PUBLIC MATTER - NOT DESIGNATED FOR PUBLICATION

Filed June 29, 2006

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of **MARILLA L. ROSS**, A Member of the State Bar.	))))))	**Case No. 04-C-13590** **OPINION ON REVIEW**

Respondent Marilla Ross was privately reproved in 2001 based on her 1999 criminal conviction for resisting arrest. In this conviction referral proceeding, based on respondent's more recent violation of the same criminal law, a State Bar Court hearing judge has recommended that she be publicly reproved. Respondent has failed to participate in either proceeding. Deeming the discipline in the current matter inadequate, the State Bar's Office of Chief Trial Counsel has sought our review. Upon our independent review (Cal. Rules of Court, rule 951.5; *In re Morse* (1995) 11 Cal.4th 184, 207), we decide that a suspension, rather than reproval, is the appropriate discipline to recommend. The record leads us to conclude that respondent has an unresolved problem which has led her twice to violate criminal laws in contacts with law enforcement officers which started out in a routine manner but which respondent quickly escalated. Consistent with the showing in the record, we shall also recommend that respondent seek professional treatment.

I. FACTUAL AND PROCEDURAL BACKGROUND

Respondent was admitted to practice in California on December 30, 1988. As we discuss *post*, she has a prior record of discipline.

A. Facts and Circumstances of Respondent's Conviction in the Case Now Under Review

On the evening of June 10, 2004, respondent entered the Laguna Beach Police Department, seemingly with the intention of filing a harassment complaint. She believed someone she hired was making harassing telephone calls to her and supposedly had tape-recordings of such calls. Sergeant Ramos, the on-duty Watch Commander, informed respondent he could take a report but needed the tape-recordings as evidence. Respondent became increasingly agitated and eventually began cursing and screaming obscenities at Ramos. He ordered respondent to leave and after several refusals, she left upon the threat of arrest. Outside the police station, respondent continued to curse and scream, and Ramos went outside to observe.

Respondent returned to her vehicle, parked illegally in a police-only parking space, and began to drive away without fastening her seatbelt. Ramos ordered her to put on her seatbelt; she reluctantly complied. Respondent then stopped her car in the middle of the street with the engine running and lit a cigarette. Ramos told her several times to move. She refused and continued to curse and scream at him. After being informed that a citation would be written, respondent accelerated and fled. Ramos and three other officers entered their vehicles and chased her.

After intercepting her path, the police followed respondent to her stop in front of the driveway of the nearby Laguna Beach Fire Department. Ramos arrested respondent for obstructing and resisting arrest under California Penal Code section 148. While removing respondent's car keys from the ignition, another officer found a container holding a Lorazepam tablet. When asked by Ramos if she had a prescription for the drug, respondent replied that she did not. As a result, respondent was also charged with possession of a designated controlled substance, in violation of California Health and Safety Code section 11350(a).

A misdemeanor criminal complaint was filed against respondent on June 14, 2004, charging one count of resisting and obstructing an officer and one count of possession for sale of a designated substance. (Pen. Code, § 148(a)(1); Health & Saf. Code, § 11375(b)(1),

respectively.) On August 2, 2004, respondent's plea of nolo contendere to violating Penal Code section 148, subdivision (a)(1) was entered. The charge of violation of Health & Safety Code section 11375, subdivision (b)(1)) was dismissed. The criminal court suspended respondent's sentence and ordered her to pay $100 in restitution. Then, finding her indigent, the court waived the fine.

B. Other Evidence Bearing on Discipline

In September 1999, respondent was found guilty of violating Penal Code section 148(a). Earlier that year, she refused to leave another attorney's office and resisted, delayed, and obstructed Los Angeles Police Department officers as they tried to usher her from the premises. In August 2001, our court's hearing department concluded that respondent's 1999 criminal conviction did not involve moral turpitude but rather, constituted other misconduct warranting discipline. She was privately reproved and placed on probation for one year. (State Bar Case Number 99-C-12177.) Respondent's prior discipline also arose from a default proceeding.

C. Procedural History

On August 30, 2004, we referred the present matter to the hearing department to determine whether respondent's conviction involved moral turpitude or other misconduct warranting discipline. Notice of Hearing on Conviction, Notice of Assignment, and Notice of Initial Status Conference were properly served on respondent on September 14, 2004. Respondent neither responded to the Notice of Hearing nor appeared at the initial status conference on November 1, 2004. Respondent also failed to appear at a subsequent telephonic status conference on November 29, 2004.

The State Bar filed its motion for entry of default on January 27, 2005. Respondent was properly served with the default motion but did not file an opposition to the motion. The hearing judge entered respondent's default on February 14, 2005. The order of entry of default was sent

to respondent's official mailing address by certified mail but was returned as undeliverable.[1] Respondent was subsequently enrolled as an inactive member. (Bus. & Prof. Code, § 6007(e).)

On March 3, 2005, the State Bar filed a request for, inter alia, waiver of default hearing and included a statement of facts and a copy of the arrest report (hereafter Exhibits.) A copy was served on respondent by mail on the same day but no return receipt was requested.[2] The hearing judge took the matter under submission on March 7, 2005, and admitted into evidence the Exhibits attached to the State Bar's brief.

