



PUBLIC MATTER

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THE STATE BAR COURT

SEP 22 2004

HEARING DEPARTMENT - SAN FRANCISCO COURT CLERK'S OFFICE
SAN FRANCISCO

In the Matter of

Case No. 02-C-15896-PEM

RICHARD LAVERN WYRICK,

DECISION

Member No. 42504,

A Member of the State Bar.

I. INTRODUCTION

In this disciplinary matter, which proceeded by default, Sherry B. McLetchie appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent, Richard Lavern Wyrick, only appeared at the initial status conference in this matter but not thereafter.

This conviction referral matter is based upon Respondent's conviction of a violation of Penal Code section 270 (Failure to Provide), a misdemeanor.

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 two years and that the suspension be stayed including a one-year actual suspension and until he pays all child support arrearage and 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 December 11, 2003, the Review Department of the State Bar Court filed an order referring this matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed if the Hearing Department finds that the facts and circumstances surrounding Respondent's violation of Penal Code section 270 involved moral turpitude or other

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1 misconduct warranting discipline.

2 On January 15, 2004, the State Bar Court filed a Notice of Hearing on Conviction and a
3 separate notice advising Respondent, among other things, that an initial status conference would be
4 held on February 23, 2004. Both notices were properly served on Respondent at his official
5 membership records address, by certified mail, return receipt requested, as provided in Business and
6 Professions Code section 6002.1 (c). A copy of the Review Department's referral order was attached
7 to the Notice of Hearing on Conviction.

8 Respondent appeared telephonically at the February 23, 2004, status conference and the court
9 ordered a further status conference on April 12, 2004. Respondent did not appear at the April 12,
10 2004, status conference.

11 Respondent did not file a response to the Notice of Hearing on Conviction. On February 19,
12 2004, the State Bar filed a corrected motion for entry of default and on that same day properly served
13 the motion on Respondent at his official membership records address and a courtesy address. The
14 motion advised Respondent that minimum discipline of disbarment would be sought if the court
15 determined his conviction involved misconduct warranting discipline. Respondent did not respond
16 to the motion.

17 On April 13, 2004, the court entered Respondent's default and enrolled him inactive effective
18 three days after service of the order. The order was properly served on Respondent at his official
19 membership records address on that same date by certified mail, return receipt requested.

20 On May 3, 2004, the State Bar filed a request for waiver of default hearing and a brief on
21 culpability and discipline.¹ The matter was submitted for decision on May 3, 2004.

22 On June 24, 2004, the court vacated its original submission date and ordered the State Bar
23 to file documentation regarding Respondent's sentence.

24 On July 14, 2004, the State Bar filed as Exhibit 5 to its brief on culpability and discipline
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26 ¹Exhibits 1-4 attached to the State Bar's brief on culpability and discipline are admitted
27 into evidence in accordance with rule 202 of the Rules of Procedure. These exhibits consist of
28 Respondent's record of three prior incidents of discipline, and a Fresno County District Attorney
report dated October 30, 2001.

1 certified copies of a January 23, 2004, minute order and register of actions in criminal case number
2 M01914552-5, *People v. Wyrick*.² The matter was resubmitted for decision on August 6, 2004.

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

4 **A. Jurisdiction**

5 Respondent was admitted to the practice of law in California on January 9, 1969, was a
6 member at all times pertinent to the allegations and is currently a member of the State Bar of
7 California.³

8 **B. The Conviction**

9 According to Business & Professions code section 6101(a), the record of conviction shall be
10 conclusive evidence of guilt of the crime of which Respondent has been convicted. On or about
11 November 27, 2001, the Fresno County District Attorney filed a criminal complaint in the Fresno
12 County Superior Court, case number M01914552-5, charging Respondent with violations of Penal
13 Code section 270 (Failure to Provide) and 166(a)(4) (Disobeying Child Support Order), both
14 misdemeanors. On April 12, 2002, Respondent pled guilty to a single violation of Penal Code
15 section 270.⁴ On that same date the court accepted Respondent's guilty plea. Specifically,
16 Respondent pled guilty to wilfully and unlawfully omitting to furnish necessary food, clothing,
17 shelter, medical attendance, and remedial care for his minor child, Gabrielle Wyrick, born September
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19 _____
20 ²These documents are admitted into evidence in accordance with rule 202 of the Rules of
21 Procedure.

