aggressor. See CAL. PEN. CODE § 13701(b) (2000).


\(^{60}\) See id.

\(^{61}\) See Levin, supra note 4, at 5-6.
Court") hears and decides attorney discipline cases. The State Bar Court may independently censure attorneys. For more severe attorney sanctions, such as suspension and disbarment, the State Bar Court makes findings of facts, conclusions of law, and recommends the extent of discipline to the California Supreme Court. The Supreme Court then reviews the State Bar Court's findings and conclusions, then determines whether the recommended sanction is appropriate. If not, the Supreme Court may impose the sanction it deems appropriate. The remainder of this section will discuss the reasoning for imposing professional discipline on domestically violent attorneys.

Fitness to practice law involves more than being an effective lawyer; it also requires that a lawyer refrain from conduct that evinces disrespect for the law, the courts, and the legal profession. Although domestic violence is not directly related to the practice of law, courts nevertheless view acts of domestic violence as misconduct deserving of professional discipline for three primary reasons: preserving the integrity of the legal profession, protecting the public, and maintaining public confidence in the law. A general discussion of the model guidelines for disciplining attorney misconduct discloses the rationale behind imposing sanctions on attorneys for committing acts of domestic violence.

63 See id.
64 See id.
65 See id.
66 See, e.g., Nevill, 39 Cal. 3d at 730.
67 See id. at 737-739 (rejecting the State Bar Court's recommendation to suspend Nevill for five years and instead opting for disbarment).
68 See, e.g., Painter, 739 A.2d 24.
69 See id.
70 See Karen A. Geraghty, Note, Bruising the Legal Profession: Attorney Discipline for Acts of Domestic Violence, 28 RUTGERS L.J. 451 (1997). Thus, disciplinary officials have given no credence to the fact that domestic violence is a problem that generally lurks behind closed doors. See Mark Hansen, Big Brother Bar: Jury is Out on Disciplining Lawyer's Private Conduct, ABA JOURNAL, November 2000, at 14; See also, e.g., Nevill, 39 Cal. 3d at 736.
1. American Bar Association Guidelines

The American Bar Association (hereinafter "ABA") states that a lawyer's responsibilities include conforming his or her conduct to the law both professionally and personally. To ensure this end, the ABA established the Model Rules of Professional Conduct (hereinafter "Model Rules") and the Model Code of Professional Responsibility (hereinafter "Model Code"). Although a majority of states continue to adopt versions of the Model Rules, thereby phasing out reliance on the Model Code, courts imposing lawyer discipline generally adhere to the standards of professional conduct in the Model Code, which closely parallel the Model Rules.

The stated goals of both the Model Rules and Model Code are to protect the public from morally deficient lawyers, bolster public confidence in the legal profession, and maintain the integrity and competence of the bar. The Model Code further recommends that lawyers be "temperate and dignified, and [ . . . ] refrain from all illegal and morally reprehensible conduct." Accordingly, the Model Code sets forth the minimum standards of attorney conduct. Under the Model Code an attorney shall not: (1) violate a disciplinary rule, (2) circumvent a disciplinary rule through another's actions, (3) engage in conduct involving moral turpitude, (4) engage in conduct involving dishonesty, fraud, deceit, or misrepresenta-

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71 See MODEL RULES OF PROFESSIONAL CONDUCT (hereinafter "MODEL RULES"), Preamble, Paragraph 4 (1999).
72 See id. Paragraph 6.
73 See MODEL CODE OF PROFESSIONAL RESPONSIBILITY (hereinafter "MODEL CODE") Canon 1 (1983).
75 See MODEL CODE EC 1-2, EC 1-3; MODEL RULES Preamble, Paragraph 4.
76 See MODEL CODE EC 1-5; see also MODEL RULES, Preamble, Paragraph 11 (discussing the profession's responsibility to conceive its self-regulation in the public interest).
77 See MODEL CODE EC 1-1; see also MODEL RULES, Preamble, Paragraph 6.
78 See MODEL CODE EC 1-5.
79 See id. DR 1-102.
80 See id. DR 1-102(A)(1).
81 See id. DR 1-102(A)(2).
82 See id. DR 1-102(A)(3).
tion, or (5) engage in conduct that is prejudicial to the administration of justice, or (6) engage in any other conduct that adversely reflects on his fitness to practice law. An attorney who violates any of these standards may be subject to professional discipline. In determining whether disciplinary action is required, the Model Rules suggest that the disciplinary officials assess the surrounding mitigating and aggravating circumstances. Particularly important to this assessment are the willfulness of the misconduct, seriousness of the violation as well as the existence of any previous violations.

2. The Case for Imposing Sanctions on Domestically Violent Attorneys

Most states have adopted versions of the Model Code and Model Rules. Thus, the rationales given in attorney discipline cases involving domestically violent attorneys generally mirror three of the six ABA standards listed above: (1) protection of the public, (2) enhancement of the administration of justice, and (3) preservation of public confidence in the legal profession. Yet, without explanation, few courts define acts of domestic violence as involving moral turpitude. Conduct involving moral turpitude is behavior that is contrary to modern day justice or morality. The moral turpitude factor is important to this Comment's proposal for imposing professional

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88 See Model Code DR 1-102(A)(4).
89 See id. DR 1-102(A)(5).
90 See id. DR 1-102(A)(6).
91 See Levin, supra note 4.
92 See id. at 33 (identifying mitigating factors as including absence of prior professional discipline, personal or emotional problems, mental disability, and chemical dependency).
93 See id. (identifying aggravating factors as including the existence of prior discipline, a pattern of misconduct, and vulnerability of the victim).
94 See Model Code Scope, at Paragraph 5.
95 See id.
96 See Geraghty, supra note 70, at 469-470.
97 See Levin, supra note 4, at 5-6.
98 See Brailsford, 933 P.2d 592 (imposing a suspension of 1 year and 1 day); Runyon, 49 N.E. 2d 189 (imposing disbarment); Patterson, 369 N.W.2d 798 (ordering indefinite suspension).
99 See Black's Law Dictionary 1026 (7th ed. 1999) (hereinafter a reference to "censure" includes "reprimand" since they are interchangeable).
discipline on domestically violent attorneys.\textsuperscript{95} Courts uniformly hold that domestically violent attorneys deserve professional discipline even though the conduct may not be directly related to the practice of law.\textsuperscript{96} Accordingly, courts need only determine the appropriate professional sanction once an attorney is found to have committed an act of domestic violence.\textsuperscript{97}

D. SANCTIONS CURRENTLY IMPOSED AGAINST DOMESTICALLY VIOLENT ATTORNEYS

Courts throughout the nation impose discipline on attorneys for committing acts of domestic violence.\textsuperscript{98} These courts generally impose one of three levels of discipline: public censure or reprimand,\textsuperscript{99} suspension,\textsuperscript{100} or disbarment.\textsuperscript{101} The extent of discipline imposed on a domestically violent attorney is determined by an \textit{ad hoc}, case-by-case analysis.\textsuperscript{102} As a result, no uniform sanction applies to acts of domestic violence.

