

**STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of	)	Case No. 02-C-11201
	)	
<b>BRADLEY HOWARD SPEAR,</b>	)	<b>DECISION AND DISCIPLINE ORDER;</b>
	)	<b>ORDER FILING AND SEALING CERTAIN</b>
<b>Member No. 133371,</b>	)	<b>DOCUMENTS</b>
	)	
<u>A Member of the State Bar.</u>	)	

**INTRODUCTION**

This disciplinary proceeding arises out of the criminal conviction of respondent Bradley Howard Spear (“respondent”) on January 8, 2002, of a violation of Vehicle Code section 23152, subdivision (b) (driving with blood alcohol level of 0.08% or more - a misdemeanor).

After reaching a stipulation as to facts and conclusions of law with the Office of the Chief Trial Counsel of the State Bar of California (“OCTC”), this court approved the stipulation, and on May 25, 2004, respondent was accepted as a participant in the State Bar Court’s Alternative Discipline Program (“ADP”).<sup>1</sup> (Rules Proc. of State Bar, rules 800-807.)

As set forth below, respondent has successfully completed the ADP. Accordingly, pursuant to rule 803 of the Rules of Procedure of the State Bar of California (“Rules of Procedure”), the court hereby orders that respondent be publicly reprovved with conditions in this matter.

**SIGNIFICANT PROCEDURAL HISTORY**

By minute order filed February 26, 2003, the Review Department of the State Bar Court referred this matter to the Hearing Department, pursuant to rule 951(a) of the California Rules of

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<sup>1</sup>The ADP was formerly known as the State Bar Court’s Pilot Program for Respondents with Substance Abuse or Mental Health Issues (“Pilot Program”). The court will use ADP throughout this decision to refer to this program.

Court, for a hearing and decision recommending the discipline to be imposed should the Hearing Department find that the facts and circumstances surrounding respondent's violation of Vehicle Code section 23152, subdivision (b), of which respondent was convicted, involved moral turpitude or other misconduct warranting discipline.

Thereafter, on March 5, 2003, a Notice of Hearing on Conviction ("NOH") was filed by the State Bar Court. This matter was originally assigned to the Honorable Richard A. Honn ("Judge Honn") of the Hearing Department of the State Bar Court.

On April 1, 2003, respondent filed his response to the NOH.

On June 24, 2003, a status conference was held in this matter. On June 25, 2003, Judge Honn issued an order, pursuant to said status conference, referring this matter to the ADP.

On June 24, 2003, respondent contacted the State Bar's Lawyer Assistance Program ("LAP"), and on June 25, 2003, respondent executed an Application Agreement with the LAP.

On September 8, 2003, the undersigned judge held the first ADP conference in this matter.

On November 14, 2003, respondent entered into a participation agreement with the LAP to assist him with his substance abuse problem.

On November 20, 2003, respondent submitted a Nexus Declaration regarding the nexus between his substance abuse problem and the misconduct in this matter, as well as a letter from a physician.

On January 13, 2004, respondent submitted a Proposed Stipulation Re Facts and Conclusions of Law; Points and Authorities Re Levels of Discipline for State Bar Court Pilot Program Lawyers Assistance Program.

On February 9, 2004, the OCTC filed its Brief Re Level of Discipline.

On March 16, 2004, respondent, respondent's counsel and the OCTC entered into a Stipulation Re Facts and Conclusions of Law in this matter which was approved by the court on March 19, 2004.

On May 25, 2004, the court issued a Decision Re Alternative Recommendations for Degree of Discipline pursuant to rule 803(a) of the Rules of Procedure.

On May 25, 2004, respondent entered into a Contract and Waiver for Participation in the

State Bar Court's ADP. On that same date, the court accepted respondent into the ADP.

On May 17, 2006, respondent submitted a Certificate of One Year Participation in the Lawyer Assistance Program, dated that same date, which set forth that: (1) respondent has complied with all drug testing requirements set forth in his LAP Participation Agreement/Plan for one year prior to the date of the certificate; (2) no unauthorized substances were detected during this time period; and (3) the LAP is not aware of the use of any unauthorized substances during this period.

Nearly two years after respondent was accepted into the ADP, on May 23, 2006, this court filed an order finding that respondent had successfully completed the ADP and indicating that it would issue this decision as to the lower level of discipline set forth in the May 25, 2004, Decision Re Alternative Recommendations for Degree of Discipline. The Stipulation Re Facts and Conclusions of Law was also filed on May 23, 2006.

