

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case Nos.: 04-C-14475-PEM;
)	05-C-01805 (Cons.)
MICHAEL IRA BURTON,)	
)	DECISION AND DISCIPLINE ORDER;
Member No. 83380,)	ORDER SEALING CERTAIN
)	DOCUMENTS
<u>A Member of the State Bar.</u>)	

INTRODUCTION

Between August 2004 and January 2005, respondent **Michael Ira Burton** (“respondent”) was arrested for driving under the influence of alcohol on three separate occasions. Respondent was subsequently convicted, and these matters were referred to this court for a hearing and decision as to whether the facts and circumstances surrounding these convictions involved moral turpitude or other misconduct warranting discipline and, if so found, a recommendation as to the discipline to be imposed. Thereafter, respondent participated in and successfully completed the State Bar Court’s Alternative Discipline Program (“ADP”). Accordingly, the court hereby orders, as set forth below, the imposition of discipline relating to a successful completion of the ADP.

PROCEDURAL HISTORY

On October 18, 2004, respondent appeared in the Marin County Municipal Court and entered guilty pleas to two separate charges of driving under the influence of alcohol.

Respondent was sentenced that same day. On May 10, 2005, the Office of the Chief Trial Counsel of the State Bar of California (“State Bar”) transmitted a certified copy of respondent’s record of conviction, in Case No. 04-C-14475, to the State Bar Court pursuant to Business and Professions Code sections 6101-6102 and California Rules of Court, rule 9.5, et seq. On May 13, 2005, the Review Department of the State Bar Court issued an order referring Case No. 04-C-14475 to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the facts and circumstances surrounding respondent’s convictions are found to involve moral turpitude or other misconduct warranting discipline.

Respondent sought to participate in the ADP, and on July 25, 2005, this matter was referred to the ADP.¹

On March 27, 2006, respondent appeared in the Marin County Municipal Court and entered a guilty plea to an additional charge of driving under the influence of alcohol. Respondent also pled guilty to driving on a suspended license, and was sentenced on both charges that same day. On July 6, 2006, the State Bar transmitted a certified copy of respondent’s record of conviction, in Case No. 05-C-01805, to the State Bar Court pursuant to Business and Professions Code sections 6101-6102 and California Rules of Court, rule 9.5, et seq. On July 12, 2006, the Review Department of the State Bar Court issued an order referring Case No. 05-C-01805 to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the facts and circumstances surrounding respondent’s convictions are found to involve moral turpitude or other misconduct warranting discipline.

On October 16, 2006, the court issued an order consolidating Case Nos. 04-C-14475 and 05-C-01805.

¹ This program was earlier referred to by other names.

The parties entered into a Stipulation Re Facts and Conclusions of Law which was received by the State Bar Court on November 7, 2006. That same day, respondent submitted a nexus statement establishing a nexus between his substance abuse issue and his misconduct.

On December 11, 2006, the court issued an order formally accepting respondent into the ADP. That same day, the court lodged the Confidential Statement of Alternative Dispositions and Orders, the Contract and Waiver for Participation in the State Bar Court's ADP ("Contract"), and the parties' Stipulation Re Facts and Conclusions of Law.

On April 12, 2010, the court issued an order finding that respondent successfully completed the ADP. Thereafter, on that same date, the parties' Stipulation Re Facts and Conclusions of Law was filed, and this matter was submitted for decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Stipulation Re Facts and Conclusions of Law, including the court's order approving the Stipulation Re Facts and Conclusions of Law, is attached hereto and hereby incorporated by reference, as if fully set forth herein.

The Stipulation Re Facts and Conclusions of Law sets forth the factual findings, legal conclusions, and aggravating and mitigating circumstances in this matter. Below is a summary of the two matters before the court.

Case No. 04-C-14475

On August 21, 2004, respondent was arrested for driving under the influence of alcohol; his blood alcohol level at the time was determined to be .27/.29/.30. On September 16, 2004, respondent was again arrested for driving under the influence; his blood alcohol level on that occasion was determined to be .36/.35. On October 18, 2004, respondent pled guilty to two misdemeanor violations of California Vehicle Code section 23152, subdivision (b), driving while

having a .08% or higher blood-alcohol level. That same day, respondent was placed on probation for three years.

Respondent stipulated that although the facts and circumstances surrounding his violations of California Vehicle Code section 23152, subdivision (b), do not involve moral turpitude, they do involve other conduct warranting discipline.

Case No. 05-C-01805

On January 2, 2005, respondent was arrested for driving under the influence and driving with a suspended/revoked driver's license. Respondent's blood-alcohol level was determined to be .22/.22. On March 27, 2006, respondent pled guilty to misdemeanor violations of Vehicle Code sections 23152, subdivision (b), (driving while having a .08% or higher blood-alcohol level), and 14601.2, subdivision (a), (driving on a suspended/revoked driver's license).