1. Censure or Reprimand

A censure or reprimand is an official condemnation of an attorney for engaging in minor conduct that is subject to discipline.\textsuperscript{103} The censure is either public or private. In public censure, the state bar publicizes the censured attorney's name.\textsuperscript{104} But if the sanction is private censure, then the attorney's name remains confidential.\textsuperscript{105} Public censure is the least severe discipline imposed upon domestically violent attorneys.\textsuperscript{106}

\textsuperscript{95} See discussion \textit{infra} Part V.A.
\textsuperscript{96} See Geraghty, supra note 70.
\textsuperscript{97} See \textit{id}.
\textsuperscript{98} See cases cited supra note 1.
\textsuperscript{99} See Senn, 824 P.2d 822 (ordering public censure); Principato, 655 A.2d 920 (ordering public reprimand); Magid, 655 A.2d 916 (ordering public reprimand).
\textsuperscript{100} See cases cited supra note 2.
\textsuperscript{101} See Nevill, 39 Cal. 3d 729; Runyon, 49 N.E. 2d 189; Painter, 739 A.2d 24.
\textsuperscript{102} See, e.g., \textit{CALIFORNIA RULES OF PROCEDURE OF STATE BAR, Title IV, Introduction} (1986).
\textsuperscript{103} See \textit{BLACK'S LAW DICTIONARY}, supra note 94, at 216.
\textsuperscript{104} See, e.g., 1 \textit{WITKIN CAL. PRoc. ATYNS} § 688 (a) (2nd ed. 2000 Supp.).
\textsuperscript{105} See \textit{id}.
\textsuperscript{106} See cases cited supra note 99; see also \textit{AMERICAN BAR ASSOCIATION Standards}}
The Colorado Supreme Court in People v. Senn ordered public censure of a domestically violent attorney. In Senn, attorney Kenneth Senn came home drunk to an angry wife. An argument ensued, which quickly escalated into a physical fight. After striking each other, Mrs. Senn ordered her husband to leave. Senn refused, pulled out his wife's gun and pointed it at her. "I should kill you," he muttered. "Why don't you then?" she replied. Senn began up the stairs to sleep, gun still in hand. His wife followed behind him insisting that he leave. Senn fired the gun several feet above her head to end the argument. Mrs. Senn phoned her parents. Attorney Senn got on the line, spoke with them briefly, then left the house. The next day, the police arrested Senn for felony menacing and third degree assault. Although the prosecutor eventually dropped the charges, the Colorado Supreme Court ordered that attorney Senn be publicly censured.

The Court found that Senn's actions deserved public censure because they displayed a "very critical failure of judgment" and "evinced a contempt for the law which was at odds with [his] duty to uphold the law." The court reasoned that the goals of professional discipline are to bolster an attorney's respect for the law, and to protect the public against attorneys with bad judgment. Further, the court rejected Senn's argument that professional discipline was inappropriate for conduct that is neither directly related to the lawyer's

2.6, Commentary (recognizing that private censures are reserved for negligent attorney conduct only).

107 824 P.2d 822.
108 See id. at 823.
109 See id.
110 See id.
111 See id.
112 See Senn, 824 P.2d at 823.
113 See id.
114 See id.
115 See id.
116 See id.
117 See Senn, 824 P.2d at 823 (noting that acquittal of criminal charges does not necessarily bar disciplinary action).
118 See id. at 824-825.
119 See id.
120 See id.
honesty and integrity nor indicates a conscious indifference to the law.\footnote{id.} Although Senn argued that he no longer abused alcohol, and had reconciled with his wife, the court held that Senn's intentional conduct posed a "significant danger of serious injury," and thus warranted public censure.\footnote{Senn, 824 P.2d at 824-825.}

2. Suspension

Suspension from the practice of law is the courts' most commonly ordered sanction for domestically violent attorneys.\footnote{cases cited supra note 2.} Suspension is a disciplinary action that prohibits an attorney from practicing law, or even holding himself or herself out as being able to practice law, within the jurisdiction of the ordering court.\footnote{See The State Bar of California Website, The Glossary of Terms Relating to Attorney Discipline (visited January 20, 2001) <http://www.calbar.org/Discipline/Glossary.htm>.} The two types of suspension imposed are stayed suspension and actual suspension.\footnote{See, e.g., CALIFORNIA RULES OF PROCEDURE OF STATE BAR, supra note 102, Standard 1.4 (recognizing stayed suspension, actual suspension and stayed suspension which includes an actual suspension as a condition).} Court ordered suspensions have ranged from a 3-year stayed suspension with a 30-day actual suspension\footnote{See, e.g., Hickey, 50 Cal. 3d 571.} to an actual indefinite suspension with eligibility for reinstatement within 3 months.\footnote{50 Cal. 3d 571.}

In \textit{In re Hickey},\footnote{50 Cal. 3d at 574-575.} the California Supreme Court suspended a domestically violent attorney.\footnote{See id.} In that case, while at a nightclub, an attorney struck his wife on the side of the head with a gun and fled before police arrived.\footnote{See id. at 574-575.} Hickey's wife ran to a neighbor's house.\footnote{See id.} Hickey followed her, threatened to hurt her, and then went home.\footnote{See id.} Early the next morning, after Mrs. Hickey returned home she called "911," but when the police arrived she insisted that they leave.\footnote{See Hickey, 50 Cal. 3d at 574-575.}
Mrs. Hickey summoned the police again. Upon arrival, the police officers noticed Hickey walk out of his house with a handgun hidden in his waistband. Hickey was subsequently convicted of carrying a concealed weapon.

The California Supreme Court suspended Hickey from the practice of law for three years. The court stayed all but 30 days of Hickey’s suspension, but conditioned the stay upon completion of three years probation. Additionally, Hickey had to retake, and pass, California’s professional responsibility examination within one year of the date of discipline. In determining the appropriateness of this sanction, the court considered another incident of domestic violence that had occurred a month earlier between Hickey and his wife. The Hickey court recognized that the primary purpose behind imposing professional sanctions on domestically violent attorneys is to protect the public, the courts, and the legal profession. Furthermore, by imposing discipline in these cases, the court also maximizes professional standards and preserves the public trust in attorneys.