### **FACTS AND CONCLUSIONS OF LAW**

This Stipulation Re Facts and Conclusions of Law, approved by the court on March 19, 2004, is incorporated by reference as if set forth fully herein.

#### **Jurisdiction**

Respondent was admitted to the practice of law in California on April 8, 1988, and has been a member of the State Bar of California at all times relevant to this proceeding.

Case No. 02-C-11201

#### **A. Respondent's Prior Convictions**

Prior to the convictions which have given rise to the current disciplinary proceeding, respondent suffered the following four prior convictions for alcohol-related driving offenses:

(a) On October 7, 1985, respondent was convicted of a misdemeanor violation of Vehicle Code section 21103.5 [reckless driving involving the consumption of alcohol]. He was placed on criminal probation for two years;<sup>2</sup>

(b) On May 2, 1991, respondent was convicted of a misdemeanor violation of Vehicle Code section 23152, subdivision (b) [driving with blood alcohol level of 0.08% or more]. He was placed

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<sup>2</sup>This conviction occurred prior to respondent's admission to the practice of law.

on criminal probation for three years and ordered to enroll in an SB-38 alcohol abuse program;

(c) On April 23, 1993, respondent was convicted of a misdemeanor violation of Vehicle Code section 23152, subdivision (b) and was placed on probation for three years;

(d) On May 8, 1997, respondent was convicted of a misdemeanor violation of Vehicle Code section 23103 [reckless driving involving alcohol].<sup>3</sup>

#### **B. Respondent's Current Convictions**

On September 6, 2001, Los Angeles police officers observed respondent speeding and straddling the traffic lanes. They also saw respondent fail to obey a red traffic signal and continue through the intersection without stopping.

When the police stopped his vehicle, respondent displayed signs of intoxication. He was unable to satisfactorily perform field sobriety tests for the officers and a Preliminary Alcohol Screening ("PAS") test indicated that he had a blood alcohol level of 0.09%, in excess of the legal limit of 0.08%.

Respondent was arrested for driving under the influence of alcohol in violation of Vehicle Code section 23152, subdivision (a). On September 18, 2001, respondent was charged in Los Angeles Superior Court with misdemeanor violations of Vehicle Code section 23152, subdivision (a) [driving under the influence of alcohol] and Vehicle Code section 23152, subdivision (b) [driving with blood alcohol level of 0.08% or more]. Each count alleged enhancements for a prior alcohol-related driving conviction within the last seven years and an allegation that respondent was driving at an excessive speed while committing those offenses. (*People v. Bradley Howard Spear*, Los Angeles Super. Ct. Case No. 1SF03906.)

On January 8, 2002, respondent entered a plea of *nolo contendere* to Count Two of the information. As part of the plea agreement, Count One was dismissed and the sentence enhancements were stricken. The court found respondent guilty of a violation of Vehicle Code section 23152, subdivision (b). On the same date, the court suspended imposition of sentence and

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<sup>3</sup>In addition to these alcohol-related driving offenses, respondent was also convicted on June 17, 1994, of a violation of Vehicle Code section 14601.1, subdivision (a) [driving with a suspended license] and was placed on criminal probation for two years.

placed respondent on probation for three years on conditions that included his completion of a three-month first-offender alcohol education program; a 90-day restriction on respondent's driving privilege; and an order prohibiting respondent from driving a motor vehicle without a valid license. Respondent was present in court when these conditions were imposed.

On March 20, 2002, less than 90 days later, the police observed respondent driving a motor vehicle in excess of the posted speed limit. When respondent was stopped, the police discovered that he was driving while his driving privilege was suspended or revoked.

On April 8, 2002, respondent was charged with violations of Vehicle Code section 14601.2 [wilfully driving a motor vehicle with knowledge that his driving privilege had been suspended or revoked and Vehicle Code section 14601.5 [wilfully driving a motor vehicle with knowledge that his driving privilege had been suspended or revoked pursuant to Veh. Code, § 13353, *et seq.*]. The criminal complaint also requested that respondent's probation in Case No. 1SF03906 be revoked. (*People v. Bradley Howard Spear*, L.A. Super. Ct. Case No. 2MT03543.)

