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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of **GEORGE HALL DUNLAP, JR.,** **Member No. 138896,** A Member of the State Bar.	)	Case No.: **02-O-14001-LMA** **DECISION**

I. INTRODUCTION.

In this contested, original disciplinary proceeding, the Office of the Chief Trial Counsel of the State Bar of California (hereafter State Bar) charges respondent **GEORGE HALL DUNLAP, JR.** with six counts of professional misconduct. The court finds, by clear and convincing evidence, that respondent is culpable on four of the six counts, which four counts charge respondent with failing to obey the laws of the State of California (Bus. & Prof. Code, § 6068, subd. (a));[1] engaging in acts involving moral turpitude (§ 6106); and failing to report, to the State Bar, that a two-count felony information had been filed against him (§ 6068, subd. (0)(4)).

For the reasons stated *post*, the court recommends that respondent be placed on five years' stayed suspension, five years' probation, and two years' actual suspension continuing until

[1] Unless otherwise noted, all further statutory references are to the Business and Professions Code.

respondent establishes his rehabilitation, fitness to practice, and learning in the law in accordance with standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.[2]

II. PERTINENT PROCEDURAL HISTORY.

The State Bar initiated this proceeding by filing a notice of disciplinary charges (hereafter NDC) on May 31 2006. Thereafter, the State Bar filed a first amended NDC. Then, on December 11, 2006, the State Bar filed a second amended NDC. And, on January 19, 2007, respondent filed a response to the second amended NDC.

The trial was held on December 14, 2007, and on April 22, 23, and 25, 2008. After posttrial briefing, the court took the matter under submission for decision on June 3, 2008.

The State Bar was represented by Deputy Trial Counsel Tammy Albertsen-Murray. Respondent was represented by Attorney Jonathan I. Arons.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Many of the court's findings of fact are based in large part on credibility determinations. After carefully observing respondent testify before it and after carefully considering, inter alia, respondent's demeanor while testifying; the manner in which he testified; the character of his testimony; his interest in the outcome in this proceeding; his capacity to perceive, recollect, and communicate the matters on which he testified; and after carefully reflecting on the record as a whole, the court finds that much, if not most, of respondent's testimony lacks credibility.[3] (See, generally, Evid. Code, § 780; *In the Matter of Berg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725, 736-737.)

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[2] The standards are found in title IV of the Rules of Procedure of the State Bar of California. All further references to standards are to this source.

[3] Of course, the court's rejection of much of respondent's testimony " 'does not reveal the truth itself or warrant an inference that the truth is the direct converse of the rejected testimony.' " (*Edmondson v. State Bar* (1981) 29 Cal.3d 339, 343, quoting *Estate of Bould* (1955) 135 Cal.App.2d 260, 265; see also *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737, 749.)

In many instances, respondent's testimony was not only evasive, but it was also inconsistent with the clearly more credible and reliable evidence proffered by the State Bar. In other instances, even respondent's uncontradicted testimony lacked credibility. (See *REO Broadcasting Consultants v. Martin* (1999) 69 Cal.App.4th 489, 498, fn. 7 [trial court is not bound to accept as true the sworn testimony of a witness even in the absence of evidence contradicting it].) Finally, with respect to respondent's testimony pertaining to his interaction with various law enforcement officers, respondent's testimony completely lacked any credibility whatsoever.

A. Jurisdiction.

Respondent was admitted to the practice of law in the State of California on December 22, 1988, and has been a member of the State Bar of California since that time.[4]

B. Findings of Fact and Conclusions of Law

For the two-year period before he was admitted to the practice of law in December 1988, respondent worked as a law clerk/legal intern for the San Joaquin County District Attorney's Office and routinely appeared in court for that office as a certified law student (Cal. Rules of Court, former rule 983.2 [now rule 9.42]). Once he was admitted to practice, respondent was promoted to deputy district attorney (hereafter sometimes DDA) in that same office. Respondent thereafter served as a DDA in that office until he was terminated for cause on September 3, 2002. Throughout his tenure as a DDA in the San Joaquin County District Attorney's Office, respondent was repeatedly recognized as an exceptional prosecutor with superior legal abilities. Even today, as a DDA in the Santa Cruz County District Attorney's Office, respondent again handles only the most difficult and complex high profile cases.