22 ³The State Bar presented no evidence establishing Respondent's bar membership at the
23 time he was convicted or committed the acts resulting in his conviction. In accordance with
24 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 January 9, 1969.

25 ⁴The evidence addressing Respondent's guilty plea is inconsistent. The register of actions
26 indicates that Respondent pled guilty to Penal Code sections 270 and 166(a)(4) while
27 Respondent's plea form dated April 12, 2002, reflects a guilty plea to Penal Code section 270
28 only. Nevertheless, since the State Bar transmittal and the Review Department referral order
reference a violation of Penal Code section 270 only, the court will base its analysis on a single
violation of this Penal Code section.

1 11, 1990.⁵

2 On July 18, 2003, Respondent was sentenced to 365 days in custody. The sentence was
3 suspended except for the first thirty days. The court ordered Respondent to pay \$2,000.00 toward
4 his support arrearage by August 29, 2003, and another \$2,000.00 by September 30, 2003. Due to
5 Respondent's failure to appear at post-sentencing court hearings, bench warrants were issued on two
6 separate occasions on October 3, 2003, and November 14, 2003. On January 23, 2004, Respondent
7 began serving an additional sixty days in custody due to his failure to comply with the court's order
8 to pay his support arrearage.

9 Respondent did not appeal his criminal conviction.

10 **C. Legal Conclusions**

11 The State Bar does not contend that the facts and circumstances surrounding Respondent's
12 conviction involve moral turpitude. Based on the facts of this record, the court finds that the facts
13 and circumstances surrounding Respondent's conviction do not involve moral turpitude.

14 The State Bar provides no discussion as to whether Respondent's conviction of violating
15 Penal Code section 270 constitutes other misconduct warranting discipline.⁶

16 The Supreme Court articulated legal principals regarding the application of the "other
17 misconduct warranting discipline" standard in *In re Rohan* (1978) 21 Cal.3d 195. According to the
18 lead opinion, an attorney's violation of the law which did not involve moral turpitude is subject to
19 State Bar discipline if the violation "demeans the integrity of the legal profession and constitutes a
20 breach of the attorney's responsibility to society." (*Id.* at p. 204 (lead opn. of Clark, J. and
21 Richardson, J.)) The court finds that Respondent's wilful failure to provide support for his child
22 demeans the integrity of the legal profession and is a breach of his responsibility to society.

24 ⁵According to the Fresno County District Attorney report dated October 30, 2001,
25 Respondent's daughter was diagnosed with a mild form of cerebral palsy necessitating physical
26 and orthopedic therapy. According to this same report, Respondent's support arrearage as of
October 10, 2001, was \$18,743.83.

27 ⁶The State Bar merely asserts that the factual allegations in the Notice of Hearing on
28 Conviction are deemed admitted. Such an assertion is of no assistance to this court, since said
notice contains no factual allegations.

1 Therefore Respondent's conviction of violating Penal Code section 270 constitutes other misconduct
2 warranting discipline.

3 **IV. LEVEL OF DISCIPLINE**

4 **A. Aggravating Circumstances**

5 Respondent's prior record of discipline is an aggravating factor. (Rules Proc. of State Bar,
6 tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i).)⁷

7 1. In Supreme Court case number S112439, effective April 17, 2003, Respondent was
8 suspended for one year, stayed, and was actually suspended for six months for failing to maintain
9 funds in trust and commingling in February 2001.

10 2. In Supreme Court case number S037696, effective April 29, 1994, Respondent
11 received a six-month stayed suspension for failing to comply with conditions of his private reproof
12 in 1993.

13 3. In case number 91-O-01299, effective, April 12, 1992, Respondent was privately
14 reproofed for commingling from December 1990 to May 1991.