On June 14, 2002, respondent entered a plea of *nolo contendere* to a violation of Vehicle Code section 14601.2. Pursuant to the plea agreement, the charged violation of Vehicle Code section 14601.5 was dismissed. Respondent also stipulated that he had violated the conditions of his criminal probation. The court revoked and reinstated respondent's probation for a period of two years, with the added condition that respondent serve an additional twenty days in jail.

Respondent's January 8, 2002, conviction of a violation of Vehicle Code section 23152, subdivision (b) and his June 14, 2002, conviction of a violation of Vehicle Code section 14601.2 do not involve moral turpitude, but do involve other misconduct warranting the imposition of discipline.

### **AGGRAVATION AND MITIGATION**

#### **Aggravation**

Respondent has a prior record of discipline in three matters, all of which involve convictions for driving offenses. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(b)(I) ("standard").)

Effective February 25, 1992, respondent received a private reproof as a result of his May 2, 1991, conviction of a violation of Vehicle Code section 23152, subdivision (b) [driving with a

blood alcohol level of 0.08% or more].) Respondent's blood alcohol level at the time of his arrest on January 1, 1991, was measured at 0.21% and 0.19%. Respondent was placed on three years' probation and was required to enroll in the SB-38 alcohol abuse program. (*In the Matter of Bradley Howard Spear*, State Bar Court Case No. 91-C-03027.)

Thereafter, effective May 11, 1994, respondent received a public reproof as a result of his April 23, 1992, conviction of a second violation of Vehicle Code section 23152, subdivision (b). At the time of respondent's arrest on October 3, 1992, his blood alcohol level was measured at 0.08%. Respondent was placed on three years' probation with 90 days in the county jail. (*In the Matter of Bradley Howard Spear*, State Bar Court Case No. 93-C-13841.)

Finally, effective December 22, 1994, respondent received a private reproof as a result of his June 17, 1994, conviction of a violation of Vehicle Code section 14610.2, subdivision (a) [driving with a suspended license]. Respondent's probation in his earlier criminal matter was revoked and reinstated for a period of two years and he was required to serve an additional 20 days in county jail. (*In the Matter of Bradley Howard Spear*, State Bar Court Case No. 94-C-14481.)

Respondent's misconduct harmed the public. (Standard 1.2(b)(iv).)

Respondent's current misconduct evidences multiple acts of wrongdoing. (Standard 1.2(b)(ii).)

### **Mitigation**

Respondent was candid and cooperative to the State Bar during the disciplinary investigation and proceedings. (Standard 1.2(e)(v).)

Respondent was suffering from a substance abuse problem at the time of his misconduct which was directly responsible for the misconduct, and he has established through clear and convincing evidence that he no longer suffers from such difficulties. (Standard 1.2(e)(iv).)

Respondent's Nexus Declaration and the parties' Stipulation Re Facts and Conclusions of Law establish that at the time of his misconduct, respondent was suffering from a substance abuse problem which was addictive in nature. In addition, respondent's Nexus Declaration and the stipulated facts also establish a causal connection between respondent's substance abuse problem and the misconduct found in the underlying criminal and disciplinary proceeding. The court

therefore finds that respondent has adequately established a nexus between his substance abuse problem and his criminal conduct, i.e., that his substance abuse problem directed caused his criminal conduct.

Furthermore, respondent sought assistance from the LAP in June 2003 to assist him with his substance abuse problem. On June 25, 2003, respondent executed an Application Agreement with the LAP, and on November 14, 2003, respondent signed a long-term participation agreement with the LAP. Since entering into the LAP, respondent has maintained compliance with the terms of his participation agreement. Furthermore, on May 17, 2006, the LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program which set forth that: (1) respondent has complied with all drug testing requirements set forth in his LAP Participation Agreement/Plan for one year prior to the date of the certificate; (2) no unauthorized substances were detected during this time period; and (3) the LAP is not aware of the use of any unauthorized substances during this period.

In addition to participating in the LAP, respondent was accepted into the court's ADP on May 25, 2004. Respondent's participation in the ADP allowed the court to monitor respondent's progress in the LAP and his overall efforts at addressing the problem that led to his criminal misconduct. Respondent fully complied with all the terms and conditions of the ADP, including timely appearing for all court ordered events. Respondent was an exemplary participant in the ADP. Based on his dedication to his sobriety and to the ADP and the LAP, the court finds it appropriate to reduce the length of time that respondent is required to participate in the ADP from 36 months to nearly two years. (Rules Proc. of State Bar, rule 804.) Accordingly, this court found that respondent has successfully completed the ADP.