1. The February 4, 1995, Incident -- Count 1

[4] Respondent was actually suspended from the practice of law for almost a full year from September 16, 2003, through August 30, 2004.

a. Facts

Shortly before 1:00 a.m. on February 4, 1995, California Highway Patrol Officers Christopher Port and Kevin Guthrie stopped respondent's pick-up truck because it was weaving from side to side and because respondent's arms were hanging out of the window (it was a very cold morning). Respondent's then wife, Jill Dunlap, was driving. Respondent was seated next to Jill, and another male passenger was seated next to respondent.

Officer Port asked Jill for her driver's license; he did not ask respondent for his identification. Nonetheless, respondent opened his wallet and displayed his badge, which identified him as a deputy district attorney, to officer Port. Officer Port then asked respondent where he worked, and respondent answered the district attorney's office.

When officer Port asked Jill whether she had been drinking, respondent slammed his wallet shut and said "This is bullshit." Officer Port knew that respondent had been drinking alcohol. In officer Port's view, respondent was both highly intoxicated and highly agitated at being stopped. Officer Port had Jill get out of the truck and noticed that she had alcohol on her breath. At about that same time, respondent asked officer Port if he was " 'seriously considering going through with this.' "

Respondent started to get out of the truck twice, but each time officer Port ordered him to stay in the truck. At that point, officer Port called his supervisor, Sergeant L. Quinn, for back up. Officer Port wanted three officers present (one for each person in respondent's truck). In addition, officer Port wanted Sergeant Quinn there because respondent had identified himself as a deputy district attorney and because respondent's "level of intoxication was having 'a detrimental effect on his ability to exercise sound judgment.' "

As officer Port was arresting Jill, respondent got out of his truck and verbally objected to Sergeant Quinn. Respondent was thereafter placed on a five-day suspension without pay from

the district attorney's office for (1) misuse of his office and official identification, (2) interference with a patrol officer's investigation, and (3) compromising the relationship between the district attorney's office and the California Highway Patrol. In addition, respondent was required to send letters of apology to both officer Port and Sergeant Quinn.

Even though he might not have remembered certain details regarding the events on February 4, 1995, the court finds that officer Port's testimony on the key elements was clear, direct, and convincing. Contrary to the respondent's contentions, the State Bar was not required to corroborate officer Port's testimony, which the court finds to be very credible, with that of Sergeant Quinn (or of officer Kevin Guthrie). (Cf. *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 128, 147.)

b. Conclusions of Law

In count 1, the State Bar charges that respondent willfully violated his duty, under section 6068, subdivision (a), to obey the laws of this state. More specifically, the State Bar charges that respondent violated his duty, under section 6068, subdivision (a), to obey the law by violating Government Code section 19990, subdivision (a), which prohibits government employees from "Using the prestige or influence of the state of the appointing authority for the officer's or employee's private gain or advantage or the private gain of another."

The record clearly establishes that respondent willfully violated section 6068, subdivision (a), when he willfully violated Government Code section 19990, subdivision (a) by attempting to use the prestige of his position in the San Joaquin County District Attorney's Office to influence officer Port's investigation into Jill's driving under the influence of alcohol on February 4, 1995, to Jill's private gain and advantage. At the time, respondent had been employed by the district attorney's office for seven years (two as a law clerk and five as a deputy district attorney). It is clear that, on February 4, 1995, respondent was well aware that his conduct and statements to

officer Port were not only inappropriate, but improper. Respondent's intoxication at the time is neither a defense nor a mitigating circumstance to his deliberate misconduct.

