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PUBLIC MATTER

FILED

JAN 18 2005

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

THE STATE BAR COURT HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No. 00-C-10794, 00-C-15655,
THOMAS LAURANCE HYATT,)	03-C-00136-RAH
Member No. 152719,)	DECISION
<u>A Member of the State Bar.</u>)	

I. INTRODUCTION

In this disciplinary matter, which proceeded by default, Charles A. Murray appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent, Thomas Laurance Hyatt, intermittently attended status conferences in this matter but ultimately failed to file a response to any of the three Notices of Hearing on Conviction filed in this proceeding.

The conviction referral matters are based upon respondent's conviction of violations of Vehicle Code sections 23152(a), 146101.1(a), and 14601.2(a).

After considering the evidence and the law, the Court finds by clear and convincing evidence that respondent's criminal misconduct warrants discipline. The Court recommends that respondent be suspended for one year and that the suspension be stayed including a six-month actual suspension and until respondent complies with rule 205, subdivision (a) and (c) of the Rules of Procedure of the State Bar of California (Rules of Procedure).

II. SIGNIFICANT PROCEDURAL HISTORY

On September 12, 2002, the Review Department of the State Bar Court filed orders referring case numbers 00-C-15655 and 00-C-10794 to the Hearing Department for a hearing and decision recommending the discipline to be imposed if the Hearing Department finds that the facts and

1 circumstances surrounding respondent's violations of Vehicle Code sections 23152(a), 14601.1(a),
2 and 14601.2(a) involved moral turpitude or other misconduct warranting discipline.

3 On September 17 and 19, 2002, the State Bar Court filed a Notice of Hearing on Conviction
4 for case numbers 00-C-15655 and 00-C-10794, respectively, and a separate Notice advising
5 respondent, among other things, that an initial status conference would be held on October 15, 2002.
6 Each notice was properly served on respondent at his official membership records address, by
7 certified mail, return receipt requested, as provided in Business and Professions Code section
8 6002.1(c). A copy of the Review Department's referral order was attached to each Notice of Hearing
9 on Conviction.

10 At the October 15, 2002, status conference, the Court consolidated the matters. Respondent
11 failed to appear.

12 On January 29, 2003, the Review Department of the State Bar Court filed an order referring
13 case number 03-C-15655 to the Hearing Department for a hearing and decision recommending the
14 discipline to be imposed if the Hearing Department finds that the facts and circumstances
15 surrounding respondent's violation of Vehicle Code sections 23152(a) and 14601.2(a) involved
16 moral turpitude or other misconduct warranting discipline.

17 On January 31, 2003, the State Bar Court filed a Notice of Hearing on Conviction for case
18 number 03-C-00136 and a separate Notice advising respondent, among other things, that an initial
19 status conference would be held on March 11, 2003. Each notice was properly served on respondent
20 at his official membership records address, by certified mail, return receipt requested, as provided
21 in Business and Professions Code section 6002.1(c). A copy of the Review Department's referral
22 order was attached to the Notice of Hearing on Conviction.

23 Respondent appeared at a status conference held on February 19, 2003. At that time the
24 Court consolidated the three conviction referral matters and abated them due to respondent's
25 incarceration. Respondent also attended a status conference conducted on December 18, 2003.

26 Respondent again attended a status conference conducted on February 27, 2004. On this date
27 the Court terminated the abatement of the criminal referral matters.

28 Respondent failed to appear at a status conference scheduled for May 18, 2004. On May 24,

1 2004, the Court filed an order scheduling a further status conference on July 6, 2004, and notified
2 respondent that if he failed to participate at the status conference the Court would entertain a motion
3 for entry of default. The order was properly served on respondent at his official membership records
4 address.

5 At the July 6, 2004, status conference, which respondent attended, the Court ordered
6 respondent to file his responses to all outstanding notices no later than July 27, 2004.

7 At a further status conference conducted on August 11, 2004, which respondent attended, the
8 Court extended the time for respondent to file his responses to August 18, 2004.

9 Respondent did not file a response to any of the Notices of Hearing on Conviction. On
10 September 3, 2004, the State Bar filed and properly served a motion for entry of default on
11 respondent at his official membership records address and a courtesy address. The motion advised
12 respondent that minimum discipline of a two-year actual suspension would be sought if the Court
13 determined his convictions involved misconduct warranting discipline. Respondent did not respond
14 to the motion.