3. Disbarment

Disbarment is the most severe professional sanction that a disciplinary court may impose on an attorney. Once a
court orders disbarment, an attorney is indefinitely expelled from the practice of law.\textsuperscript{144} However, a disbarred attorney may petition the court for reinstatement after a court-specified period of time.\textsuperscript{145} Three courts nationwide have disbarred an attorney for acts of domestic violence.\textsuperscript{146}

A California Supreme Court decision, \textit{In re Nevill},\textsuperscript{147} is the lead case. In \textit{Nevill}, an attorney invited his wife to lunch.\textsuperscript{148} When she refused, he became suspicious.\textsuperscript{149} Nevill went to a friend's house. While there, Nevill snorted cocaine, smoked marijuana, and planned on finding someone to assault his wife's lover.\textsuperscript{150} Nevill invited his wife to lunch again, but she declined.\textsuperscript{151} So he drove to her workplace, hid in the bushes, and watched her leave with another man.\textsuperscript{152} Nevill tried to follow them but could not keep up.\textsuperscript{153} He had drinks, snorted more cocaine, picked his daughter up from nursery school, and drove to his wife's office, where he confronted her.\textsuperscript{154} Nevill said he was leaving her and taking their child.\textsuperscript{155} When he arrived home he hid a rifle on the bed under a sheet, began to pack, and snorted more cocaine.\textsuperscript{156} When his wife arrived, he accused her of going to a hotel with her lover.\textsuperscript{157} She said that she had not slept with the man "this week."\textsuperscript{158} Nevill ordered her to call her lover, but she could not reach him.\textsuperscript{159} Nevill pulled the rifle from under the sheet and shot three rounds into the bedroom floor.\textsuperscript{160} Mrs. Nevill yelled, "You really are crazy aren't you?"\textsuperscript{161} Nevill turned, fired ap-

\begin{itemize}
  \item \textsuperscript{144} See \textit{BLACK'S LAW DICTIONARY}, supra note 94, at 475.
  \item \textsuperscript{145} See \textit{CALIFORNIA RULES OF PROCEDURE OF STATE BAR}, supra note 102.
  \item \textsuperscript{146} See cases cited supra note 101.
  \item \textsuperscript{147} 39 Cal. 3d 729.
  \item \textsuperscript{148} See \textit{id.} at 732-733.
  \item \textsuperscript{149} See \textit{id.}
  \item \textsuperscript{150} See \textit{id.}
  \item \textsuperscript{151} See \textit{id.}
  \item \textsuperscript{152} See \textit{Nevill}, 39 Cal. 3d at 732-733.
  \item \textsuperscript{153} See \textit{id.}
  \item \textsuperscript{154} See \textit{id.}
  \item \textsuperscript{155} See \textit{id.}
  \item \textsuperscript{156} See \textit{id.}
  \item \textsuperscript{157} See \textit{Nevill}, 39 Cal. 3d at 732-733.
  \item \textsuperscript{158} See \textit{id.}
  \item \textsuperscript{159} See \textit{id.}
  \item \textsuperscript{160} See \textit{id.}
  \item \textsuperscript{161} See \textit{id.}
\end{itemize}
proximately ten rounds and killed her.\textsuperscript{162}

The \textit{Nevill} court reiterated that the primary purpose of imposing discipline against attorneys is to protect the public, the courts, and the legal profession.\textsuperscript{163} The Supreme Court reasoned that these protections were necessary as Nevill’s actions had “displayed a dangerous volatility which might well prejudice his ability to effectively represent his clients’ interests given the pressures associated with the practice of law.”\textsuperscript{164} Though Nevill offered several mitigating circumstances,\textsuperscript{165} the court disbarred him.\textsuperscript{166} In doing so, the court explained that disbarment would best protect the public because it facilitated a future evaluation of Nevill’s future fitness to practice law through reappraisal, should Nevill ever seek reinstatement.\textsuperscript{167}

That the lack of uniformity in lawyer discipline leads to the imposition of inconsistent sanctions in domestic violence cases is self-evident.\textsuperscript{168} Despite attempts to follow the ABA standards, disciplinary courts impose disparate degrees of discipline\textsuperscript{169} that often do not reflect the severity of the acts committed. Part III of this Comment explores the shortcomings of the current approach to imposing discipline on domestically violent attorneys.

III. DISCUSSION

As the cases outlined above demonstrate, disciplinary courts across the United States employ case-by-case analysis in determining the extent of discipline to be imposed against

\begin{footnotesize}
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\item \textsuperscript{162} See \textit{Nevill}, 39 Cal. 3d at 732-733.
\item \textsuperscript{163} See id. at 735.
\item \textsuperscript{164} See id.
\item \textsuperscript{165} The mitigating factors included marital disharmony, Nevill being under the influence of cocaine and alcohol the day of the incident, a vehement argument precipitated the killing, Nevill was serving an 8 year prison sentence, he had no prior discipline, he was cooperative with disciplinary officials, and the killing was unrelated to the practice of law. See id. at 735-736.
\item \textsuperscript{166} See id. at 737-738 (going beyond the recommended 5-year suspension, with 30 months actual suspension, 5 years probation, quarterly reports to the bar, mandatory psychiatric treatment and abstinence from drugs).
\item \textsuperscript{167} See \textit{Nevill}, 39 Cal. 3d at 738-739 (recognizing that all disbarred attorneys, after five years, may seek reinstatement).
\item \textsuperscript{168} See, \textit{e.g.}, Levin, supra note 4, at 37.
\item \textsuperscript{169} See id.
\end{itemize}
\end{footnotesize}
an attorney for acts of domestic violence. This approach results in inconsistent and unpredictable sanctions. These results are the source of the problem to the current approach to attorney discipline.

A. ATTACK ON THE CURRENT APPROACH TO DETERMINING THE SANCTION TO BE IMPOSED ON DOMESTICALLY VIOLENT ATTORNEYS

The current approach solely applies case-by-case analysis, which leads to ambiguous standards and unpredictable outcomes. Courts generally agree that an attorney's domestically violent acts are a legitimate basis for sanctions, yet no standards have been established for determining the extent of sanction to be imposed. From public reprimand to disbarment, the range of sanctions is broad and often inconsistent. In fact, the New Jersey Supreme Court is the only disciplinary authority that has imposed standard sanctions against domestically violent attorneys. It has, de facto, decided that a 3-month actual suspension is the appropriate sanction in the majority of these cases. However, because the court is not bound to that sanction, disciplinary results are still unpredictable in New Jersey.

