

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No. 03-C-04088
)	
WOLFGANG FRANZ HAHN,)	DECISION AND ORDER FILING AND
)	SEALING CERTAIN DOCUMENTS
Member No. 61385,)	
)	
<u>A Member of the State Bar.</u>)	

This disciplinary proceeding arises out of the criminal conviction of respondent Wolfgang Franz Hahn (“respondent”) on December 19, 2003, of misdemeanor violations of Vehicle Code section 23152(a) [driving under the influence of alcohol] and 2800.1 [fleeing a police officer].

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”), the court approved the stipulation and thereafter respondent was accepted as a participant in the State Bar Court’s Alternative Discipline Program (“ADP”).¹ (Rules Proc. of State Bar, rules 800-807.)

As set forth below, the court finds that respondent has successfully completed the ADP. Accordingly, pursuant to rule 803 of the Rules of Procedure of the State Bar of

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

California (“Rules of Procedure”), the court hereby recommends that respondent be suspended from the practice of law for a period of one year, that execution of such suspension be stayed, and that respondent be placed on probation for a period of three years on certain conditions.

SIGNIFICANT PROCEDURAL HISTORY

On January 27, 2004, the State Bar Court Review Department filed an order referring this matter to the Hearing Department for a hearing and decision limited to whether the facts and circumstances surrounding the offenses of which respondent was convicted involved moral turpitude or other misconduct warranting discipline, or if respondent objected to a hearing on this issue before his conviction was final, for a hearing and findings, based only on the record of conviction, as to whether there is probable cause to believe that the facts and circumstances surrounding the offenses involved moral turpitude.

On February 6, 2004, a Notice of Hearing on Conviction (“NOH”) and a Notice of Assignment and Notice of Initial Status Conference were filed by the State Bar Court and properly served upon respondent on that same date.² This matter was originally assigned to the Honorable Pat McElroy.

On March 3, 2004, respondent filed an Answer to the NOH.

On April 1, 2004, the Review Department augmented its earlier referral order under the authority of rule 951(a) of the California Rules of Court, to include a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding the offenses of which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

²Pursuant to Evidence Code section 452, subdivision (h), the court takes judicial notice of respondent’s official membership records address maintained by the State Bar of California.

On May 24, 2004, respondent initially contacted the State Bar of California's Lawyer Assistance Program ("LAP") and executed an Application Agreement with the LAP.

On June 22, 2004, this matter was reassigned to the undersigned ADP judge for all further proceedings.

In August 2004, respondent, his counsel and Deputy Trial Counsel Brooke A. Schafer of the State Bar of California, Office of the Chief Trial Counsel, executed a Stipulation Re Facts and Conclusions of Law in this matter.

On August 10, 2004, respondent's brief on the issue of discipline was received by the court via facsimile transmission.³

On August 11, 2004, respondent's Nexus Statement was received by the court. On that same date, the State Bar submitted to the court its brief on the issue of discipline, setting forth the OCTC's recommended alternative levels of discipline in this proceeding.

On September 23, 2004, the court received, via facsimile transmission, respondent's amended brief on the issue of discipline and another Nexus Statement. Respondent's Nexus Statement addressed the nexus between his admitted misconduct and his substance abuse problem.⁴

On October 25, 2004, respondent signed a Participation Agreement with the LAP to assist him with his substance abuse problem.

On December 14, 2004, the court approved the parties' Stipulation Re Facts and Conclusions of Law submitted by the parties for purposes of respondent's participation in the ADP (Rules Proc. of State Bar, rule 802(a)).

³Respondent's brief on the issue of discipline was again received by the court on August 13, 2004. This brief was not submitted via facsimile transmission.

⁴The amended brief on the issue of discipline and the nexus statement were again received by the court on September 24, 2004. This amended brief and the nexus statement were not submitted via facsimile transmission.

On December 20, 2004, the court lodged its Decision Re Alternative Recommendations for Degree of Discipline pursuant to rule 803(a) of the Rules of Procedure.

On December 20, 2004, respondent entered into a Contract and Waiver for Participation in the State Bar Court's ADP ("Contract") which was lodged with the court that same day, and respondent was accepted into the ADP on that date.

On September 5, 2006, the court received from the LAP a Certificate of One Year Participation in the Lawyer Assistance Program.