15 On September 21, 2004, the Court entered respondent's default and enrolled him inactive
16 effective three days after service of the order. The order was properly served on respondent at his
17 official membership records address on that same date by certified mail, return receipt requested.

18 On October 20, 2004, the State Bar filed a request for waiver of default hearing and a brief
19 on culpability and discipline.¹ The matter was submitted for decision on October 20, 2004.

20 On October 21, 2004, the State Bar filed a supplement to its brief on culpability and
21 discipline.

22
23 ¹Exhibits 1-4 attached to the State Bar's brief on culpability and discipline are admitted
24 into evidence in accordance with rule 202 of the Rules of Procedure. These exhibits consist of
25 respondent's record of prior discipline, copies of a police report and documents from Santa
26 Barbara County Superior Court case number 1010037 entitled *People v. Thomas Laurance Hyatt*
27 relating to State Bar Court case number 00-C-10794, copies of a police report and documents
28 from Santa Barbara County Superior Court case number 1013308 entitled *People v. Thomas*
Laurance Hyatt relating to State Bar Court case number 00-C-15655, and copies of a police
report and documents from Santa Barbara County Superior Court case number 1074602 entitled
People v. Thomas Laurance Hyatt relating to State Bar Court case number 03-C-10794.

1 **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

2 **A. Jurisdiction**

3 Respondent was admitted to the practice of law in California on June 6, 1991, was a member
4 at all times pertinent to the allegations and is currently a member of the State Bar of California.²

5 **B. The Convictions**

6 According to Business & Professions code section 6101(a), the record of conviction shall be
7 conclusive evidence of guilt of the crime of which respondent has been convicted.

8 **1. Case Number 00-C-10794**

9 In the early hours of January 24, 2000, respondent was involved in a traffic collision
10 involving his two-door Mercedes and residential landscaping in the vicinity of Alamar and Foothill
11 in Santa Barbara, California. After police officers arrived, respondent refused to participate in any
12 field sobriety tests. Respondent was placed under arrest and provided a blood alcohol sample of
13 0.20%.

14 On or about February 9, 2000, the Santa Barbara County District Attorney filed a criminal
15 complaint in the Santa Barbara County Superior Court, case number 1010037, charging respondent
16 with violations of Vehicle Code sections 23152(a) (Driving Under the Influence), 23152(b) (Driving
17 with Blood Alcohol Content Exceeding .08%), and 14601.1(a) (Driving with Suspended License),
18 all misdemeanors.

19 According to the complaint, respondent suffered a prior conviction in November 1994 for
20 violating Vehicle Code section 23152(a) while driving under the influence in August 1994 in Orange
21 County.

22 On May 9, 2000, respondent pled no contest to a violation of Vehicle Code sections 23152(a)
23 and 14601.1(a). On that same date the court accepted respondent's plea and suspended imposition
24 of sentence for three years. The court ordered respondent to serve thirty days in jail and pay

25
26 ²The State Bar presented no evidence establishing respondent's bar membership at the
27 time he was convicted or committed the acts resulting in his conviction. In accordance with
28 Evidence Code section 452(h), the Court, on its own motion, takes judicial notice of State Bar
membership records which establish that respondent has been a California bar member at all
times since June 6, 1991.

1 \$2,135.00 in fines and assessments and \$125.00 to the Victim Restitution Fund. The court further
2 ordered respondent to obey all laws and to refrain from driving with any measurable amount of
3 alcohol in his blood.

4 Respondent did not appeal his criminal conviction.

5 **2. Case Number 00-C-15655**

6 At approximately 12:15 a.m. on June 17, 2000, while respondent was on probation for his
7 prior DUI conviction, respondent was stopped at the 200 block of State Street in Santa Barbara,
8 California, for recklessly driving a motorcycle. Respondent failed the field sobriety tests
9 administered to him and was placed under arrest. Respondent provided a blood alcohol sample of
10 0.22%.