Whenever courts apply case-by-case analysis the judicial process becomes less efficient because this approach is fact intensive. Under a fact-driven approach, the court ideally must compare the case at bar with every case in which courts have disciplined domestically violent attorneys to determine whether the appropriate discipline to impose is censure, sus-

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170 See generally, Levin, supra note 4.
171 See id.
172 See id.
173 See Levin, supra note 4, at 35-38.
174 See id. at 38-39.
175 See, e.g., Senn, 824 P.2d 822.
176 See, e.g., Painter, 739 A.2d 24.
177 See, e.g., Levin, supra note 4.
178 See Howard, 673 A.2d 800; Margrabia, 695 A.2d 1378; In re Toronto, 696 A.2d 8 (N.J. 1998). The courts imposed a 3-month suspension in each of these cases.
179 See, e.g., Principato, 655 A.2d at 919 (avowing to suspension as the appropriate sanction for domestically violent attorneys but remaining silent as to the duration of such suspension); See also, Levin, supra note 4.
180 See, e.g., Stanley A. Goldman, Not So "Firmly Rooted": Exceptions to the Confrontation Clause, 66 N.C.L. REV. 1, 44 (1987).
pension, or disbarment. Suspension is the most troublesome sanction because it further requires the court to square the law with the facts of the case at hand to justify the length of the suspension. Thus, case-by-case analysis injects an additional step into the disciplinary process that is unnecessarily time-consuming and wasteful of judicial resources.

B. PROPRIETY OF IMPOSING PROFESSIONAL SANCTIONS ON DOMESTICALLY VIOLENT ATTORNEYS

Some legal commentators argue against the propriety of subjecting domestically violent attorneys to professional discipline. Opponents maintain that judicial sanctioning of domestically violent attorneys allows the government to intrude into their private lives because the misconduct does not ordinarily arise from the rendering of professional services. On the other hand, proponents of imposing discipline posit that even though domestic violence is not ordinarily committed in attorneys’ professional capacity, such misconduct nevertheless indicates a lack of integrity and judgment that threaten both the public and the reputation of the legal profession. As the reasoning goes, attorneys violate the profession’s ideals of honesty, trustworthiness, truthfulness, reliability and commitment to the judicial process and the administration of justice by committing acts of domestic violence. Therefore, court-imposed sanctions are proper though the underlying misconduct may not be directly related to the practice of law.

181 See, Levin, supra note 4, at 44-46.
182 See id.
183 See Geraghty, supra note 70, at 485-488.
184 See id. at 485 (citing Kevin Campbell, Letter, Fight the Lynch Mob Mentality in Domestic Violence Cases, 140 N.J.L.J. 36 (April 24, 1995)). See also Hansen, supra note 70, at 14.
185 See, e.g., Geraghty, supra note 70, at 486; see also Patterson, 369 N.W.2d at 800-801.
186 See, e.g., Principato, 655 A.2d 920.
187 See Geraghty, supra note 70, at 485-488. See also, e.g., Musick, 960 P.2d 89 (noting that the fact that misconduct is not directly related to the practice of law consequently becomes relegated to a mere factor in determining the extent of discipline and not determinative of whether to impose discipline). Furthermore, in contrast to the disciplinary authorities of other professions, courts consistently hold attorneys to higher standards of professional responsibility for engaging in conduct that is not directly related to the practice of law. See Geraghty, supra, at 487-488. For example,
Critics also complain that professional discipline for acts of domestic violence exposes attorneys to dual punishment.\textsuperscript{188} The rationale for this conclusion is that criminal law provides sufficient punishment for those who commit domestic violence.\textsuperscript{189} Thus, when attorneys are professionally sanctioned as well, they are unnecessarily punished twice.\textsuperscript{190} Courts generally circumvent this argument by recognizing that the primary goal of attorney discipline is not to punish but to protect the public and preserve the reputation of the legal profession.\textsuperscript{191}

C. SIGNIFICANCE OF THE QUASI-CRIMINAL NATURE OF ATTORNEY DISCIPLINE PROCEEDINGS

Disciplinary courts generally characterize attorney disciplinary proceedings as being neither criminal nor civil in nature.\textsuperscript{192} Instead, courts describe these proceedings as quasi-criminal.\textsuperscript{193} Therefore, attorney discipline proceedings are unique\textsuperscript{194} and thus implicate distinct procedural quandaries.\textsuperscript{195}

First and foremost, an attorney facing professional discipline is not presumed innocent until proven guilty.\textsuperscript{196} Second, the state bar need not prove the attorney's alleged misconduct beyond a reasonable doubt.\textsuperscript{197} Instead, the state bar need only physicians are rarely disciplined for misconduct that is not directly related to the practice of medicine. See id. at 487. Additionally, professional athletes are seldom disciplined by their leagues for private misconduct, such as committing an act of domestic violence. See id. For example, in a recent case, Jason Kidd, of the Phoenix Suns basketball team, admitted to hitting his wife and cutting her lip after an all-day argument. He voluntarily sat out about six games so that he could attend to his marital problems. See Associated Press, Kidd to Leave Suns to Work Out Problems with His Wife (visited January 20, 2001) <http://sports.excite.com/nba/news/010120/sl-sports-nba-3389579>.

\textsuperscript{188} See Geraghty, supra note 70, at 488.

\textsuperscript{189} See id.

\textsuperscript{190} See id.

\textsuperscript{191} See, e.g., Howard, 673 A.2d at 802; see also 1 Witkin, supra note 104, \S\ 623.


\textsuperscript{193} See 1 Witkin, supra note 104, \S\ 624(b).

\textsuperscript{194} See Parker, supra note 192, at 498.

\textsuperscript{195} See 1 Witkin, supra note 104, \S\ 623.

\textsuperscript{196} See id. \S\ 623(a).

\textsuperscript{197} See id. \S\ 624(a).
prove that the attorney has committed the prohibited acts by clear and convincing evidence.\textsuperscript{198} Third, the technical rules of evidence as applied in criminal trials do not apply to disciplinary proceedings.\textsuperscript{199} The evidence need only be legally sufficient for the court to consider it at a disciplinary hearing.\textsuperscript{200} Fourth, the entrapment defense is not available to attorneys charged with disciplinary violations that stem from criminal offenses,\textsuperscript{201} such as domestic violence. Accordingly, although the defendant attorney may allege entrapment as a defense to criminal charges, disciplinary courts may nevertheless impose professional sanctions because the state bar did not commit the entrapment.\textsuperscript{202} Finally, an unreasonable delay, without a showing of prejudice, in bringing a disciplinary proceeding does not mandate dismissal, as it would in the criminal context.\textsuperscript{203}

These procedural differences fail to recognize that a state's challenge to an attorney's license to practice law puts as much at stake as in some criminal proceedings.\textsuperscript{204} The possibility of disbarment jeopardizes an attorney's entire livelihood.\textsuperscript{205} Thus, an attorney facing disciplinary sanctions should be entitled to the same legal protections provided in a criminal proceeding.\textsuperscript{206} For this reason, attorneys are guaranteed the privilege against self-incrimination in disciplinary hearings.\textsuperscript{207} But overall, attorney discipline proceedings afford the accused higher standards of protection, such as requiring clear and convincing evidence rather than a mere preponderance, and thus recognize that these matters risk significantly