On October 12, 2006, respondent submitted a declaration in support of his early termination from the ADP. In addition, respondent also sought a lower level of discipline than that set forth in the court's Decision Re Alternative Recommendations for Degree of Discipline.

On October 20, 2006, the court held a status conference at which time the court found that respondent had successfully completed the ADP, but denied respondent's request that the court modify its recommended low level of discipline. The court therefore issues this decision as to the lower level of discipline set forth in the December 20, 2004, Decision Re Alternative Recommendations for Degree of Discipline.

FACTS AND CONCLUSIONS OF LAW

The Stipulation Re Facts and Conclusions of Law, lodged with the court on December 20, 2004, is incorporated by reference as if set forth fully herein.

A. Jurisdiction

Respondent was admitted to the practice of law in California on December 18, 1974, and has been a member of the State Bar of California at all times since that date.

B. Respondent's Criminal Conviction

On August 29, 2003, a San Diego police officer observed respondent driving erratically. As the officer approached respondent's car on foot, respondent drove off, with the officer in pursuit for several blocks. When respondent was stopped, he exhibited

signs of intoxication. Following the administration of field sobriety tests, respondent was transported to a local precinct, where he submitted to an analysis of his blood to determine his blood alcohol content. The results of the tests indicated that respondent had a blood alcohol content of .22%, nearly three times the legal limit.

On December 19, 2003, respondent pled no contest to a misdemeanor violation of Vehicle Code section 23152, subdivision (a) [driving under the influence of alcohol] and to a misdemeanor violation of Vehicle Code section 2800.1 [fleeing a police officer]. Although respondent had prior DUI convictions, he was sentenced as if he were a first-time offender because of the remoteness of those convictions. Respondent did not appeal his conviction.

Respondent's misdemeanor convictions of Vehicle Code section 23152, subdivision (a) [driving under the influence of alcohol] and section 2800.1 [fleeing a police officer] do not involve moral turpitude but do involve other misconduct warranting discipline.

AGGRAVATION AND MITIGATION

A. Aggravation

Respondent has a record of prior discipline in two matters, both arising out of previous DUI convictions. Effective September 16, 1992, respondent received a private reproof in State Bar Court Case No. 91-C-03567, as a result of his misdemeanor conviction of a violation of Vehicle Code section 23152, subdivision (a).

Thereafter, by minute order filed April 7, 1994, in Supreme Court Case No. S037634 (State Bar Court Case No. 92-C-18792), respondent was suspended from the practice of law for a period of six months, execution of the suspension was stayed and respondent was placed on probation for two years, with no period of actual suspension, as a result of his conviction on December 4, 1992, of a misdemeanor violation of Vehicle Code section 23103.5 [alcohol-related reckless driving].

Respondent's record of prior discipline is an aggravating circumstance.⁵ (Standard 1.2(b)(i), Standards for Attorney Sanctions for Professional Misconduct ("standards").)

There are no additional aggravating circumstances in this case.

B. Mitigation

Respondent has been candid and cooperative with the State Bar during the investigation and resolution of these matters. (Standard 1.2(e)(v).)

Respondent did not harm any client or other person in the commission of his offenses in this matter. (Standard 1.2(e)(iii).)

Additionally, 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 Statement and the parties' Stipulation Re Facts and Conclusions of Law establishes 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 Statement and the stipulated facts also establish a causal connection between respondent's substance abuse problem and the misconduct found in the underlying criminal 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 directly caused his criminal conduct.

⁵Respondent was also convicted on September 22, 1997, of a violation of Vehicle Code section 12500, subdivision (a) [unlicensed operation of a vehicle]. However, the conviction referral proceeding against respondent (State Bar Court Case No. 97-C-16337) was dismissed on February 3, 1998, on the grounds that the facts and circumstances surrounding respondent's conviction did not involve either moral turpitude or other misconduct warranting discipline.

Furthermore, respondent sought assistance from the LAP in May 2004 to assist him with his substance abuse problem. On October 25, 2004, respondent signed a long-term participation agreement with LAP. Since entering into the LAP, respondent has maintained compliance with the terms of his participation agreement. He has undergone regular random drug testing since early September 2004, and, since September 2004, has complied with all drug testing requirements set forth in his LAP Participation Agreement/Plan, a period of more than two years. Furthermore, on September 5, 2006, the LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program indicating that respondent has been substance-free for at least one year prior to the date of the certificate as is required for successful completion of the ADP pursuant to rule 804 of the Rules of Procedure.