11 On or about June 27, 2000, the Santa Barbara County District Attorney filed a criminal
12 complaint in the Santa Barbara County Superior Court, case number 1013308, charging respondent
13 with violations of Vehicle Code sections 23152(a) (Driving Under the Influence), 23152(b) (Driving
14 with Blood Alcohol Content Exceeding .08%), 14601.2(a) (Knowingly Driving with Suspended
15 License), all misdemeanors, and 16028(a) (Failure to Provide Evidence of Financial Responsibility),
16 an infraction. On October 17, 2000, respondent pled no contest to a violation of Vehicle Code
17 sections 23152(a) and 14601.2(a).

18 On October 30, 2000, the court accepted respondent's plea and suspended imposition of
19 sentence for three years. The court ordered respondent to serve 120 days in jail and pay \$2,675.00
20 in fines and assessments, pay \$125.00 to the Victim Restitution Fund, and attend for at least 18
21 months a state licensed education and counseling program for multiple offenders. The court further
22 ordered respondent to obey all laws; to refrain from driving with any measurable amount of alcohol
23 in his blood; to submit his person, property, and residence to search and seizure at any time, by a
24 peace or probation officer, with or without a warrant, and with or without probable cause; and to
25 refrain from driving a motor vehicle unless in possession of a valid California driver's license and
26 insurance.

27 Respondent did not appeal his criminal conviction.

28 //

1 **3. Case Number 03-C-10794**

2 At approximately 7:30 p.m. on February 3, 2002, while respondent was on probation for his
3 prior DUI conviction, respondent was stopped while driving a golf cart on East Valley Road, a public
4 highway in Santa Barbara County, California. Respondent failed the field sobriety tests administered
5 to him and was placed under arrest. Respondent was belligerent and aggressive and refused to
6 submit to a blood or breath test. Respondent ultimately provided a blood alcohol sample of 0.30%.

7 On or about February 13, 2002, the Santa Barbara County District Attorney filed a criminal
8 complaint in the Santa Barbara County Superior Court, case number 1074602, charging respondent
9 with violations of Vehicle Code sections 23152(a) (Driving Under the Influence), 23152(b) (Driving
10 with Blood Alcohol Content Exceeding .08%), and 14601.2(a) (Knowingly Driving with Suspended
11 License), all misdemeanors. On April 17, 2002, respondent pled no contest to a violation of Vehicle
12 Code sections 23152(a) and 14601.2(a).

13 On May 7, 2002, the court sentenced respondent to serve one year in jail.

14 Respondent did not appeal his criminal conviction.

15 **C. Legal Conclusions**

16 The State Bar contends that the facts and circumstances surrounding respondent's conviction
17 involve moral turpitude, citing *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct.
18 Rptr. 208 in support of its contention. On the contrary, the Court finds that *Anderson* supports the
19 conclusion that the facts and circumstances surrounding respondent's convictions do not involve
20 moral turpitude.

21 *Anderson* involved an attorney's two conviction referrals for drunk driving in 1985 and 1988.
22 The attorney also had a prior drunk driving conviction in 1984 involving two counts of drunk driving
23 which were not the subject of any State Bar disciplinary criminal referral. The attorney was still on
24 probation at the time of the 1985 and 1988 drunk driving incidents.

25 With respect to the 1985 conviction, the facts revealed that the attorney's driving almost
26 caused a collision with opposing traffic. Furthermore, after being stopped, the attorney engaged in
27 an altercation with the arresting officer and slightly injured him before fleeing the scene at a high rate
28 of speed without headlights at night.

1 In the 1988 conviction, the attorney's demeanor was so seriously threatening to safety that
2 citizens who observed him get into his car called police and were ready to make a citizens' arrest.
3 Additionally, before his arrest, the attorney tried to place his hand on the arresting officer's revolver
4 and thereafter attempted to elude him. When finally arrested, the attorney resisted and kicked the
5 arresting officer necessitating the assistance of an additional officer. On his way to jail, the attorney
6 threatened one of the officers and was uncooperative. The court concluded that although the facts
7 and circumstances of the case approached the moral turpitude line, it did not cross it.

8 The facts and circumstances surrounding respondent's four drunk driving arrests and
9 convictions, two of which occurred while still on probation, do not approach the egregiousness of
10 those in *Anderson*. Based on the facts of this record, the Court finds that the facts and circumstances
11 surrounding respondent's conviction do not involve moral turpitude.