Respondent stipulated that although the facts and circumstances surrounding his violations of California Vehicle Code sections 23152, subdivision (b), and 14601.2, subdivision (a), do not involve moral turpitude, they do involve other conduct warranting discipline.

Aggravation and Mitigation

The parties stipulated to the following factors in aggravation and mitigation. In aggravation, respondent committed multiple acts of misconduct, and was on criminal probation for his first two DUI convictions when he was arrested for his third DUI. In mitigation, respondent displayed candor and cooperation with the State Bar, participated in the Lawyer's Assistance Program, and completed residential treatment for his alcohol dependency.

In addition, respondent successfully completed the ADP. Respondent's successful completion of the ADP, which required his successful participation in the LAP, as well as the Certificate of One Year Participation in the Lawyer Assistance Program – Substance Use, qualify as clear and convincing evidence that respondent no longer suffers from the substance abuse

issue which led to his misconduct. Accordingly, it is appropriate to consider respondent's successful completion of the ADP as a mitigating circumstance in this matter. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(e)(iv).)

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.)

The parties submitted briefs on the issue of discipline. After considering the parties' briefs, including the case law and standards cited therein, the court advised the parties of the discipline that would be ordered if respondent successfully completed the ADP and the discipline that would be recommended to the Supreme Court if respondent was terminated from, or failed to successfully complete, the ADP.

In determining the appropriate discipline to recommend in this matter if respondent successfully completed the ADP, the court considered the discipline recommended by the parties, as well as standards 1.3, 1.4, 1.5, 1.6, and 3.4. The court also considered and distinguished *In re Kelley* (1990) 52 Cal.3d 487, and *In re Silverton* (2005) 36 Cal.4th 81.

After agreeing to the court's proposed high and low levels of discipline, respondent executed the Contract to participate in the ADP, and respondent's period of participation in the ADP commenced.

Thereafter, respondent successfully participated in the ADP and - as set forth in the court's April 12, 2010 order - successfully completed the ADP. Accordingly, the court orders imposition of the discipline set forth in the Confidential Statement of Alternative Dispositions and Orders relating to a successful completion of the ADP.

DISCIPLINE ORDER

Accordingly, it is ordered that respondent **Michael Ira Burton**, State Bar Number 83380, is hereby publicly reprovved. Pursuant to the provisions of rule 270(a) of the Rules of Procedure of the State Bar of California, the public reprovval will be effective when this decision becomes final. Furthermore, pursuant to rule 9.19(a) of the California Rules of Court and rule 271 of the Rules of Procedure, the court finds that the interests of respondent and the protection of the public will be served by the following specified conditions being attached to the public reprovval imposed in this matter. Failure to comply with any conditions attached to this public reprovval may constitute cause for a separate proceeding for willful breach of rule 1-110 of the Rules of Professional Conduct of the State Bar of California. Respondent is hereby ordered to comply with the following conditions attached to his public reprovval for a period of two years following the effective date of the public reprovval imposed in this matter:

1. During the reprovval period, respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct;
2. Within ten (10) days of any change, respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California (“Office of Probation”), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;
3. Within thirty (30) days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent’s assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request;
4. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of reprovval. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all reprovval conditions during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him in the State Bar Court and if so, the case number and current status of that proceeding. If the first report

would cover less than thirty (30) days, that report must be submitted on the next 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 twenty (20) days before the last day of the reprobation period and no later than the last day of the reprobation period;

5. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully, any inquiries of the Office of Probation which are directed to respondent personally or in writing relating to whether respondent is complying or has complied with the reprobation conditions;
6. Within one (1) year of the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, and passage of the test given at the end of that session;
7. Respondent must comply with all conditions of probation imposed in the underlying criminal matter(s) and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation;
8. Respondent must abstain from use of any alcoholic beverages, and shall not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription; and
9. The period during which these conditions are in effect will commence upon the date this decision imposing the public reprobation becomes final.

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (“MPRE”).²

COSTS

The court orders 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. Michael Ira Burton must also reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and such payment is enforceable as provided under Business and Professions Code section 6140.5.

² The parties stipulated that protection of the public and respondent’s interests would not be served by a requirement that respondent take and pass the MPRE.

DIRECTION RE DECISION AND ORDER SEALING CERTAIN DOCUMENTS

The court directs a court case administrator to file this Decision and Discipline Order; Order Sealing Certain Documents. Thereafter, pursuant to rule 806(c) of the Rules of Procedure of the State Bar of California (“Rules of Procedure”), all other documents not previously filed in this matter are ordered sealed pursuant to rule 23 of the Rules of Procedure.

It is further ordered that protected and sealed material will only be disclosed to: (1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosure. All persons to whom protected material is disclosed will be given a copy of this order sealing the documents by the person making the disclosure.

IT IS SO ORDERED.

Dated: June _____, 2010

PAT McELROY
Judge of the State Bar Court