\textsuperscript{198} See id. \\
\textsuperscript{199} See id. § 623(b). \\
\textsuperscript{200} See 1 Witkin, supra note 104, § 624(b) (citing In re Richardson, 209 Cal. 492 (1930)). \\
\textsuperscript{201} See 1 Witkin, supra note 104, § 623(d) (citing Wong v. State Bar, 15 Cal.3d 528 (1975)). \\
\textsuperscript{202} See id. (distinguishing Patty v. Bd. of Medical Examiners, 9 Cal.3d 356 (1973)). \\
\textsuperscript{203} See 1 Witkin, supra note 104, § 623(e) (recognizing, however, that unreasonable delay may be considered as a mitigating factor). \\
\textsuperscript{204} See id. § 623. \\
\textsuperscript{205} See id. \\
\textsuperscript{206} See id. \\
\textsuperscript{207} See 1 Witkin, supra note 104, § 624 (noting that the right to invoke the 5\textsuperscript{th} Amendment in disciplinary hearings may in fact work against the attorney since cooperation in the process is considered a mitigating factor by many courts).
more than do civil actions.\textsuperscript{208}

Court decisions to impose discipline on domestically violent attorneys are nevertheless open to further scrutiny. First, disciplinary courts have not adequately impressed the seriousness of domestic violence upon the public and errant attorneys. Second, courts have failed to ease the judicial process for determining the appropriate level of professional sanction to be imposed on attorneys who engage in domestic violence. Part IV expands on these concerns.

IV. CRITIQUE

The primary problem with the current treatment is that courts rarely characterize an attorney's acts of domestic violence as misconduct that involves moral turpitude.\textsuperscript{209} Courts generally define moral turpitude as a base, vile, or depraved act in the private and social duties a person owes to others that is contrary to the accepted and customary right and duty between persons.\textsuperscript{210} Disappointingly, only three disciplinary courts have fit domestic violence into that definition for purposes of imposing attorney sanctions.\textsuperscript{211}

The first case that declared attorney domestic violence to be conduct involving moral turpitude was \textit{Committee on Prof'l Ethics & Conduct of the Iowa State Bar Assoc. v. Patterson}.\textsuperscript{212} In that case, Patterson met a woman at a class.\textsuperscript{213} They became romantically involved.\textsuperscript{214} A few months later, Patterson's girlfriend met with her former husband for dinner.\textsuperscript{215} Although she had told Patterson that she was meeting a girlfriend, he found out that she had lied.\textsuperscript{216} Patterson went to her home and confronted her.\textsuperscript{217} Despite her confession, he be-

\textsuperscript{208} See, e.g., Levin, supra note 4, at 19 (urging that attorney discipline proceedings are closer to criminal than not).

\textsuperscript{209} See cases cited supra note 93. These are the only three cases that have defined the attorneys' acts of domestic violence as conduct involving moral turpitude.

\textsuperscript{210} See, e.g., \textit{In re Calaway}, 20 Cal. 3d 165 (1977).

\textsuperscript{211} See cases cited supra note 93.

\textsuperscript{212} 369 N.W.2d 798.

\textsuperscript{213} See id. at 799-800.

\textsuperscript{214} See id.

\textsuperscript{215} See id.

\textsuperscript{216} See Patterson, 369 N.W.2d at 799-800.

\textsuperscript{217} See id.
gan striking her and tore off her clothes.\textsuperscript{218} After beating her for about two hours,\textsuperscript{219} Patterson cared for his girlfriend’s wounds.\textsuperscript{220} Soon afterwards, Patterson left the state and sought psychiatric help.\textsuperscript{221} He took the clothing he had torn off of his victim during the beating out of state and destroyed it.\textsuperscript{222} Patterson pled guilty to the criminal charges that followed.\textsuperscript{223}

The Iowa Supreme Court suspended Patterson from the practice of law for an indefinite term for his acts of domestic violence.\textsuperscript{224} However, the court declared his license eligible for reinstatement after three months.\textsuperscript{225} In doing so, the \textit{Patterson} court recognized that the purpose of attorney discipline is to preserve public confidence in the legal profession and bolster the layperson’s respect for the law.\textsuperscript{226} The court described Patterson’s misconduct “as morally reprehensible [as] accepting gifts in violation of a federal statute limiting attorney fees; having possession of marijuana and amphetamines; or making obscene phone calls.”\textsuperscript{227} Accordingly, the \textit{Patterson} court found the attorney’s acts of domestic violence to be conduct involving moral turpitude.\textsuperscript{228}

The second case in which a court defined an attorney’s acts of domestic violence as involving moral turpitude was \textit{In re Runyon}, an Indiana Supreme Court case.\textsuperscript{229} In \textit{Runyon}, an attorney forced his way into his former spouse’s apartment, struck her with a club, and held her at gunpoint with an M-10 machine gun.\textsuperscript{230} Runyon surrendered after the apartment manager let the police into the apartment.\textsuperscript{231} After assuring

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\begin{quote}
\textsuperscript{218} See id.
\textsuperscript{219} See id.
\textsuperscript{220} See id. (noting that pictures of the victim taken the next day evidenced Patterson’s skill as a martial artist).
\textsuperscript{221} See \textit{Patterson}, 369 N.W.2d at 799-800.
\textsuperscript{222} See id.
\textsuperscript{223} See id.
\textsuperscript{224} See id. at 800-801.
\textsuperscript{225} See id. (opting to order suspension rather than follow the state bar’s recommended censure).
\textsuperscript{226} See \textit{Patterson}, 369 N.W.2d at 800-801.
\textsuperscript{227} See id. at 801.
\textsuperscript{228} See id. at 800-801.
\textsuperscript{229} 491 N.E.2d 190.
\textsuperscript{230} See id.
\textsuperscript{231} See id.
\end{quote}
that Runyon had not physically injured the victim, the police arrested him. Runyon was convicted of unlawful possession of firearms.

The Indiana Supreme Court consequently disbarred Runyon. The court reasoned that Runyon's acts were heinous, regardless of his motive, intent or mental state. The Runyon court stated that it had a duty to protect the public from unfit lawyers, whatever the cause. Accordingly, the court defined Runyon's violence as acts of moral turpitude that reflected adversely on his fitness to practice law.

The only other case to date that has defined attorney domestic violence as involving moral turpitude is People v. Brailsford. In that case, an attorney with the Colorado Attorney General's office was convicted of committing third-degree sexual assault against his wife. In March 1989, while his wife was sleeping on the couch, Brailsford got on top of her, pinned her down, and undressed her. She resisted by yelling “No” and hitting him on the back with her fists. But he did not relent and forced her to have sex with him. During the attack, Mrs. Brailsford had difficulty breathing, and experienced a lot of pain. After the attack, she complained of chest and leg pain.