Although it does not establish any charged misconduct, it is noteworthy that respondent's conduct on February 4, 1995, violated at least two ethical principles published in Ethics and Responsibility for the California Prosecutor (Cal. District Attys. Assoc. 3rd ed. 1992) section 1.4(B)&(C), at pages 14-15 to the effect (1) that prosecutors are not to refer to their official position, rank, and title if it conveys an appearance of an attempt to gain an improper advantage or favor and (2) that prosecutors are to display their badge or other official identification only when necessary in connection with their official duties or if requested to display employment identification.

2. The Manes Criminal Case -- Counts 2 & 3

a. Facts

On June 13, 2001, respondent and his then girlfriend, Amelita Marie Manes, went to a party given at the home of one of respondent's coworkers.[5] As they were leaving the party in Manes's pickup truck, Manes hit a parked car causing about $1,000 in damage to the other vehicle. There is a suggestion in the record that respondent might have actually been driving at the time, but the court does not rely on that suggestion because Manes clearly admitted to driving and to hitting the other vehicle. Manes reported the accident to someone at the party who agreed to thereafter notify the owner of the parked vehicle. Manes said that she would have her insurance company take care of the damage.

After discovering that her insurance policy had lapsed and was not effective on the date of the accident (i.e., June 13, 2001), Manes filed an insurance claim stating that the accident occurred one week later after insurance was reinstated. The San Joaquin County District

[5] At the time, respondent and Manes lived together.

Attorney's Office learned of Manes's fraud because she asked the owner of the parked vehicle to lie about the date of the accident. And, on August 31, 2001, that office filed a criminal complaint against Manes in which it charged her with "hit and run" driving and insurance fraud. The case was assigned to Deputy District Attorney J.C. Weydert for prosecution. The hit and run driving charged was later dismissed by the district attorney's office.

Respondent told then Assistant District Attorney James Willett (now District Attorney Willett) that the case against Manes was "bullshit"; that the entire district attorney's office had a conflict of interest due to respondent's relationship with Manes; and that the case should be referred to the California Attorney General's Office for prosecution. The district attorney's office determined that it was *not* disqualified from handling the case so long as respondent was not involved with it. (At the time, the San Joaquin County District Attorney's Office had about 80 prosecutors.) Respondent admits that, during this same general time frame, he appeared at a hearing in the Manes case, which was before Judge Richard Vlavianos; recused himself; and told Judge Vlavianos that he (i.e., respondent) had a conflict of interest.

It is undisputed that respondent was not permitted to review the Manes file. It is also undisputed that, in September 2001, the then District Attorney John Phillips told respondent to "stay the fuck away from the case." Moreover, ADA Willett also made it clear to respondent that he was not to have anything to do with Manes's case. Despite these direct and unequivocal instructions to respondent to stay away from the Manes case, DDA Weydert and others in the district attorney's office repeatedly used respondent as a messenger to give various documents to Manes and to communicate with Manes about topics such as plea negotiations, case disposition, court calendaring, and the importance of Manes appearing in court.

Respondent claims that his then boss ADA Willett effectively ordered him to remain involved in the Manes case to relay information to Manes. Even assuming that respondent

honestly believed this claim, there is a clear distinction between (1) being involved in a case to relay information to a party and being given courtesy copies of various letters and pleadings and (2) being involved in a case and making prosecutorial decisions or in representing the district attorney's office in court. Respondent, one of the top prosecutors in the district attorney's office at the time, was clearly aware of this distinction. And respondent's contention that the district attorney's office somehow took advantage of him and used him as a "tool" to resolve the case against Manes simply lacks any credibility whatsoever.

The district attorney's office offered to dismiss the case against Manes if she agreed to make restitution in the sum of $1,381.69 to the victims. A hearing in Manes's case was continued at least five times to give her an opportunity to make restitution. Manes failed to appear in court on any of those five dates. When she failed to appear on the fifth date on March 5, 2002, a bench warrant was issued for her arrest.

