

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO**

In the Matter of)	Case No. 04-C-13670-PEM
)	
JAMES FRANCIS-JU)	DECISION
GOODFELLOW,)	
)	
Member No. 133082,)	
<u>A Member of the State Bar.</u>)	

I. INTRODUCTION

This disciplinary proceeding arises out of the criminal conviction of respondent James Francis-Ju Goodfellow for a misdemeanor violation of Health and Safety Code section¹ 11377, subdivision (a) [possession of controlled substance]. The Office of the Chief Trial Counsel (State Bar) was represented by Cydney Batchelor. Respondent did not appear during the proceedings.

After considering the facts and the law applicable to this matter, the court recommends, among other things, that respondent be suspended for two years; that said suspension be stayed; and that he be actually suspended for one year and until he complies with rule 205 of the Rules of Procedure of the State Bar.²

II. SIGNIFICANT PROCEDURAL HISTORY

By minute order filed January 4, 2006, the State Bar Court Review Department referred this disciplinary proceeding to the Hearing Department, pursuant to rule 951(a) of the California Rules of Court, for a hearing and decision regarding whether the facts and circumstances

¹Future references to section are to this source.

²Future references to rule are to this source.

surrounding respondent's violation of section 11377, subdivision (a) involved moral turpitude or other misconduct warranting discipline and, if so, for a recommendation as to the discipline that should be imposed.

Thereafter, on January 19, 2006, this court filed a notice of hearing on conviction and caused it to be properly served upon respondent on the same date by certified mail, return receipt requested, at his State Bar membership records address (official address).

Also on January 19, 2006, respondent was properly served at his official address with a notice advising him, among other things, that a status conference would be held on February 27, 2006.

On its own motion, the court judicially notices its records pursuant to Evidence Code section 452, subdivision (g) that the January 19 correspondence to respondent was returned unclaimed.

Respondent did not appear at the February 27, 2006, status conference. On February 28, 2006, he was properly served with a status conference order at his official address by first-class mail, postage prepaid. On its own motion, the court judicially notices its records which indicate that this correspondence was not returned as undeliverable.

Respondent did not file a responsive pleading to the notice of hearing on conviction. On March 22, 2006, a motion for entry of default was filed and properly served on respondent at his official address by certified mail, return receipt requested. The motion advised him that minimum discipline of actual suspension for two years and until he complied with Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct³, standard 1.4(c)(ii), would be sought if he was found culpable. Respondent did not respond to the motion.

Respondent did not appear at a status conference held on March 27, 2006; however, he did not receive proper notice of that event. A status conference order was properly served on respondent at his official address on March 28, 2006, memorializing that event and advising him

³Future references to standard or std. are to this source.

that the case would proceed by default. The court judicially notices its records which indicate that this correspondence was not returned as undeliverable.

On May 8, 2006, the court entered respondent's default and enrolled him inactive effective three days after service of the order. The order was filed and properly served on him at his official address on that same date by certified mail, return receipt requested. This correspondence was returned bearing a stamp indicating that it was undeliverable and also bearing the handwritten notation "moved."

The State Bar's and the court's efforts to contact respondent were fruitless. The court concludes that respondent was given sufficient notice of the pendency of this proceeding, including notice by certified mail and by regular mail, to satisfy the requirements of due process. (*Jones v. Flowers, et al.* (April 26, 2006, No. 04-1477) 547 U.S.)

The matter was submitted for decision without hearing after the State Bar filed a brief on May 30, 2006. On May 31, 2006, the State Bar filed an additional declaration. Accordingly, the court, on its own motion, vacates the submission date and reopens the record to allow consideration of that declaration. The matter was again submitted for decision on May 31, 2006.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent's culpability is conclusively established by the record of his conviction. (Bus. & Prof. Code, section 6101, subd. (a); *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581, 588.)

A. Jurisdiction

Respondent was admitted to the practice of law in California on January 21, 1988, and has been a member of the State Bar at all times since.

B. Facts

On July 10, 2004, respondent attempted to shoplift some food items from a Whole Foods Market in San Francisco valued at \$17.33. A store security guard observed him place the items into a plastic shopping bag and leave the store without attempting to pay for the items. The guard stopped respondent and brought him into the security office. While there, the guard

looked into respondent's open shopping bag and saw several small bags of "an unknown narcotic." The police came, took custody of respondent and seized eight small bags of crystal, later determined to be methamphetamines.

On July 15, 2004, respondent was charged with possessing a controlled substance, a misdemeanor, in violation of section 11377, subdivision (a). (*People v. Goodfellow*, San Francisco Superior Court case no. 2172415.)

On August 23, 2004, the court released respondent to supervised pretrial release on condition that he submit to substance abuse counseling and report five times a week.

On September 14, 2004, respondent pled nolo contendere to the charge. He was sentenced to three years' probation; six days in county jail, with credit for the six days already served; \$500 fine; \$100 restitution, registration pursuant to section 11590; and drug testing and counseling, among other things.

On May 3, 2005, respondent failed to appear at a Proposition 36 progress report court event. His probation was administratively revoked and he was terminated from the Proposition 36 program. A bench warrant was issued for his arrest in the sum of \$75,000. The court noted that this was the second bench warrant issued in that case.