The Colorado Supreme Court suspended Brailsford from practicing law for one year and a day. The court also required him to petition for reinstatement at the end of the actual suspension term and to attend group therapy to address

\[232\] See id.
\[233\] See id.
\[234\] See Runyon, 491 N.E.2d 190.
\[235\] See id.
\[236\] See id.
\[237\] See id.
\[238\] 933 P.2d 592 (holding that the acts of domestic violence involved moral turpitude).
\[239\] See id. at 594.
\[240\] See id.
\[241\] See id. (noting that while Brailsford weighed over 255 pounds, his wife was much smaller and suffered from asthma attacks).
\[242\] See id.
\[243\] See Brailsford, 933 P.2d at 594.
\[244\] See id.
\[245\] See id. at 596 (failing to mention the significance of the extra day of suspension).
his violent tendencies. The court found the following aggravating factors: (1) his wife testified that Brailsford had beaten her throughout the marriage; (2) he attacked his victim in the middle of the night in the privacy of their home; (3) Brailsford was disparately larger than his wife; and (4) he knowingly inflicted harm on his victim. Despite a number of mitigating factors, the Brailsford court held that Brailsford's conduct involved moral turpitude, which reflected adversely on his fitness to practice law.

The common thread in these three cases is that the courts have defined the attorney misconduct as involving moral turpitude. However, the reason these courts reached that conclusion where other courts have failed to do so is unclear. The following analysis gives insight. Firstly, all three victims were women. But this fact seems insignificant, as all the cases cited by this Comment involve attorneys committing acts of domestic violence against women. Secondly, Patterson and Brailsford involved sexual assault. In Patterson, although there was no accusation of rape, the attorney tore off his victim's clothing, whereas in Brailsford the attorney raped his victim. Finally, Patterson used his martial art mastery to badly injure his victim, Brailsford used his overbearing size to force his victim into having sex with him, and Runyon burglarized his victim's home armed with a machine gun. In sum, these cases involved attorneys who preyed on especially vulnerable victims by extraordinary means of force or violence likely prompted the Runyon, Patterson and Brailsford courts to define the attorneys' acts as involving moral turpitude.

Accordingly, the Patterson court stated that the attorney's misconduct clearly met the definition of moral turpitude.

246 See id. (imposing this sanction as opposed to a public censure and conditions recommended by the lower disciplining body).
247 See id.
248 See Brailsford, 933 P.2d at 596.
249 See id.
250 See id.
251 See id. at 595 (recognizing no prior discipline, candor, cooperation, criminal sanctions, loss of his job, public and editorial comment on the incident, remorse, substantial interim rehabilitation, a clear understanding of wrongfulness, and psychological improvement as mitigating factors).
252 See id. at 595-596.
253 491 N.E.2d 189.
based on the incident. The Runyon court concluded that the evidence adduced at the underlying criminal trial proved that the attorney's misconduct involved moral turpitude. And in the most recent of these cases, the Brailsford court defined the underlying domestic violence as involving moral turpitude because the attorney sexually assaulted his victim.

Exemplary of the current inadequate treatment of domestically violent attorneys is a Maryland Supreme Court case, Attorney Grievance Commission of Maryland v. Painter. The Painter court was presented with a case where it should have declared the attorney's domestic violence to be base, vile acts contrary to modern day social mores and thus involving moral turpitude. Yet, it failed to do so.

In Painter, an attorney repeatedly beat his wife and children over the course of almost twenty years. For instance, Painter once gave his son a black eye for his first birthday. On another occasion, Painter grabbed his son and beat his head against the wall for turning on the wrong fan switch. When his wife and her sister tried to intervene, he called his sister-in-law "a stupid, fucking bitch." Painter also threw his son against walls and choked him on occasion. As for his daughter, he verbally abused her by calling her a "fucking brat." Even worse, when she was in the first grade, Painter told his daughter that "[she] was nothing but a fucking, goddamn bitch, just like [her] mother." He also physically abused his daughter. He once grabbed her around the neck, choked her, and shook her for accidentally messing his hair. When she was five, Painter punched his daughter while they were in a restaurant for refusing to drink orange juice.

See 369 N.W.2d at 801.
See 491 N.E.2d at 190.
See 933 P.2d at 596.
See 739 A.2d 24.
See id. at 26-27.
See id.
See id.
See id.
See Painter, 739 A.2d at 26-27.
See id.
See id.
See id.
See id.
also beat and kicked her dog and threw it off the second story
deck.\footnote{267 See Painter, 739 A.2d at 26-27.}

Painter's behavior towards his wife was equally reprehensible. He beat her regularly, starting on their honeymoon. Painter beat her head against the garage floor, swung a hatchet at her, and called her a "goddamn fucking bitch."\footnote{268 See id.}

Then he jumped on her, and pounded her head.\footnote{269 See id.}

Finally, Mrs. Painter, fed up, left to her mother's home. After Painter promised to never abuse her again, she returned home.\footnote{270 See id.}

But the violent cycle continued. Painter knocked her out of a chair, jumped on her and beat her. She freed herself and ran outside of the house.\footnote{271 See id.}

Painter followed her out, "kicked her, cursed her, bashed her head and pulled her hair."\footnote{272 See Painter, 739 A.2d at 26-27.}

When Painter threatened to kill himself or her, she finally secured a protective court order.\footnote{273 See id.}

But that did not stop his abusive attempts. Mrs. Painter noticed her husband parked down the block from her home, so she phoned the police.\footnote{274 See id.}

When the officers arrested him, they found two loaded guns.\footnote{275 See id.}

Finding no mitigating factors, the court disbarred Painter.\footnote{276 See Painter, 739 A.2d at 29.}

It reasoned that Painter showed no appreciable insight or explanation for his pattern of violence that spanned 16 years.\footnote{277 See id.}

Furthermore, because he had been subjected to prior discipline for striking a former girlfriend and threatening her with a gun, Painter deserved disbarment.\footnote{278 See id.}

But, despite the egregious acts of violence against his family, the court did not characterize Painter's acts of domestic violence as conduct involving moral turpitude.\footnote{279 See generally Painter, 739 A.2d 24.}
some abuse to which Painter subjected his family presented the perfect opportunity for the Maryland court to declare an attorney’s acts of domestic violence as base, vile and contrary to modern day social mores. However, the Painter court held that the acts were merely prejudicial to the administration of justice.281 This is an incredible understatement, unreflective of the serious problem domestic violence presents to society.