In addition to participating in the LAP, respondent was accepted into the court's ADP on December 20, 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 22 months. (Rules Proc. of State Bar, rule 804.) Accordingly, this court finds 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, rather, to protect the public, to preserve public confidence in the legal 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.

In determining the disposition to be recommended in this proceeding, the court looks to *In re Kelley* (1990) 52 Cal.3d 487 for guidance. *Kelley* 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 in the earlier matter. *Kelley's* blood alcohol level in the second case was between .16% and .17%. Before the Supreme Court, *Kelley* argued that she should not be subject to any discipline because the conduct was unrelated to the practice of law.

Because the Supreme Court found that a nexus existed between the attorney's misconduct and the practice of law, the court expressly declined to decide 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* second DUI conviction 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 probation, the law and the safety of the public. (*In re Kelley, supra*, 52 Cal.3d at p. 495.)

Second, 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 findings 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.

(*Id.* at p. 496.)

The Supreme Court found that the facts and circumstances surrounding Kelley's conviction involved other misconduct warranting discipline and that the imposition of a public reproof was appropriate. (*Id.* at p. 498.)

In the current proceeding, while respondent was not on probation when he committed his most recent DUI offense, he has now been convicted of four alcohol-related driving offenses over a 15-year period (i.e., from 1988 to 2003). Respondent's history of DUI offenses (as well as his 1997 conviction for the unlicensed operation of a vehicle) clearly demonstrates that he has both an alcohol abuse problem and a lack of respect for the legal system.

The State Bar recommended that if respondent successfully completes the ADP, he should be suspended from the practice of law for a period of one year, that execution of the order of suspension should be stayed, and that respondent should be placed on probation for a period of three years. Respondent recommended that he be placed on probation for two years and that there be no period of stayed suspension if he successfully completes probation.

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 2004, 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 indicating that respondent has been substance-free for at least one year prior to the date of the certificate, 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.)

The court therefore concludes that no period of actual suspension is necessary in this matter. Instead, a period of stayed suspension and probation with conditions is sufficient to fulfill the purposes of attorney discipline. Therefore, the court recommends to the Supreme Court the imposition of the discipline set forth below in this matter.

RECOMMENDED DISCIPLINE

IT IS HEREBY RECOMMENDED that respondent **WOLFGANG FRANZ HAHN** be suspended from the practice of law in the State of California for a period of one year, that execution of such suspension be stayed, and that respondent be placed on probation for a period of three years, on the following conditions:

1. Respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;
2. Within 10 calendar days of any change in the information required to be maintained on the State Bar's membership records 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/Plan with the Lawyer Assistance Program (“LAP”) and must provide an appropriate waiver authorizing the LAP to provide both the Office of Probation and this court with information regarding the terms and conditions of respondent’s participation in LAP and his compliance with 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 no later than each January 10, April 10, July 10 and October 10 during the period of probation. Under penalty of perjury, respondent must state whether he has complied with the State Bar Act, the Rules of Professional Conduct and all conditions of his probation during the preceding calendar quarter. If the first report will cover less than 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 20 calendar days before the last day of the probation period 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 of his probation;

6. Within one year after the effective date of the Supreme Court’s final disciplinary order in this proceeding, 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 end of that session;

7. These conditions of probation will commence upon the effective date of the Supreme Court’s final disciplinary order in this proceeding.

The court recommends that respondent be required to take and pass the Multistate Professional Responsibility Examination (“MPRE”), administered by the National Conference of Bar Examiners, within one year after the effective date of the Supreme Court’s final disciplinary order in this proceeding and that he be ordered to provide satisfactory proof of his passage of the MPRE to the Office of Probation within that period.

COSTS

It is recommended 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.

ORDER FILING AND SEALING CERTAIN DOCUMENTS

The court orders the Clerk to file the parties’ Stipulation Re Facts and Conclusions of Law, as well as this Decision and Order Filing and Sealing Certain Documents. Thereafter, pursuant to rule 806(c) 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: November ____, 2006

RICHARD A. HONN
Judge of the State Bar Court