On March 30, 2005, a Notice of Augmented Referral Order and a copy of our augmented order were mailed to respondent at her latest official address, which changed on March 16, 2005. The mail was returned as unclaimed.[3] Respondent neither filed a response to the augmented order nor a motion to set aside the default.

The hearing judge concluded that obstructing a public officer did not establish moral turpitude per se. Additionally, the facts and circumstances surrounding the 2004 conviction were determined to not involve moral turpitude. However, since respondent's 1999 conviction was also for obstructing a public officer, the hearing judge concluded that her 2004 conviction constituted other misconduct warranting discipline.

Respondent's prior record of discipline was one of two aggravating factors considered by the hearing judge; her lack of participation in this matter was the other. No mitigating factors were considered, as none were admitted into evidence. On May 6, 2005, the hearing judge

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[1] Pursuant to rule 200(d)(1)(C) of the Rules of Procedure of the State Bar, subsequent to the entry of default, exceptions aside, "no further notices or pleadings shall be served upon the respondent[.]" Hence, the lack of receipt of notices and pleadings subsequent to the entry of default has no effect.

[2] Again, pursuant to rule 200(d)(1)(C) of the Rules of Procedure of the State Bar, this is inconsequential.

[3] See fn. 1, *ante*.

decided respondent should be publicly reproved for her 2004 conviction. Deeming the discipline insufficient, the State Bar appeals.

II. DISCUSSION

A. Culpability

We agree with the hearing judge's conclusion that the conviction here does not involve moral turpitude but rather, constitutes other misconduct warranting discipline. There is sufficient precedent for this conclusion in other cases of attorney criminal convictions not involving attorney-client matters. (See, e.g., *In re Kelley* (1990) 52 Cal.3d 487 [discipline imposed for two drunk-driving convictions]; *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52 [misdemeanor battery on a police officer].)

B. Appropriate Level of Discipline

The Standards for Attorney Sanctions for Professional Misconduct "provide guidance in making a disciplinary recommendation, although we are not compelled to follow them in every case." (*In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108, 118.) Pursuant to standard 3.4, for a criminal conviction involving other misconduct warranting discipline, the appropriate sanction is determined by "the nature and extent of the misconduct.... " (Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 3.4.)[4] Hence, the appropriate degree of reproval or suspension, in part, depends on the gravity of the offense. (Std. 2.10.) The appropriate sanction also takes into

[4] All further references to standards are to this source.

account principles of protecting the public and maintaining high professional standards, inter alia, and balances mitigating and aggravating circumstances. (Stds. 1.3 & 1.6(b).)

As respondent has one prior imposition of discipline, standard 1.7(a) suggests the discipline here should be greater than that imposed in the prior matter. The prior discipline imposed was a private reproval with one year probation. The issue here concerns whether and what "greater" degree of discipline is appropriate.

"[C]oncerns in assessing whether an attorney's actions warrant discipline are to protect the public, the courts, and the integrity of the legal profession, and to preserve public trust in the profession." (*In re Kelley, supra*, 52 Cal.3d at 493.) For example, in *In re Kelley*, an attorney was disciplined based upon two drunk-driving convictions. The second offense occurred during the probationary period of the first conviction, and neither offense occurred during the performance of legal activities. The court found the attorney's "behavior evidence[d] both a lack of respect for the legal system and an alcohol abuse problem." (*Id*. at p. 496.) The court deemed public reproval and referral to the State Bar Program on Alcohol Abuse sufficient discipline to protect the public.

Toward the stricter end of the discipline spectrum of similar convictions of attorneys is *In the Matter of Stewart, supra*, 3 Cal. State Bar Ct. Rptr. 52. There, police responded to a domestic dispute involving an attorney and his estranged wife. The attorney consumed alcoholic beverages daily. While under the influence of alcohol, he trespassed on and refused to leave his wife's apartment without their 18-month-old son. He became physically resistive and verbally abusive toward the arresting officers. He placed an officer's upper body in a bear hug, and

struggled as the officers attempted to handcuff him. The attorney's conduct resulted in a conviction for misdemeanor battery on a police officer. For such criminal conduct, we recommended a two-year stayed suspension and a two-year probation. We also recommended an actual suspension for the first 60 days and participation in the State Bar's substance abuse program. The Supreme Court imposed this discipline.

The facts here lie between *Kelley* and *Stewart*. On one hand, the facts here do not rise quite to the level of battery as in *Stewart*. On the other hand, the facts warrant a more severe discipline than that in *Kelley*. Hence, we do not agree with the hearing judge's conclusion that public reproval is sufficient discipline.

Again, as noted in *Kelley*, the protection of both the public and the integrity of the legal profession are primary concerns of discipline. (See also std. 1.3.) Respondent initiated a police chase which could have resulted in injury to herself, the officers, or other members of the public. Her confrontations with police have twice resulted in obstructing police officers in the administration of their duties, and she has twice been criminally convicted for such conduct. Minimally, such conduct can jeopardize the public and the public's confidence in the fitness of legal practitioners. Further, respondent's failure to participate in both disciplinary matters shows her lack of appreciation for the gravity of her actions. Hence, discipline more severe than public reproval is warranted.