The abuse in Painter was more egregious than the acts of domestic violence in Patterson, Runyon and Brailsford, which did determine the misconduct involved moral turpitude. First, the abuse in Painter occurred over a prolonged period rather than on a single isolated occasion.282 Painter violently beat and verbally abused his wife and children over the course of approximately twenty years.283 In comparison, Patterson severely beat and disfigured his girlfriend in a single incident of violence,284 while Runyon forced his way into his girlfriend’s apartment, held her at gunpoint and struck her with a club on a single occasion. Further, Brailsford forced his wife to have sex with him on one occasion.285 No one could disagree that each of these cases, including Painter, involved base and vile acts of domestic violence that are contrary to modern day social mores. However, the severity of the violence, combined with the long cycle of abuse involved in Painter makes a very strong case for misconduct involving moral turpitude. In fact, Painter presents an even stronger case than Runyon and Brailsford, considering that the violence in those cases occurred only on a single occasion and the harm was minimal, whereas in Painter prolonged abuse was not only aimed at the wife but also at the children. Based on the foregoing analysis, there was no legitimate reason for the Painter court not to define the abusive acts as involving moral turpitude. This is especially alarming in cases, such as Painter, where courts recognize domestic violence as a serious problem in modern day society,286 yet paradoxically fail to define the underlying acts

281 See id. at 32.
282 See, e.g., id. at 30 (recognizing the fact that the incident was isolated as a mitigating factor).
283 See id. at 29.
284 369 N.W.2d 798.
285 933 P.2d 592.
286 739 A.2d at 29.
of domestic violence as base, vile conduct that is contrary to modern day social mores.\textsuperscript{287}

Under disciplinary courts' current approach to imposing professional discipline on domestically violent attorneys, outcomes are unpredictable; the process is inefficient; and the decisions are inconsistent, except that suspension is the favored sanction. Moreover, only three courts have characterized attorneys' acts of domestic violence as conduct involving moral turpitude. Consequently, courts have not completely recognized the serious problem that domestic violence presents to our society, at least when it comes to imposing attorney discipline.

V. Proposal

Courts uniformly insist that the primary goal of imposing attorney sanctions is not to punish misbehaved or errant attorneys.\textsuperscript{288} Instead attorney discipline is designed to protect the public, defend the reputation of the legal profession, and preserve public confidence in lawyers.\textsuperscript{289} Punishment may not be the primary \textit{court-professed} goal of imposing these sanctions, yet there are concomitant punitive effects that must nonetheless be considered. More importantly, few disciplinary courts enlist the rehabilitative opportunity attorney sanction proceedings provide.

A. Revitalizing California's Former Approach to Imposing Attorney Discipline for Misconduct That Involves Moral Turpitude

Disciplinary courts have used many approaches to imposing discipline on misbehaved or errant attorneys.\textsuperscript{290} For example, in the 1950's, California entertained a unique system for disciplining attorneys who committed crimes involving moral turpitude. When an attorney was convicted of a crime, the

\textsuperscript{287} See, \textit{e.g.}, Painter, 739 A.2d 24.
\textsuperscript{289} See id.
\textsuperscript{290} See generally id. (urging the consideration of monetary sanctions in attorney discipline); see also Levin, supra note 4, at 83 (urging for detailed written standards regarding imposing attorney discipline to bolster the efficacy of the process).
normal procedures for imposing professional discipline did not apply.\textsuperscript{291} Instead, the criminal trial court forwarded the attorney's conviction record to the California Supreme Court.\textsuperscript{292} The Supreme Court then automatically suspended the attorney from the practice of law.\textsuperscript{293} Once the conviction became final,\textsuperscript{294} the high court considered the facts of the case to determine whether the attorney's conduct involved acts of moral turpitude.\textsuperscript{295} If so, the court disbarred the attorney.\textsuperscript{296} In the mid-1950's, the uncertainty of the 'moral turpitude' test gave way to legislation and disciplinary rules enacted to remedy difficulties that resulted from the automatic suspension and disbarment procedure.\textsuperscript{297} However, these problems are otherwise resolvable to allow the moral turpitude test to be revived.

For purposes of attorney discipline, the state bar should define domestic violence as conduct involving moral turpitude \textit{per se}.\textsuperscript{298} This approach would eliminate the uncertainty presented by the moral turpitude test. Thus, upon filing criminal charges against an attorney for committing acts of domestic violence, the prosecutor's office would submit a copy of its entire case file to the disciplinary court. This would provide the court with two primary benefits. Firstly, the justices would have time to prepare for any subsequent disciplinary proceedings. Secondly, the decision would not rest solely on a “bare bones” conviction record. Once conviction of domestic violence is final, the court should then impose the appropriate discipline against the attorney, as set forth in Section B im-

\begin{enumerate}
\item \textsuperscript{291} See 1 WITKIN, supra note 104, § 526 (1) (citing \textit{In re} Rothrock, 25 Cal. 2d 588, 589 (1949)).
\item \textsuperscript{292} See id.
\item \textsuperscript{293} See id.
\item \textsuperscript{294} A conviction is considered final when the time for appeal has expired and no appeal had been filed, or if an appeal has been filed it has been denied or the conviction has been affirmed. See 1 WITKIN, supra note 104, § 530(b).
\item \textsuperscript{295} See id. § 529(a).
\item \textsuperscript{296} See id. § 526(1) (citing \textit{Rothrock}, 25 C.2d at 589).
\item \textsuperscript{297} See id.
\item \textsuperscript{298} This would circumvent the requirement of courts to determine on a case-by-case basis whether the attorney's conduct involved moral turpitude by automatically defining an attorney's criminal conviction for domestic violence as involving moral turpitude. Thus the uncertainty of the moral turpitude test that triggered its abolishment in the 1950's would no longer be a factor.
\end{enumerate}
This system will not only better protect the public, but also afford accused attorneys the benefit of discipline being dependent on criminal conviction with all the attendant safeguards of those proceedings. Furthermore, the attorney discipline process will be more consistent and predictable.

B. CAPITALIZING ON THE REHABILITATIVE OPPORTUNITY THAT ATTORNEY DISCIPLINE PROCEEDINGS PROVIDE

Beyond mere censure or suspension, courts should uniformly impose sanctions geared toward rehabilitation on attorneys who are convicted of domestic violence. Requiring attorneys to attend counseling, volunteer their legal services to the less fortunate, and otherwise make restitution will further impress upon these offenders the seriousness of their acts. Such an approach will also grant to those attorneys who are amenable the opportunity for betterment. Thus, the offending attorney, the legal profession, and the public will reap the full benefits that disciplinary proceedings offer. However, more severe sanctions must remain available to courts to properly address more severe acts of domestic violence.

