

THE STATE BAR OF CALIFORNIA
OFFICE OF THE CHIEF TRIAL COUNSEL
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FILED

JUN 21 2006

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

IN THE STATE BAR COURT OF THE STATE BAR OF CALIFORNIA

IN THE MATTER OF THE
CONVICTION OF:

PHILIP M. VAN AELSTYN,
No. 220844

A Member of the State Bar.

) Case No. **05-C-05089**
)
) Transmittal of Records of Conviction of Attorney (Bus. &
) Prof. Code §§6101-6102; Cal. Rules of Court, rule 950 et
) seq.)
)
) ☒ Felony;
) ☒ Crime(s) involved moral turpitude;
) ☐ Probable cause to believe the crime(s) involved moral
) turpitude;
) ☐ Crime(s) which may or may not involve moral
) turpitude or other misconduct warranting discipline;
) ☐ Transmittal of Notice of Finality of Conviction.
)

To the CLERK OF THE STATE BAR COURT:

1. Transmittal of records.

- ☒ A. Pursuant to the provisions of Business and Professions Code, sections 6101-6102 and California Rules of Court, rule 950 et seq., the Office of the Chief Trial Counsel transmits a certified copy of the record of convictions of the following member of the Bar Court and for such consideration and action as the Court deems appropriate:
- ☒ B. Notice of Appeal
- ☐ C. Evidence of Finality of Conviction (Notice of Lack of Appeal)
- ☐ D. Other

Name of member: PHILIP M. VAN AELSTYN

Date member admitted to practice law in California: NOVEMBER 25, 2002

Member's Address of Record: P.O. BOX 7261
AUBURN, CA 95604 7261

2. Date and court of conviction; offense(s).

The record of conviction reflects that the above-named member of the State Bar was convicted as follows:

Date of entry of conviction: JANUARY 27, 2005

Convicting court: CHITTENDEN DISTRICT COURT, STATE OF VERMONT

Case number(s): CHITTENDEN DOCKET NOS. 89-1-04; 90-1-04; 91-1-04.

Crime(s) of which convicted and classification(s):

Respondent was convicted of two counts of extortion under 13 Vermont Revised Statutes § 1701. This crime constitutes a felony under Vermont Law (13 Vermont Revised Statutes § 1). The elements of this offense do not match the elements of any California penal statute. The closest analogy is California's extortion statute (California Penal Code §§ 518, 519), which is punishable as a felony (Penal Code §§ 1, 520) and constitutes moral turpitude per se (*In re Disbarment of Coffey* (1899) 123 Cal 522; *In re Rothrock* (1940) 16 Cal.2d 449, and *Libarian v. State Bar* (1952) 38 Cal.2d 328. Given the fact that the Vermont crime is somewhat broader than the California crime, the State Bar believes that respondent's crime does not satisfy the test set forth in Business and Professions Code section 6102(d)(2) and therefore is not deemed a felony for disciplinary purposes in California. However, we recommend that respondent be placed on interim suspension under Business and Professions Code section 6102(a) because his extortion offense involved moral turpitude per se or there is at least probable cause to believe that his extortion crime involved moral turpitude.

Respondent was also convicted of stalking under 13 Vermont Revised Statutes § 1062 (see also the definition of stalking in 13 Vermont Revised Statutes § 1061). This crime constitutes a felony under Vermont Law (13 Vermont Revised Statutes § 1). The elements of this offense do not match the elements of any California penal statute. The closest analogy is California's stalking statute (California Penal Code § 646.9), which is punishable as a felony (Penal Code §§ 1, 649.6(a)). Given the fact that the Vermont crime is somewhat broader than the California crime, the State Bar believes that respondent's crime does not satisfy the test set forth in Business and Professions Code section 6102(d)(2) and therefore is not deemed a felony for disciplinary purposes in California. However, we recommend that respondent be placed on interim suspension under Business and Professions Code section 6102(a) because his stalking offense involved moral turpitude per se or there is at least probable cause to believe that his stalking crime involved moral turpitude. There is no California authority on the issue of whether a conviction for stalking involves moral turpitude per se. However, in the context of an original disciplinary matter, this Court has found stalking conduct to involve moral turpitude (*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 146-148) and a violation of California's stalking statute involves moral turpitude for purposes of immigration determination see *Zavalaeta-Gallegos v. INS* (9th Cir. 2001) 261 F.3d 951, 955). Since respondent's crime required a

specific intent to stalk, we recommend that respondent be placed on interim suspension under Business and Professions Code section 6102(a) because his stalking offense involved moral turpitude per se or there is at least probable cause to believe that his stalking crime involved moral turpitude.

[X] 3. Compliance with Rule 955. (Applicable only if checked.)

We bring to the Court's attention that, should the Court enter an order of interim suspension herein, the Court may wish to require the above-named member to comply with the provisions of rule 955, California Rules of Court, paragraph (a), within 30 days of the effective date of any such order; and to file the affidavit with the Clerk of the State Bar Court provided for in paragraph (c) of rule 955 within 40 days of the effective date of said order, showing the members' compliance with the provisions of rule 955.

[X] 4. Other information to assist the State Bar Court.

We bring to the Court's attention that count four ("dispute 4") was dismissed by the state on may 13, 2005 as shown in the enclosed docket. Also enclosed, for the court's convenience, are copies of the vermont statutes that Mr. Van Aelstyn was convicted of violating.

DOCUMENTS TRANSMITTED:

13 VERMONT REVISED STATUE 1701
13 VERMONT REVISED STATUE 1062
AFFIDAVIT
INFORMATION, COUNT ONE OF FOUR FILED JANUARY 7, 2004
INFORMATION, COUNT TWO OF FOUR FILED JANUARY 7, 2004
INFORMATION, COUNT THREE, AS AMENDED, OF FOUR FILED JANUARY 7, 2004
PARTIAL TRANSCRIPT OF JURY TRIAL (DAY THREE) HEARD ON JANUARY 27, 2005
DOCKET
PROBATION ORDER FILED MAY 26, 2005
NOTICE OF APPEAL FILED MAY 31, 2005

THE STATE BAR OF CALIFORNIA
OFFICE OF THE CHIEF TRIAL COUNSEL

DATED: June 21, 2006

BY: 
DONALD R. STEEDMAN
Supervising Trial Counsel

A copy of this transmittal and its
Attachments have been sent to:

PERSONAL AND CONFIDENTIAL
PHILIP M. VAN AELSTYN
P.O. BOX 7261
AUBURN, CA 95604 7261

DECLARATION OF SERVICE BY MAIL

CASE NUMBER: 05-C-05089

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 180 Howard Street, San Francisco, California 94105, declare that I am not a party to the within action; that I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service; that in the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day; that I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit. That in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of San Francisco, on the date shown below, a true copy of the within

TRANSMITTAL OF CONVICTION AND NOTICE OF APPEAL RE PHILIP M. VAN AELSTYN

in a sealed envelope placed for collection and mailing at San Francisco, on the date shown below, addressed to:

PERSONAL AND CONFIDENTIAL
PHILIP M. VAN AELSTYN
P.O. BOX 7261
AUBURN, CA 95604 7261

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California, on the date shown below.

Signed: _____

Deborah Flores

Date: _____

June 21, 2006