12 The Court does find that respondent's convictions constitute other misconduct warranting
13 discipline. Respondent's multiple vehicle code violations and convictions demean the integrity of
14 the legal profession and constitute a breach of the attorney's responsibility to society. (*In re Rohan*
15 (1978) 21 Cal.3d 195, at p. 204 (lead opn. of Clark, J. and Richardson, J.))

16 Furthermore, respondent's violation of court orders setting forth the conditions of his
17 probation negatively bear on his fitness to practice law and his duties as an officer of the court, and
18 respondent's three arrests and convictions within a 25-month period demonstrate an alcohol abuse
19 problem which can have a potentially damaging effect on respondent's practice and clients. (*In re*
20 *Kelley* (1990) 52 Cal.3d 487.) For these reasons the Court finds that respondent's convictions
21 constitute other misconduct warranting discipline.

22 IV. LEVEL OF DISCIPLINE

23 A. Aggravating Circumstances

24 Respondent's prior record of discipline is an aggravating factor. (Rules Proc. of State Bar,
25 tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i).)³

26 In Supreme Court case number S061389, effective August 22, 1997, respondent was
27

28 ³All further references to standards are to this source.

1 suspended for two years, stayed, and was actually suspended for 30 days in a default proceeding
2 involving respondent's criminal conviction for violating Penal Code section 240 (Assault) in July
3 1994.

4 Respondent's multiple violations and convictions of the Vehicle Code constitute multiple
5 acts of misconduct and is an aggravating factor. (Standard 1.2(b)(ii).)

6 Respondent's lack of candor and cooperation with the State Bar during a disciplinary
7 proceeding, evidenced by his failure to participate prior to entry of default, is an aggravating
8 circumstance. (Standard 1.2(b)(vi).)

9 **B. Mitigating Circumstances**

10 Respondent bears the burden of establishing mitigation by clear and convincing evidence,
11 and since he did not participate in these proceedings, the Court is unaware of any steps, if any,
12 respondent has taken to address his alcohol problem.

13 **C. Discussion**

14 The purpose of disciplinary proceedings is not to punish the attorney, but to protect the
15 public, the courts, and the legal profession, to preserve public confidence in the profession, and to
16 maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989)
17 49 Cal.3d 103, 111; Standard 1.3.)

18 Standard 1.6 provides that the appropriate sanction for the misconduct found must be
19 balanced with any mitigating or aggravating circumstances, with due regard for the purposes of
20 imposing discipline.

21 Standard 1.7(b) provides that when a member has a record of one prior imposition of
22 discipline, the degree of discipline imposed in the current proceeding shall be greater than that
23 imposed in the prior proceeding.

24 Standard 3.4 provides for the imposition of sanctions ranging from reproof to disbarment
25 depending on the nature and extent of the misconduct committed after final conviction of a member
26 of a crime which does not involve moral turpitude but does involve other misconduct warranting
27 discipline.

28 The standards, however, are guidelines from which the Court may deviate in fashioning the

1 most appropriate discipline considering all the proven facts and circumstances of a given matter.
2 (*Howard v. State Bar* (1990) 51 Cal.3d 215.) They are not mandatory sentences imposed in a blind
3 or mechanical manner. (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.)

4 Respondent has been repeatedly convicted of violations of the Vehicle Code. The facts and
5 circumstances surrounding respondent's convictions do not involve moral turpitude but do involve
6 other misconduct warranting discipline. There is no mitigation. In aggravation, the Court has found
7 a record of prior discipline, multiple acts of misconduct, and failure to participate in the proceeding
8 prior to the entry of default.

9 In a conviction referral proceeding, "discipline is imposed according to the gravity of the
10 crime and circumstances of the case. (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar
11 Ct. Rptr. 502, 510.)

12 Although the facts involved in *Anderson* are not identical to those in respondent's matter, in
13 balance, the underlying criminal misconduct is sufficiently similar to the facts in respondent's matter
14 to offer the Court guidance in its discipline recommendation. In *Anderson*, discussed above, the
15 attorney received a one-year stayed suspension with a 60-day actual suspension. In aggravation, the
16 attorney had two prior incidents of discipline - a private reproof and a public reproof for inattention
17 to the needs of his clients. In mitigation, the attorney offered impressive character evidence and
18 made important efforts toward overcoming his addiction to alcohol.