1. Sanctions for Less Serious First-Time Offenders

Rehabilitative measures recognize the relationship between the stresses associated with practicing law and attorney misconduct. Of course, one attorney's first incident of domestic violence may be more serious than another attorney's first incident, but this qualitative difference can be ac-

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299 When a complaint is brought to the direct attention of the state bar that an attorney allegedly committed acts of domestic violence, the state bar must relay the complaint to the prosecutor's office so that criminal proceedings can begin. When the conviction is final, the state bar may begin discipline proceedings. However, since acquittal or non-prosecution is not determinative on the administration of attorney sanctions, the state bar must provide for an independent hearing in those circumstances to determine whether the alleged acts of domestic violence occurred. If so, then the state bar must subject the attorney to sanctions pursuant to this proposal.


301 See Levin, supra note 4, at 23-25.
counted for. For the purposes of attorney discipline, a less serious offense should include the following traits. The incident did not leave physical or mental injury to the victim. For example, incidents that resulted in no physical markings, abrasions, bleeding, broken bones, or mental torture, such as false imprisonment, or threats, such as a threat to take the children away, or did not involve the use of a weapon belong in this category. In these less-serious, isolated incidents, attorney sanctions should be geared more toward rehabilitation. Accordingly, disciplinary officials should establish the following rehabilitative measures to bolster the efficacy of traditional attorney sanctions.

First, public censure should be mandatory for any domestic violence serious enough to come to the attention of the state bar. This measure would have a deterrent effect in that it is a public admonishment. Additionally, it would inform the public of the misconduct, enabling people to make a more informed decision of whether to retain the services of these attorneys. Public censure will also display to the public the “no nonsense” attitude that disciplinary officials take toward, even first-time, less-serious, domestically violent attorneys.

Second, courts should require these attorneys to attend a domestic violence prevention program (hereinafter “DVPP”). Forums such as these will allow the domestically violent attorney to recognize the causes of stress that is associated with the day-to-day demands of the legal profession. The offender will also be taught how to identify his anger before it esca-
lates into violent acts. The program will also offer insight on how to deal with misplaced anger. Encouraging these attorneys to properly channel their tension should, in turn, reduce the risk of domestic violence.

Third, courts should mandate that domestically violent attorneys contribute a minimum number of hours of pro bono legal aid. Though it may be impractical to require that these attorneys become experts in all areas of law, the average attorney should be able to handle uncontested divorces, filing and serving temporary restraining orders, simple custody issues, and simple estate planning. However, when a matter is particularly complicated then the attorney should be required to assist attorneys who are experts in these areas. For example, domestically violent attorneys should be required to assist prosecutors assigned to the domestic violence caseload. This would allow the offenders to understand the seriousness of domestic violence, while granting greatly needed aid to the overburdened criminal justice system. Consequently, these attorneys would also be afforded an opportunity to understand the ill effect domestic violence has on the legal system as a whole.

2. Sanctions for Repeat or More Severe First-Time Offenders

Attorneys who have violated a prior condition of probation for domestic violence or committed a more severe incident of domestic violence deserve harsher treatment. The above-recommended treatment should be required of these attorneys as well, but to a more severe degree. For example, courts should require more DVPP sessions, a longer pro bono commitment, as well as a lengthier probationary period. However, the sanctions must not end there. The more serious incidents or recidivism should mandate suspension from the practice of law for at least six months. Courts should also impose substantial fines against these attorneys and distribute the funds to various charitable causes that further

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307 See, e.g., Margrabia, 695 A.2d 1378 (recognizing an abusive pattern as an aggravating factor for determining the appropriate level of lawyer sanction).

308 The lengths are somewhat arbitrary but it is the uniformity of application that will justify them.
Attorneys who commit a subsequent act of domestic violence, despite being subjected to the foregoing sanctions must be disbarred. Domestically violent attorneys, who recidivate, permanently tarnish the reputation of the legal profession. Thus, recidivists deserve the severest sanction. Moreover, while the lower levels of sanctions may be labeled as being geared toward specific deterrence and rehabilitation of the offending attorney, this final level of sanction goes further. The threat of disbarment will further general deterrence. That is, those domestically violent attorneys in the two lower tiers of sanction will know what awaits them should they recidivate. Such swift, certain, and severe sanctions will ensure that courts will not stand idly by while the confidence in the legal profession is threatened by violent attorneys with no respect for the law.

C. Creating Incentive for States to Adopt This Proposed Approach to Disciplining Domestically Violent Attorneys

Revamping the system cannot stop with attorney discipline. Congress must also enact legislation, similar to the VAWA, which provides additional monetary incentives for states to adopt approaches like the one that is set forth above. The VAWA provides grants to states that demonstrate a general commitment to increased arrests or lengthier incarceration of violent offenders. Once granted, these funds are earmarked to facilitate the prevention of violence against women.

VAWA funding is necessary and helpful, but more is needed. Thus Congress must authorize appropriations to states whose high courts have demonstrated a general commitment to facilitating the ease, predictability, and judicial efficiency of imposing attorney sanctions in domestic violence cases. Congress should provide grants to states that have implemented state bar rules that define domestic violence as a crime involving moral turpitude. Congress should also grant

309 See Bene, supra note 288.
310 See, e.g., Margrabia, 695 A.2d 1378.
311 See supra notes 25-36 and accompanying text.
312 See supra notes 25-36 and accompanying text.
funds to states that have implemented rules of state bar procedure that include a definite and structured scheme of sanctions, such as the scheme set forth above. The legislation should provide additional grants to those states that have provided for a rehabilitative approach for certain qualified offenders, such as first-time, less-severe domestic violence offenders. Congress should also grant funds to states that demonstrate adherence to a system of attorney discipline based on the moral turpitude test, at least for non-professional criminal offenses, such as domestic violence.

VI. Conclusion

Disciplinary courts have inconsistently sanctioned domestically violent attorneys. Though suspension is the most often imposed sanction, no standards guide the process. The reasons that justify attorney sanctions in these cases may generally reflect ABA guidelines, but that is not enough. A consistent and predictable system of attorney discipline is needed, particularly when disciplinary officials are sanctioning conduct that involves moral turpitude, such as domestic violence. Even more concerning, few disciplinary courts have made the connection between domestic violence and moral turpitude despite the serious threat domestic violence presents to American society.

Consequently, a complete revamping of the current approach to imposing discipline on domestically violent attorneys is needed. In addition to protecting the public and preserving the integrity of the legal profession, a disciplinary system must also provide an errant attorney with an opportunity for rehabilitation; an aspect currently lacking in the attorney discipline process. The uniformity in discipline that would flow from the proposed approach will also better address current concerns, such as ease of application and predictability of sanction. Judicial efficiency and fairness in the disciplinary process will also be maximized. Accordingly, the
time has come to shelve the current approach to imposing discipline on domestically violent attorneys and breathe new life into the process.

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