15 Respondent made no attempt to rectify or atone for the consequences of his misconduct as
16 evidenced by his post-conviction, continuing failure to pay child support arrearage resulting in
17 additional incarceration. (Standard 1.2(b)(v).)

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

21 **B. Mitigating Circumstances**

22 Respondent bears the burden of establishing mitigation by clear and convincing evidence,
23 and since he did not participate in these proceedings, no mitigating evidence was presented or
24 discernable from the record.

25 **Discussion**

26 The purpose of disciplinary proceedings is not to punish the attorney, but to protect the
27

28 ⁷All further references to standards are to this source.

1 public, the courts, and the legal profession, to preserve public confidence in the profession, and to
2 maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989)
3 49 Cal.3d 103, 111; Standard 1.3.)

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

7 Standard 1.7(b) provides for disbarment unless the most compelling mitigation circumstances
8 clearly predominate when a member has a record of two prior impositions of discipline.

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

13 The standards, however, are guidelines from which the court may deviate in fashioning the
14 most appropriate discipline considering all the proven facts and circumstances of a given matter.
15 (*Howard v. State Bar* (1990) 51 Cal.3d 215.) They are not mandatory sentences imposed in a blind
16 or mechanical manner. (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.)

17 Respondent has been convicted of a single misdemeanor count of failing to provide support
18 for his minor daughter. The facts and circumstances surrounding Respondent's conviction do not
19 involve moral turpitude but do involve other misconduct warranting discipline. There is no
20 mitigation. In aggravation, the court has found an extensive record of prior discipline, indifference
21 toward rectification or atonement, and failure to participate in the proceeding prior to the entry of
22 default.

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

26 Although the court did not review case law involving failing to provide support for a minor,
27 in arriving at its discipline recommendation, the court finds instructive several cases involving
28 criminal misconduct related to an attorney's failure to pay or withhold money. Although the facts

1 involved in these cases are not identical to the facts involved in Respondent's matter, in balance, the
2 underlying criminal misconduct, the factors in aggravation, and the factors in mitigation are
3 sufficiently similar to the facts in Respondent's matter to offer the court guidance in its discipline
4 recommendation.

5 In *In re Brown* (1995) 12 Cal.4th 205, an attorney was convicted of three misdemeanor
6 counts of failure to remit to the state funds withheld from employee wages. As a condition of
7 criminal probation, the attorney was required to pay more than \$35,000.00 in tax withholdings. The
8 attorney's criminal conduct did not involve moral turpitude but did involve other misconduct
9 warranting discipline. The attorney received a two-year stayed suspension and a two-year probation
10 with a sixty-day actual suspension. In mitigation, the attorney had no prior record of discipline in
11 over twenty-two years of practice, suffered from physical disabilities, financial difficulties, displayed
12 good character, and was candid and cooperative during disciplinary proceedings. The Court
13 discussed no factors in aggravation.

14 In *In re Morales* (1983) 35 Cal.3d 1, an attorney was convicted of 27 misdemeanor counts
15 due to his failure to withhold or pay payroll taxes and unemployment insurance contributions for his
16 employees despite having withheld the funds from his employees. The facts and circumstances
17 surrounding the attorney's conviction involved other misconduct warranting discipline rather than
18 moral turpitude. The attorney received an eighteen-month stayed suspension coupled with an
19 eighteen-month probation. The Court discussed no factors in mitigation. In aggravation, the
20 attorney was previously privately reprovved.

21 In *In re Rohan, supra*, 21 Cal.3d 195, an attorney was convicted of wilful failure to file his
22 federal income tax return. As a condition of probation, the attorney was required to pay all back
23 taxes plus penalties. The facts and circumstances surrounding the attorney's criminal conviction did
24 not involve moral turpitude, but did involve other misconduct warranting discipline. Discipline
25 consisting of two years stayed suspension, two years probation with a sixty-day actual suspension
26 was imposed. The Court found no mitigating circumstances. In aggravation, the attorney had a prior
27 private reprovval.