On May 30, 2002, DDA Weydert sent Manes a letter in which he notified her that a bench warrant had been issued for her arrest; that her case was set for a hearing on June 17, 2002; that she had to appear at that hearing; and that she needed to contact him immediately about making restitution or that the offer to dismiss her case would be withdrawn, her case set for trial, and her conviction would be sought. DDA Weydert gave his May 30, 2002 letter to respondent to give to Manes. When he did so, DDA Weydert expressed his hope that respondent would communicate the seriousness of the situation to Manes and that the case would be resolved without her having a conviction on her record.

On the morning of June 17, 2002, before the hearing in the Manes case, DDA Weydert and respondent spoke on the courthouse steps about the Manes case. ADA Willett briefly participated in that conversation. While the specifics of the conversation are disputed, DDA Weydert made it clear that he intended to ask for a plea in abeyance under which Manes would

be given the opportunity to plead guilty or nolo contendere to the fraud charge, and the plea would be held in abeyance for a set period of time and would be dismissed if Manes made restitution within that time period. However, if she did not make restitution within the time period, the plea would be filed and Manes would be convicted. DDA Weydert told respondent that he opposed any additional continuances in the Manes case, which respondent knew was consistent with DDA Weydert's May 30, 2002 letter to Manes. On the other hand, respondent told DDA Weydert and ADA Willett that he wanted Manes to be able to pay the required restitution in monthly installments and that he wanted her case continued for six months to give her time to pay restitution without her having to plead guilty or nolo contendere.

The June 17, 2002, hearing in Manes's case was before Superior Court Judge Terrence Van Oss. Deputy District Attorney Robert Martinelli was assigned to the calendar in Judge Van Oss's court room, but DDA Weydert was assigned to appear on Manes' case. DDA Weydert had an appearance that he had to make in another courtroom, so he asked DDA Martinelli to have the judge continue the Manes case if it was called before DDA Weydert returned.

When Manes's case was called, DDA Weydert had not returned to Judge Van Oss's courtroom. DDA Martinelli and Judge Van Oss believed that respondent had authority to appear for the district attorney's office on the Manes case. Respondent represented, to Martinelli and Judge Van Oss, that the district attorney's recommended resolution of the Manes case was a six-month continuance for dismissal. In addition, respondent represented that both ADA Willett and DDA Weydert had agreed to such a disposition. Respondent never disclosed his intimate relationship with Manes to Judge Van Oss. Nor did he disclose, to Judge Van Oss, that he had been instructed by the district attorney's office to stay away from the Manes case.

The San Joaquin District Attorney's Office never agreed to a six-month continuance in the Manes case. Respondent, however, steadfastly maintains that it did or, at least, that he honestly believed that it had. The court does not find respondent's position credible.

b. Conclusions of Law

In count 2, the State Bar charges that respondent violated section 6106, which prohibits attorneys from engaging in acts involving moral turpitude, dishonesty, or corruption. In count 3, the State Bar charges that respondent violated section 6128, subdivision (a), which makes it a misdemeanor for an attorney to engage in any deceit or collusion or to consent to any deceit or collusion with the intent to deceive a court or any party.

Section 6106 expressly provides that a violation of its proscription of acts involving moral turpitude, dishonesty, or corruption "constitutes a cause for disbarment or suspension." Section 6128, however, does not provide that a violation of its proscriptions constitutes a cause for disbarment, suspension, or other discipline. Accordingly, to discipline respondent for violating section 6128, the State Bar was required to charge respondent with violating his duty, under section 6068, subdivision (a), to obey the laws of this state by violating section 6128, subdivision (a). (Cf. *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476, 487; *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229, 236-237.) Because the State Bar failed to do so, count 3 is DISMISSED with prejudice.[6]

At a minimum, the record clearly establishes that, as charged in count 2, respondent willfully violated section 6106 by falsely representing to DDA Martinelli and Judge Van Oss that