Respondent is entitled to significant mitigating credit for his participation in the LAP and his successful completion of the court's ADP.

### **DISCUSSION**

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

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

Standard 3.4 provides that conviction of a crime which does not involve moral turpitude, either inherently or in the facts and circumstances surrounding the commission of the crime, but which does involve other misconduct warranting discipline, must result in a sanction appropriate to the nature and extent of the misconduct.

Standard 1.7(b) provides that if an attorney is found culpable of misconduct in any proceeding and the member has a record of two prior impositions of discipline, the degree of discipline to be imposed in the current proceeding must be disbarment, unless the most compelling mitigating circumstances clearly predominate.

However, the standards are only guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) “[E]ach case must be resolved on its own particular facts and not by application of rigid standards.” (*Id.* at p. 251.) In determining the degree of discipline to be imposed or recommended in this proceeding, the court looks to several cases for guidance.

*In re Kelley* (1990) 52 Cal.3d 487 involved an attorney with separate DUI convictions in 1984 and 1986. Kelley’s second conviction occurred while she was still on probation for the first offense and constituted a violation of her probation. Her blood alcohol level in the second case was between .16% and .17%. Before the California Supreme Court, Kelley argued that she should not be subject to any discipline because her conduct was unrelated to the practice of law.

The Supreme Court found that a nexus existed between the attorney’s misconduct and the practice of law and, thus, expressly declined to resolve whether such a nexus was necessary in finding that the misconduct warranted the imposition of discipline. The Supreme Court concluded that a nexus existed between Kelley’s DUI convictions and the practice of law in two ways. First, Kelley’s second DUI conviction occurred while she was still on criminal probation from her first offense and, therefore, evidenced a disregard for the conditions of her probation, the law and the safety of the public. (*In re Kelley, supra*, 52 Cal.3d at p. 495.)



Secondly, and more importantly, the court found that the circumstances surrounding Kelley's two DUI convictions indicated a continuing problem with alcohol abuse. As for its finding on the nexus issue, the Supreme Court stated:

Petitioner's behavior evidences both a lack of respect for the legal system and an alcohol abuse problem. Both problems, if not checked, may spill over into petitioner's professional practice and adversely affect her representation of clients and her practice of law.

(*In re Kelley*, *supra*, 52 Cal.3d at p. 498.)

The Supreme Court concluded that the facts and circumstances surrounding Kelley's conviction involved other misconduct warranting discipline and that the imposition of a public reproof was appropriate. (*In re Kelley*, *supra*, 52 Cal.3d at p. 498.)

In *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208, the attorney received a 60-day actual suspension for more serious misconduct (two DUI conviction referrals with three prior DUI convictions) and aggravating circumstances (including two prior reprovals, prior service as a deputy district attorney prosecuting DUIs and aggressive and uncooperative behavior at the time of his arrests). The attorney participated in the disciplinary proceeding and presented mitigating evidence, including maintenance of sobriety, regular psychiatric counseling for major depression and alcoholism, and "impressive" good character evidence. (*In the Matter of Anderson*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 213.)

In this court's view, respondent's misconduct in the present case is significantly more serious than the misconduct in *Kelley* and slightly more serious than the misconduct in *Anderson*. Unlike *Anderson*, there is no evidence that respondent was aggressive or uncooperative at the time of his arrests. Nevertheless, respondent has four prior alcohol-related driving convictions (as compared to three in *Anderson*) and has also been convicted on at least two additional occasions of driving with a suspended license. Additionally, at least three of respondent's driving offenses were committed while he was still on probation from earlier convictions. Finally, although respondent has not been a criminal prosecutor, he practices criminal law and is or should be well aware of the dangers of intoxicated driving and the harm caused to the administration of justice by the volume of DUI cases in the criminal justice system.

The OCTC has recommended that if respondent successfully completes the ADP, respondent should be given a stayed suspension of two years, with five years' probation and no period of actual suspension. Respondent recommended that the court impose a public reproof if he successfully completes the ADP.