Additionally, respondent's recurring outbursts indicate her inability to control her actions in seemingly straightforward contacts with law enforcement officers. They raise concerns, particularly when considered in a client representation context. As feared in *Kelley*, respondent's

problem "if not checked, may spill over into [her] professional practice and adversely affect her representation of clients and her practice of law." (*In re Kelley, supra*, 52 Cal 3d. at 496.) Respondent's apparent possession of the Lorazepam pill may also indicate causes for her behavior.[5] Thus, respondent's conduct also warrants a requirement of psychiatric treatment. (See *In re Todd L*. (1980) 113 Cal.App.3d 14, 18 [conditions of probation may be required if there is a relationship between such condition and the conviction]; *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 154 [in the absence of proffered evidence, a requirement of psychiatric treatment may still be imposed if "the record contains other clear evidence that respondent suffers from either a mental or other problem requiring medical treatment"].)

III. RECOMMENDATION

For the reasons discussed above, we recommend that respondent Marilla Ross be suspended from the practice of law in the State of California for two years and until respondent shows proof satisfactory to the State Bar Court of her rehabilitation, present fitness to practice, and present learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct, that execution of that suspension be stayed, and that respondent be placed on probation for two years on the following conditions:

1. That respondent be actually suspended from the practice of law in the State of California for the first 30 days of her probation.

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[5] Lorazepam, the generic name for Activan, is a medication prescribed to manage anxiety disorders. (PDRhealth, Ativan <http://www.pdrhealth.com/drug_info/rxdrugprofiles/drugs/ati1036.shtml> [May 2, 2006].)

2. Respondent must obtain psychiatric or psychological treatment from a duly-licensed psychiatrist, psychologist or clinical social worker, at her own expense, a minimum of twice per month and must furnish evidence of her compliance to the Office of Probation with each quarterly report. Treatment should commence immediately and, in any event, no later than 30 days after the effective date of the Supreme Court's final disciplinary order in this proceeding. Treatment must continue for the period of probation or until a motion to modify this condition is granted and that ruling becomes final. If the treating psychiatrist, psychologist or clinical social worker determines that there has been a substantial change in respondent's condition, respondent or the State Bar may file a motion for modification of this condition with the State Bar Court Hearing Department pursuant to rule 550 of the Rules of Procedure. The motion must be supported by a written statement from the psychiatrist, psychologist or clinical social worker, by affidavit or under penalty of perjury, in support of the proposed modification.

3. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all the conditions of this probation.

4. Respondent must maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation in Los Angeles, her 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).) Respondent must also maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation in Los Angeles, her current home address and telephone number. (See Bus. & Prof. Code, § 6002.1, subd. (a)(5).) Respondent's home address and telephone number will *not* be made available to the general public. (Bus. & Prof. Code, § 6002.1, subd. (d).) Respondent must notify the Membership Records Office and the Office of Probation of any change in any of this information no later than 10 days after the change.

5. Respondent must report, in writing, to the State Bar's Office of Probation in Los Angeles no later than January 10, April 10, July 10 and October 10 of each year or part thereof in which respondent is on probation (reporting dates). However, if respondent's probation begins less than 30 days before a reporting date, respondent may submit the first report no later than the second reporting date after the beginning of her probation. In each report, respondent must state that it covers the preceding calendar quarter or applicable portion thereof and certify by affidavit or under penalty of perjury under the laws of the State of California as follows:

(a) in the first report, whether respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation since the beginning of probation; and

(b) in each subsequent report, whether respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation during that period.

During the last 20 days of this probation, respondent must submit a final report covering any period of probation remaining after and not covered by the last quarterly report required under this probation condition. In this final report, respondent must certify to the matters set forth in subparagraph (b) of this probation condition by affidavit or under penalty of perjury under the laws of the State of California.

6. Subject to the proper or good faith assertion of any applicable privilege, respondent must fully, promptly, and truthfully answer any inquiries of the State Bar's Office of Probation that are directed to respondent, whether orally or in writing, relating to whether respondent is complying or has complied with the conditions of this probation.

7. Within one year after the effective date of the Supreme Court order in this matter, respondent must attend and satisfactorily complete the State Bar's Ethics School and provide satisfactory proof of such completion to the State Bar's Office of Probation in Los Angeles. This condition of probation is separate and apart from respondent's California Minimum Continuing Legal Education (MCLE) requirements; accordingly, respondent is ordered not to claim any MCLE credit for attending and completing this course. (Accord, Rules Proc. of State Bar, rule 3201.)

8. Respondent's probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. And, at the end of the probationary term, if respondent has complied with the conditions of probation, the Supreme Court order suspending respondent from the practice of law for two years will be satisfied, and the suspension will be terminated.

A. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that respondent be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar

Examiners within one year of the effective date of the Supreme Court order imposing discipline in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

B. COSTS

We further recommend 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.

STOVITZ, P. J.

We concur:

EPSTEIN, J.

WATAI, J.