[6] The court further notes that, even if the State Bar had properly charged respondent with violating section 6068, subdivision (a) by violating section 6128, the court would still have dismissed count 3 with prejudice because it is duplicative of the misconduct charged and found in count 2, *post*. Because the appropriate level of discipline for an act of misconduct does not depend on how many rules or statues proscribe the misconduct, it is inappropriate to find redundant violations. (*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 128, 148; see also *In the Matter of Van Sickle* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 980, 992.)

respondent was authorized to handle the Manes case for the district attorney's office and by falsely representing that the district attorney's recommended resolution of the case was a six-month continuance for dismissal. But, even assuming that on June 17, 2002 respondent honestly believed that DDA Weydert and ADA Willett had agreed to a six-month continuance and monthly restitution payments in the Manes case, he clearly knew that he was not authorized to represent the district attorney's office in the Manes case, that he had previously recused himself from the Manes case, and that he had previously told Judge Vlavianos that he had a conflict of interest vis-à-vis the Manes case. Accordingly, even if respondent did nothing more than respond to questions from Judge Van Oss (or DDA Martinelli), respondent not only misrepresented that he was authorized to appear on behalf of the district attorney's office when he answered Judge Van Oss's questions (§ 6106), but he also willfully and without authority appeared as attorney for the district attorney's office (§ 6104).

Attorneys have a duty to "refrain from misleading and deceptive acts *without exception*." (§ 6068, subd. (d); *Rodgers v. State Bar* (1989) 48 Cal.3d 300, 315 [italics added].) An attorney need not utter an affirmative falsehood in order to violate this duty. (*Franklin v. State Bar* (1986) 41 Cal.3d 700, 709.) That is because concealment of a material fact misleads just as effectively as a false statement. (*Ibid*.) "No distinction can therefore be drawn among concealment, half-truth, and false statement of fact." (*Grove v. State Bar* (1965) 63 Cal.2d 312, 315.) Without question, respondent's statements to Judge Van Oss under the circumstances were, at a minimum, deceptive and involved moral turpitude in willful violation of section 6106.[7] Moreover, even if respondent did not intend to mislead Judge Van Oss and DDA Martinelli, his

[7] Of course, respondent's statements also violated section 6068, subdivision (d)'s proscription against seeking to mislead a judicial officer by an artifice or false statement of fact or law. However, such a section 6068, subdivision (d) violation, had one been charged, would be duplicative of the charged section 6106 violation. (*In the Matter of Chestnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166, 175.)

conduct and his answering Judge Van Oss's questions without affirmatively disclosing that he was not authorized to appear for the district attorney's office, that he had previously recused himself from the Manes case, and that he had previously told Judge Vlavianos that he had a conflict of interest with the Manes case was *grossly* negligent. "Gross negligence is a well-established basis for finding an act of moral turpitude." (*In the Matter of Moriarty* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9, 15.) The court rejects, for want of credibility, respondent's testimony and claims to the effect that he believed that Judge Van Oss knew (1) that respondent had recused himself from the Manes case and (2) that respondent had a conflict of interest in representing either the district attorney's office or Manes (c.f. Rules Prof. Conduct, rule 3-310(C)(1),(2); *Woods v. Superior Court* (1983) 149 Cal.App.3d 931, see also Rules Prof. Conduct, rule 5-210(C)).

" 'Prosecutors. . . are held to an elevated standard of conduct. "It is the duty of every member of the bar to 'maintain the respect due to the courts' . . . . [Citation.] A prosecutor is held to a standard higher than that imposed on other attorneys because of the unique function he or she performs in representing the interests, and in exercising the sovereign power, of the state." ' [Citation.]" (*People v. Roldan* (2005) 35 Cal.4th 646, 719.) In short, respondent had an absolute duty not to appear before Judge Van Oss on the Manes case. His contentions that he did not do so and that he instead merely "responded" to Judge Van Oss's inquires about the Manes case are meritless and show that respondent fails to understand a basic professional duty of his office.