19 As in *Anderson*, respondent has a prior record of discipline, albeit less extensive. Unlike
20 *Anderson*, respondent's prior does involve a criminal offense and, when viewed in conjunction with
21 his current convictions, reflects a repeated failure to adhere to the law, repeated jeopardizing of
22 public safety, and repeated disregard for court probation orders. The Court also notes that
23 respondent's matter involves the serious aggravating factor of not participating in the proceeding
24 which is not involved in *Anderson*. Furthermore, respondent cannot avail himself of any mitigating
25 factors to temper the severity of his misconduct and aggravating factors as was the case in *Anderson*.
26 Because of these differences, respondent's matter warrants greater discipline than the 60-day actual
27 suspension imposed in *Anderson*.

28 The State Bar recommends imposition of a two-year actual suspension. This

1 recommendation is excessive in light of relevant case law. Nevertheless, respondent's lack of
2 participation and continued neglect of his alcohol addiction displays his contempt for these
3 proceedings as well as his inability to conform his behavior within the bounds of the law. This
4 warrants a substantial increase from the discipline imposed in *Anderson*.

5 After considering the purposes of attorney discipline, respondent's misconduct and the law,
6 and balancing the aggravating and mitigating factors, the Court recommends, among other things,
7 actual suspension of six months and until respondent complies with rule 205.

8 **V. DISCIPLINE RECOMMENDATION**

9 Accordingly, it is hereby recommended that respondent **THOMAS LAURANCE HYATT**
10 be suspended from the practice of law for one year, that said suspension be stayed, and that he be
11 actually suspended from the practice of law for six months and until the State Bar Court grants a
12 motion to terminate respondent's actual suspension at its conclusion or upon such later date ordered
13 by the Court. (Rules Proc. of State Bar, rule 205(a), (c).)

14 It is also recommended that respondent be ordered to comply with any probation conditions
15 reasonably related to this matter that may hereinafter be imposed by the State Bar Court as a
16 condition for terminating his actual suspension.

17 If the period of actual suspension reaches or exceeds two years, it is further recommended
18 that respondent remain actually suspended until respondent has shown proof satisfactory to the State
19 Bar Court of rehabilitation, fitness to practice, and learning and ability in the general law pursuant
20 to Standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct. (Rules Proc.
21 of State Bar, rule 205(b).)

22 It is further recommended that respondent be ordered to comply with the requirements of rule
23 955 of the California Rules of Court within 30 calendar days of the effective date of the Supreme
24 Court Order in this matter, and file the affidavit provided for in paragraph (c) within 40 days of the
25 effective date of the order showing his compliance with said order.

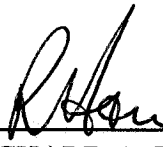
26 It is further recommended that respondent be ordered to take and pass the Multistate
27 Professional Responsibility Examination given by the National Conference of Bar Examiners within
28 one year after the effective date of the discipline imposed herein or during the period of his actual

1 suspension, whichever is later, and furnish satisfactory proof of such to the State Bar's Office of
2 Probation within said period.

3 **VI. COSTS**

4 The Court recommends that costs be awarded to the State Bar pursuant to Business and
5 Professions Code section 6086.10 and that those costs be payable in accordance with section 6140.7.

6
7
8 Dated: January 14, 2005



RICHARD A. HONN

Judge of the State Bar Court

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on January 18, 2005, I deposited a true copy of the following document(s):

DECISION, filed January 18, 2005

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

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

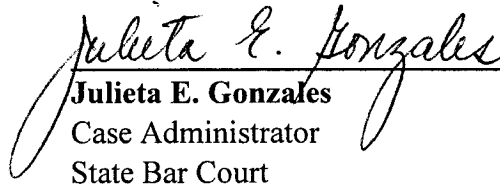
**THOMAS L HYATT ESQ
460 POR LA MAR CIR
SANTA BARBARA CA 93103**

**THOMAS L HYATT ESQ
1707 E VALLEY ROAD
SANTA BARBARA CA 93108**

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

Charles A. Murray, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **January 18, 2005**.



Julieta E. Gonzales
Case Administrator
State Bar Court