On October 24, 2006, respondent appeared in court and admitted the probation violation. The probation revocation of May 3, 2005, was set aside. Respondent's probation was reinstated and extended until October 19, 2008.

C. Conclusions of Law

The facts and circumstances surrounding respondent's violation of section 11377, subdivision (a) do not involve moral turpitude, but do involve other misconduct warranting discipline.

IV. MITIGATING AND AGGRAVATING FACTORS

A. Aggravating Factors

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

In relevant part, standard 1.2(b)(iii) makes consideration as an aggravating circumstance whether respondent's misconduct was surrounded or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct. In the instant case, respondent's criminal conviction for possession of a controlled substance arose from a dishonest act, shoplifting.

Respondent has demonstrated indifference toward rectification of or atonement for the consequences of his misconduct by not complying with the terms of his criminal probation. (Std. 1.2(b)(v).)

Respondent's failure to participate in these proceedings prior to the entry of default is also an aggravating factor. (Std. 1.2(b)(vi).) He has demonstrated his contemptuous attitude toward disciplinary proceedings as well as his failure to comprehend the duty of an officer of the court to participate therein, a serious aggravating factor. (Std. 1.2(b)(vi); *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 104, 109.)

B. Mitigating Factors

Respondent bears the burden of establishing mitigation by clear and convincing evidence. (Std. 1.2(e).) Since respondent did not participate in these proceedings, the court has been provided no basis for finding mitigating factors. However, the court notes that respondent has practiced law for over 16 years without a disciplinary record prior to the commission of the misconduct herein, a significant mitigating factor.

V. DEGREE OF DISCIPLINE

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; Std. 1.3.)

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. If two or more acts of professional misconduct are found in a single

disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. (Std. 1.6(a).) The level of discipline is progressive. (Std. 1.7(b).)

Standard 3.4 provides that the final conviction of a member of a crime which does not involve moral turpitude but which does involve other misconduct warranting discipline shall result in a sanction that is appropriate to the nature and extent of the misconduct found to have been committed by the member. (*In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108, 118; *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 510.) The standards, however, are guidelines from which the court may deviate in fashioning the most appropriate discipline considering all the proven facts and circumstances of a given matter. (*In re Young* (1989) 49 Cal.3d 257, 267 (fn. 11); *Howard v. State Bar* (1990) 51 Cal.3d 215.) They are "not mandatory 'sentences' imposed in a blind or mechanical manner." (*Gary v. State Bar* (1988) 44 Cal. 3d 820, 828.)

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

The State Bar seeks actual suspension of two years and until respondent complies with standard 1.4(c)(ii). After considering this matter, the court believes that actual suspension for one year and until he complies with rule 205, among other things, is sufficient to protect the public and to deter further misconduct by respondent.

Respondent was convicted of possessing methamphetamines. There is no indication that he had a motive of financial gain with regard to the drug. The conviction resulted from respondent's shoplifting some food items, a dishonest act not to be condoned. However, the property stolen was valued at \$17.33, a very small amount. Respondent did miss a progress report appearance which resulted in his probation being revoked. However, he later appeared in court and the probation was reinstated and extended. There is no indication that he has violated any terms of his probation since. Respondent practiced law for over 16 years without disciplinary incident, a significant mitigating factor. Although the court is concerned that

respondent did not participate in these proceedings, it is recommending that he remain actually suspended until he complies with rule 205. Moreover, if he remains actually suspended for two years or more, he will also have to comply with standard 1.4(c)(ii) before he is allowed to practice law again. Accordingly, the court believes that the recommended discipline is sufficient to protect the public and to deter further misconduct by respondent.

VI. RECOMMENDED DISCIPLINE

IT IS HEREBY RECOMMENDED that respondent JAMES FRANCIS-JU GOODFELLOW be suspended from the practice of law in the State of California for a period of two years; that said suspension be stayed; and that he be actually suspended from the practice of law for one year and until the State Bar Court grants a motion to terminate respondent's actual suspension at its conclusion or upon such later date ordered by the court. (Rule 205(a), (c), Rules of Proc. of State Bar.)

It is also recommended that he be ordered to comply with the conditions of probation, if any, hereinafter imposed by the State Bar Court as a condition for terminating his actual suspension.

If the period of actual suspension reaches or exceeds two years, it is further recommended that respondent remain actually suspended until he has shown proof satisfactory to the State Bar Court of rehabilitation, fitness to practice, and learning and ability in the general law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct. (See also, rule 205(b).)

It is also recommended that respondent be ordered to comply with the requirements of rule 955 of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court order in this matter and file the affidavit provided for in paragraph (c) within 40 days of the effective date of the order showing his compliance with said order.⁴

⁴Failure to comply with rule 955 of the California Rules of Court could result in disbarment. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Respondent is required to file an affidavit pursuant to rule 955(c) even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

It is further recommended that respondent take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners, Multistate Professional Responsibility Examination Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) and provide proof of passage to the State Bar Office of Probation, within one year of the effective date of the discipline herein. **Failure to pass the Multistate Professional Responsibility Examination within the specified time results in actual suspension by the Review Department, without further hearing, until passage. But see rule 951(b), California Rules of Court, and rule 321(a)(1) and (3), Rules of Procedure of the State Bar.**

VI. 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.

Dated: August 16, 2006

PAT McELROY
Judge of the State Bar Court