3. Respondent's Driving Under the Influence of Alcohol -- Counts 4 & 6

a. Facts

In the late afternoon on April 2, 1995, respondent was driving his pickup truck in San Francisco while he was heavily intoxicated.[8] Respondent's then-wife, Jill, was a passenger in the truck. Respondent ran a red light and hit a Volkswagen Bug that was lawfully in the intersection. The driver of the VW Bug, Jill, and respondent were all injured in the accident.

When the police arrived at the scene, respondent admitted that he had been drinking, but lied and stated that he had only two drinks, two hours prior to the accident. In an ice chest in the back of respondent's truck, the police found open cans of beer. When San Francisco Police Officer Watkins, who was wearing his uniform, asked respondent how the accident happened, respondent lied and stated that someone named "John was driving and he went walking East down Oak [Street]."[9]

There were multiple witnesses to the accident. Officer Watkins spoke with a number of them. None of them saw anyone other than respondent exit the truck immediately after the accident. One witness saw respondent sitting behind the steering wheel of the truck seconds after the accident and did not see any male in the truck other than respondent. Another witness actually saw respondent driving the truck and saw respondent get out of the truck and walk around to the passenger side to talk with a female passenger in the truck (i.e., Jill). Moreover, one witness heard respondent say that "the driver ran up Oak Street."

After officer Watkins had spoken to a number of the witnesses, he went back to respondent and confronted him with the witnesses' accounts of the collision and who was driving. When officer Watkins pointed out the inconsistencies with respondent's own statement that John was driving, respondent stated: "I am sorry sir but I don't want to talk to you at this

[8] Respondent's blood level alcohol level was .15 percent, which as the State Bar aptly notes, was almost double the legal limit of .08 percent in effect in 1995.

[9] It is unclear whether respondent actually told officer Watkins that John "went walking east" down oak street or whether respondent merely pointed towards east down Oak Street. Nevertheless, the record clearly establishes that respondent actually told officer Watkins that "John was driving."

time." Shortly thereafter, respondent was arrested for driving under the influence of alcohol and causing bodily injuries.

Not only does respondent claim that he does not remember speaking to officer Watkins at the scene of the accident, but respondent also claims that he does not even recall even seeing officer Watkins at the scene. The court rejects respondent's testimony for want of credibility.

b. Conclusions of Law

In count 4, the State Bar charges respondent with a second violation of section 6106's proscription of acts involving moral turpitude, dishonesty, or corruption. In count 6, the State Bar charges respondent with a second violation of his duty, under section 6068, subdivision (a), to obey the laws of this state. More specifically, in count 6, the State Bar charges that respondent violated section 6068, subdivision (a), by violating Penal Code section 148.5, which makes it a misdemeanor for a person to make a false report of criminal activity.

The court finds that the charged violation of section 6068, subdivision (a) by violating Penal Code section 148.5 is duplicative of the section 6106 violation that is charged and found under count 4, *post*. As noted in footnote 6, *ante*, it is inappropriate to find such redundant violations. (*In the Matter of Torres, supra*, 4 Cal. State Bar Ct. Rptr. at p. 148; see also *In the Matter of Van Sickle, supra*, 4 Cal. State Bar Ct. Rptr. at p. 992.) Accordingly, count 6 is DISMISSED with prejudice.

The record clearly establishes that, as charged in count 4, respondent willfully violated section 6106 when he deliberately lied and told officer Watkins that "John was driving" in an attempt to relieve himself of liability for driving drunk and causing the accident. Without question, respondent's conduct involved not just moral turpitude, but also dishonesty. Respondent's intoxication at the time of the accident is neither a defense nor a mitigating circumstance to his deliberately lying to officer Watkins.

4. Respondent's Failure to Report Felony Information – Count 5

a. Facts

On September 8, 1995, the San Francisco County District Attorney's Office filed a two count felony information against respondent in the San Francisco County Superior Court. The information charged respondent with driving under the influence of alcohol and causing bodily injury to the driver of the VW Bug and to Jill. Respondent failed to report, to the State Bar, the filing of the information.

b. Conclusion of Law

In count 5, the State Bar charges respondent with violating section 6068, subdivision (o)(4), which mandates that an attorney notify the State Bar in writing within 30 days of the time the attorney has knowledge that an indictment or information charging a felony has been brought against the attorney. The record clearly establishes that respondent willfully violated section 6068, subdivision (o)(4) when he failed to notify the State Bar that the San Francisco District Attorney's Office filed a two-count felony information against him on September 8, 1995.