Supreme Court case law establishes that an attorney's rehabilitation from alcoholism or other substance abuse problems can be accorded significant weight if it is established that (1) the abuse was addictive in nature; (2) the abuse causally contributed to the misconduct; and (3) the attorney has undergone a meaningful and sustained period of rehabilitation. (*Harford v. State Bar* (1990) 52 Cal.3d 93, 101; *In re Billings* (1990) 50 Cal.3d 358, 367.)

At the time respondent engaged in his criminal conduct, he was suffering from a substance abuse problem which was addictive in nature, and respondent's substance abuse problem directly caused the criminal conduct in this matter. Furthermore, respondent has been participating in the LAP since 2003, and the court finds that respondent has successfully completed the ADP. Respondent's successful completion of the ADP, which required his compliance with all terms and conditions set forth by the LAP, as well as the Certificate of One Year Participation in the Lawyer Assistance Program, which sets forth that: (1) respondent has complied with all drug testing requirements set forth in his LAP Participation Agreement/Plan for one year prior to the date of the certificate; (2) no unauthorized substances were detected during this time period; and (3) the LAP is not aware of the use of any unauthorized substances during this period, establishes, by clear and convincing evidence that respondent has undergone a meaningful and sustained period of rehabilitation. (*Harford v. State Bar, supra*, 52 Cal.3d at p. 101; *In re Billings, supra*, 50 Cal.3d at p. 367.)

Therefore, the court concludes that respondent's discipline recommendation is appropriate in light of respondent's successful completion of the ADP. The court therefore issues the following disciplinary order.

#### **DISCIPLINE ORDER**

Accordingly, it is ordered that respondent **BRADLEY HOWARD SPEAR** is hereby publicly reproofed. Pursuant to the provisions of rule 270(a) of the Rules of Procedure, the public

reproval will be effective when this decision becomes final. Furthermore, pursuant to rule 956(a) of the California Rules of Court and rule 271 of the Rules of Procedure, the court finds that the interests of respondent and the protection of the public will be served by the following specified conditions being attached to the public reproval imposed in this matter. Failure to comply with any conditions attached to this reproval may constitute cause for a separate proceeding for wilful breach of rule 1-110 of the Rules of Professional Conduct of the State Bar of California. Respondent is hereby ordered to comply with the following conditions attached to his public reproval for a period of three years following the effective date of the public reproval imposed in this matter:

1. During the three-year period, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;

2. Within ten (10) calendar days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone number, respondent must report such change in writing to both the Office of Probation and to the Membership Records Office of the State Bar;

3. Respondent must comply with all provisions and conditions of his Participation Agreement with the Lawyer Assistance Program (“LAP”) and must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent’s participation in the LAP and his compliance with the LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition;

4. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period during which these conditions are in effect. Under penalty of perjury, respondent must state whether he has complied with the State Bar Act, the Rules of Professional Conduct and all conditions attached to his reproval within the preceding calendar quarter. If the first report will cover less than thirty (30) calendar days, that report must be submitted on the reporting date for the next calendar quarter and must cover the extended period. In addition to all quarterly reports, respondent must submit a final report,

containing the same information required by the quarterly reports. The final report must be submitted no earlier than twenty (20) days before the last day of the period during which these conditions are in effect and no later than the last day of that period;

5. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully, all inquiries of the Office of Probation which are directed to him personally or in writing relating to whether respondent is complying or has complied with the conditions attached to this reproof;

6. Within one year of the effective date of this public reproof, respondent must provide the Office of Probation with satisfactory proof of his attendance at a session of State Bar Ethics School and of his passage of the test given at the conclusion of that session;

7. Respondent must comply with all terms and conditions of probation in the underlying criminal proceedings which gave rise to this disciplinary proceeding;

8. Respondent must take and pass the Multistate Professional Responsibility Examination ("MPRE") administered by the National Conference of Bar Examiners, and provide proof of passage of the MPRE to the Office of Probation, within one year after the effective date of this public reproof.

### **COSTS**

Costs are awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

### **ORDER FILING AND SEALING CERTAIN DOCUMENTS**

The court orders the Clerk to file this Decision and Discipline Order; Order Filing and Sealing Certain Documents. Thereafter, pursuant to rule 806© of the Rules of Procedure, all other documents not previously filed in this matter will be sealed pursuant to rule 23 of the Rules of Procedure

**IT IS SO ORDERED.**

Dated: June 16, 2006

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ROBERT M. TALCOTT  
Judge of the State Bar Court