28 In *In the Matter of Bouyer*, (Review Dept. 1988) 3 Cal.3 State Bar Ct. Rptr. 888, an attorney

1 was convicted of a misdemeanor count of failing to file reports of his employment taxes with the
2 State of California. As a condition of his probation, the attorney was required to pay the unpaid
3 balance of his employment taxes plus interest. The facts and circumstances surrounding the
4 attorney's misdemeanor conviction involved misconduct warranting discipline but not moral
5 turpitude. The attorney received an eighteen-month stayed suspension, a two-year probation, and
6 a ninety-day actual suspension. The attorney received mitigative credit for his good character, pro
7 bono work, and cooperation with the State Bar. In aggravation, the attorney had three prior incidents
8 of discipline, ranging from a six-month actual suspension in 1991 for settling three client matters
9 without authorization, failing to promptly pay clients, and failing to maintain client funds in trust;
10 a three-year stayed suspension in 1993 for failing to promptly pay client funds and failing to maintain
11 the funds of three clients in trust; and an eighteen-month suspension in 1995 for failing to
12 competently perform in a single client matter. Although the court characterized the attorney's
13 offense as less serious than that in *Brown* and *Morales* since the attorney did not deduct the tax
14 levies from his employee's wages and then fail to pay over the taxes, the attorney's extensive record
15 of prior discipline warranted a period of actual suspension.

16 According to these cases, an appropriate sanction is stayed suspension in the range of
17 eighteen months to two years, with a probationary period in the range of eighteen months to two
18 years, and an actual suspension in the range of sixty to ninety days.

19 Particularly instructive is *Bouyer* since the attorney in that case had three prior incidents of
20 discipline as does Respondent. As in *Bouyer*, Respondent's three priors differ from the criminal
21 offense involved, but whereas the attorney's second and third priors in *Bouyer* did not result in actual
22 suspension, Respondent's third prior culminated in a six-month actual suspension. The court also
23 notes that Respondent's matter involves the additional aggravating factors of not participating in the
24 proceeding and failing to rectify the consequences of his misconduct. Furthermore, Respondent
25 cannot avail himself of any mitigating factors to temper the severity of his misconduct and
26 aggravating factors as was the case in *Bouyer*. Because of these differences, Respondent's matter
27 warrants greater discipline than the ninety-day actual suspension imposed in *Bouyer*.

28 The State Bar recommends Respondent's disbarment. This recommendation is excessive in

1 light of relevant case law. Nevertheless, Respondent's post-conviction arrest warrants, additional
2 incarceration, and continued neglect of his duty to provide support for his minor child displays his
3 inability to conform his behavior within the bounds of the law and warrants a substantial increase
4 from the discipline imposed in *Bouyer*.

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 one year and until Respondent pays all child support arrearage and complies
8 with rule 205.

9 **V. DISCIPLINE RECOMMENDATION**

10 Accordingly, it is hereby recommended that Respondent **RICHARD LAVERN WYRICK**
11 be suspended from the practice of law for two years, that said suspension be stayed, and that he be
12 actually suspended from the practice of law for one year and until he provides satisfactory evidence
13 of payment of all child support arrearage related to Gabrielle Wyrick to the State Bar's Office of
14 Probation and until the State Bar Court grants a motion to terminate Respondent's actual suspension
15 at its conclusion or upon such later date ordered by the court. (Rules Proc. of State Bar, rule 205(a),
16 (c).)

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

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

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

1 It is further recommended that Respondent be ordered to take and pass the Multistate
2 Professional Responsibility Examination given by the National Conference of Bar Examiners within
3 one year after the effective date of the discipline imposed herein or during the period of his actual
4 suspension, whichever is later, and furnish satisfactory proof of such to the State Bar's Office of
5 Probation within said period.

6 **VI. COSTS**

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

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11 Dated: September 22, 2004


PAT MCELROY

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 San Francisco, on September 22, 2004, I deposited a true copy of the following document(s):

DECISION

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

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

**RICHARD LAVERN WYRICK
1655 W MAGILL
FRESNO CA 93711**

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

SHERRIE MCLETCHIE, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on September 22, 2004.



Laretta Cramer
Case Administrator
State Bar Court