IV. MITIGATING AND AGGRAVATING CIRCUMSTANCES

A. Mitigation.

As noted *ante*, respondent was admitted to practice in California in December 1988. His misconduct began in January 1995. Accordingly, respondent is only entitled to limited mitigating credit for his little more than 6 years of unblemished practice from December 1988 through January 1995. (Std. 1.2(e)(i); *In the Matter of Rech* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310, 316; see also *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, fn. 13.)

Respondent has no subsequent disciplinary record, and his "record of practicing without complaint subsequent to his misconduct is as valid a mitigating circumstance as his lack of a

prior record." (*In the Matter of Stamper, supra*, 1 Cal. State Bar Ct. Rptr. at p. 106, fn. 12; std. 1.2(e)(viii); *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 112.)

Two Judges of the Santa Cruz County Superior Court credibly testified as to respondent's good character and superior legal abilities. Because two witnesses do not represent a cross-section of the community, respondent is entitled to only limited mitigating credit for the judges' good character testimony. (Std. 1.2(e)(vi).) However, respondent is entitled to significant mitigating credit for the judges' testimony and for respondent's own testimony regarding respondent's exceptional legal abilities and dedication to public service. (*Rose v. State Bar* (1989) 49 Cal.3d 646, 667; *Hawk v. State Bar* (1988) 45 Cal.3d 589, 602 [attorney entitled to mitigating credit for demonstrated legal abilities and dedication to his or her clients].)

B. Aggravation

Respondent's misconduct involves multiple acts of misconduct. (Std. 1.2(b)(ii).) Moreover, the record clearly establishes that respondent lacks insight in the wrongfulness of his actions. "The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for his acts and come to grips with his culpability. [Citation.]" (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) Respondent's demonstrated lack of insight into the seriousness of his misconduct is particularly troubling to this court because it suggests that the misconduct may reoccur. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 781-782.) In sum, the record clearly establishes that respondent fails to understand the nature and extent of his wrongdoing, which is a serious aggravating factor. (Std. 1.2(b)(v).)

V. DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve confidence in the legal profession, and to maintain the highest possible professional standards for attorneys. (Std. 1.3; C*hadwick v. State Bar* (1989) 49 Cal.3d

103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025.) In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Second, the court looks to decisional law for guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions. In the present proceeding, the most severe sanction for respondent's misconduct is found in standard 2.3, which provides:

> Culpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law.

The State Bar recommends disbarment, but fails to cite a single case to support its recommendation. The court finds the case of *Price v. State Bar* (1982) 30 Cal.3d 537 to be instructive on the appropriate level of discipline. In *Price*, the Supreme Court imposed five years' stayed suspension, five years' probation, and two years' actual suspension on an attorney for misconduct he committed while he was prosecuting a defendant charged with multiple murders. During trial, the attorney in *Price* fabricated evidence and presented it to the court and defense counsel. Moreover, the attorney's misconduct "was followed by a prolonged and complicated attempt to cover his tracks." (*Id*. at p. 551 (dis. Opn. of Richardson, J.).) Arguably, the attorney's misconduct in *Price* was more egregious than that found in the present proceeding, but in *Price* there was more mitigation than that in the present proceeding.

The court views respondent's misconduct and the aggravating circumstances in the present proceeding to be extremely serious. Thus, the court concludes that, on balance, the five years' stayed suspension, five years' probation, and two years' actual suspension that was imposed in *Price*, together with a requirement that respondent's two years' actual suspension continue until he establishes his rehabilitation, fitness to practice, and learning in the law in a standard 1.4(c)(ii) proceeding, will adequately advance the goals of attorney discipline. The court believes that this added standard 1.4(c)(ii) requirement affords the proper balance of protecting the public without disproportionately punishing respondent.

Finally, respondent's excessive consumption of alcohol was involved in the majority of the misconduct found in the present proceeding. In fact, one of the Superior Court Judges who testified on respondent's behalf noted that respondent's use of alcohol had made him do "stupid" things. Thus, this court is concerned that respondent's use of alcohol might well "spill over into [his] professional practice and adversely affect [his] representation of clients and [his] practice of law." (*In re Kelley* (1990) 52 Cal.3d 487, 496.) Thus, even though there is not sufficient evidence in the record to support the imposition of an abstention-from-alcohol probation condition, respondent's use of alcohol will be an appropriate issue in his standard 1.4(c)(ii) proceeding.

VI. RECOMMENDED DISCIPLINE

The court recommends that respondent **GEORGE HALL DUNLAP, JR.** be suspended from the practice of law in the State of California for five years, that execution of the five-year suspension be stayed, and that respondent be placed on probation for five years on the following conditions.

1. Dunlap is to be actually suspended from the practice of law in the State of California for the first two years of his probation and until he provides proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice, and present learning and ability in the general

law in accordance with standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.

2. Dunlap is to comply with the provisions of the State Bar Act, the Rules of Professional Conduct of the State Bar, and all of the conditions of this probation.

3. Dunlap is to maintain, with the State Bar's Membership Records Office and the State Bar's Office of Probation, his current office address and telephone number or, if no office is maintained, an address to be used for State Bar purposes (Bus. & Prof. Code, § 6002.1, subd. (a)(1)). In addition, Dunlap is to maintain, with the State Bar's Office of Probation, his current home address and telephone number (Bus. & Prof. Code, § 6002.1, subd. (a)(5)). Dunlap's home address and telephone number is not to be made available to the general public unless it is his official address on the State Bar's Membership Records. (Bus. & Prof. Code, § 6002.1, subd. (d).)

4. Dunlap is to submit written quarterly reports to the State Bar's Office of Probation on each January 10, April 10, July 10, and October 10. Under penalty of perjury under the laws of the State of California, Dunlap must state whether he has complied with the State Bar Act, the Rules of Professional Conduct of the State Bar, and all conditions of this probation during the preceding calendar quarter. If the first report will cover less than 30 days, that report must be submitted on the next following quarter date, and cover the extended period.

   In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.

5. Subject to the assertion of any applicable privilege, Dunlap is to fully, promptly, and truthfully answer all inquiries of the State Bar's Office of Probation that are directed to him, whether orally or in writing, relating to whether he is complying or has complied with the conditions of this probation.

6. Within the first two years of his probation, Dunlap must provide to the State Bar's Office of Probation satisfactory proof of his attendance at a session of the Ethics School, which is given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015-2299, and of his passage of the test given at the end of that school. Arrangements to attend Ethics School must be made in advance by calling (213) 765-1287, and paying the required fee. This condition of probation is separate and apart from Dunlap's Minimum Continuing Legal Education requirements; accordingly, he is ordered not to claim any MCLE credit for attending and completing Ethics School. (Accord, Rules Proc. of State Bar, rule 3201.)

7. This probation will commence on the effective date of the order of the Supreme Court imposing discipline in this matter. At the expiration of the period of this probation, if Dunlap has complied with all the terms of probation, the order of the Supreme Court suspending him from the practice of law for five years will be satisfied and the suspension will be terminated.

VII. MPRE, RULE 9.20 & COSTS

The court further recommends that Dunlap be ordered to take and pass the Multistate Professional Responsibility Examination (hereafter MPRE) administered by the National Conference of Bar Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) within the period of his actual suspension and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same time period.

The court further recommends that **DUNLAP** be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.[10]

Finally, the court recommends that costs be 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.

Dated: August 29, 2008.

LUCY ARMENDARIZ
Judge of the State Bar Court

[10] Dunlap is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)