

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)
)
EARLY MARLOW HAWKINS,)
)
Member No. 119827,)
)
A Member of the State Bar.)

Case No.: 06-C-13875; 06-C-14062 (Cons.)
DECISION AND ORDER SEALING
CERTAIN DOCUMENTS

After the transmittal to the State Bar Court of the records of the conviction of respondent Early Marlow Hawkins (respondent), the Review Department of the State Bar Court issued an order on January 25, 2007, in case no. 06-C-14062, referring respondent's April 14, 2006, misdemeanor conviction for violating Vehicle Code section 23103, subdivision (a) [alcohol-related reckless driving] to the Hearing Department of the State Bar Court for a hearing and possible decision recommending discipline.

A Notice of Hearing on Conviction in case no. 06-C-14062 was filed against respondent on February 6, 2007, and the matter was assigned to the Honorable Richard A. Platel.

Thereafter, on February 28, 2007, respondent contacted the State Bar of California's Lawyer Assistance Program (LAP) to assist him with his substance abuse issue.

On March 7, 2007, Judge Platel referred case no. 06-C-14062 to the State Bar Court's Alternative Discipline Program (ADP). Thereafter, effective May 18, 2007, case no. 06-C-14062 was reassigned to the undersigned.

On June 25, 2007, the State Bar of California, Office of the Chief Trial Counsel (State Bar) transmitted to the State Bar Court the records of respondent's May 18, 2007, misdemeanor conviction of Vehicle Code section 23153, subdivision (a) [DUI causing bodily injury with two or more priors], Vehicle Code section 23153, subdivision (b) [driving with blood alcohol of .08% or more causing bodily injury with two or more priors], and Vehicle Code section 12500, subdivision (a) [driving a motor vehicle without a valid license].

On July 3, 2007, the Review Department issued an order in case no. 06-C-13875 referring respondent's May 18, 2007, conviction to the Hearing Department of the State Bar Court for certain action.¹

A Notice of Hearing on Conviction in case no. 06-C-13875 was filed against respondent on July 16, 2007, and the matter was assigned to the undersigned judge. Thereafter, case no. 06-C-13875 was referred to the ADP and both case nos. 06-C-14062 and 06-C-13875 were consolidated.

Respondent executed a Participation Plan with LAP on August 6, 2007.

A nexus statement dated August 13, 2007, was submitted by respondent to the court. Respondent's written statement established a nexus between his substance abuse issue and his misconduct.

Also on August 13, 2007, the parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) in case nos. 06-C-14062; 06-C-13875 (Cons.). The Stipulation was received by the court that same date.

On August 28, 2007, the State Bar transmitted evidence of the finality of respondent's May 18, 2007, conviction to the court. Thereafter, the Review Department issued an augmented referral order to the Hearing Department on September 6, 2007, in case no. 06-C-13875.

¹ At the time of the referral, the court had not received evidence that respondent's conviction was final.

On March 13, 2008, respondent executed the Contract and Waiver for Participation in the State Bar Court's ADP (Contract). On that same date, the court executed an order approving the parties' Stipulation and the Confidential Statement of Alternative Dispositions and Orders (Confidential Statement) which set forth the discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP and the discipline which would be recommended if respondent was terminated from, or failed to successfully complete, the ADP. The Contract, Stipulation, and Confidential Statement were lodged on March 13, 2008.

On March 14, 2008, the court issued an order accepting respondent into the ADP, effective March 13, 2008.

Respondent thereafter participated in both LAP and ADP, and on September 29, 2009, the court issued an order finding that respondent has successfully completed ADP. This matter was submitted for decision that same date.²

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In case no. 06-C-14062, respondent stipulated that, he was stopped on October 2, 2005 by police in Orange County after he was observed driving erratically on the freeway at 75 miles per hour. When stopped by the police, respondent exhibited objective signs of intoxication and refused to perform field sobriety tests. Respondent was then arrested for drunk driving. He submitted to a blood test which revealed a blood alcohol concentration of .08%. Although charged with misdemeanor drunk driving, a plea agreement was reached, and respondent ultimately pled guilty and was convicted of alcohol-related reckless driving. Respondent had been convicted on two prior occasions: (1) on November 25, 2007, for reckless driving; and (2) on January 6, 2004, for drunk driving which occurred on March 18, 2003. Respondent's misconduct on October 2, 2005, which resulted in his April 14, 2006 conviction, was a violation

² The court also issued an order on October 19, 2009, finding that respondent has successfully completed the ADP.

of the court ordered probationary terms of his January 6, 2004 drunk driving conviction. Respondent stipulated that the facts and circumstances surrounding his conviction did not involve moral turpitude but did involve other misconduct warranting discipline. Respondent also stipulated that his misconduct violated the criminal court's order for his 2004 drunk driving conviction, in willful violation of section 6103 of the Business and Professions Code.

In case no. 06-C-13875, respondent stipulated that on July 18, 2006, respondent, whose driver's license had been suspended, hit the back of a van stopped at a red light. After the impact, respondent got out of his vehicle and went to the other vehicle to ask if the individuals inside were alright. The driver of the other vehicle told respondent that they were sore and that she had called 911 for assistance. Respondent was then observed by a witness to remove a black bag from his vehicle and to start walking away from the scene of the accident. After searching the surrounding area, officers located respondent. While he was being interviewed by a police officer, respondent showed objective signs of being under the influence of alcohol. Respondent did not cooperate with the officer but did admit to having one prior arrest for driving under the influence and to being on probation. Respondent was arrested. His blood alcohol concentration was found to be .10%. On May 18, 2007, respondent pled guilty to misdemeanor violations of Vehicle Code section 23153, subdivisions (a) and (b), and Vehicle Code section 12500, subdivision (a). Respondent stipulated that the facts and circumstances surrounding his conviction did not involve moral turpitude but did involve other misconduct warranting discipline. Respondent also stipulated that his misconduct violated the criminal court's orders for his 2004 drunk driving conviction and his April 14, 2006, alcohol-related reckless driving conviction, in willful violation of section 6103 of the Business and Professions Code.

In mitigation, respondent has no prior record of discipline (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e)(i)), and he was candid and cooperative with the State Bar during disciplinary investigation and proceedings (std. 1.2(e)(v)).

In aggravation, respondent's misconduct significantly harmed the public or the administration of justice (std. 1.2(b)(iv)) and evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct (std. 1.2(b)(ii)).

The parties' stipulation as to facts and conclusions of law, including the court's order approving the stipulation, is attached hereto and hereby incorporated by reference, as if fully set forth herein. The stipulation as to facts and conclusions of law set forth the factual findings, legal conclusions, and aggravating and mitigating circumstances in this matter.

Furthermore, at the time respondent engaged in his misconduct, he was suffering from a substance abuse issue, and respondent's substance abuse issue directly caused or contributed to the misconduct which forms the basis for this proceeding. 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.)

Respondent executed a Participation Plan with the LAP on August 6, 2007. The LAP issued a certificate dated August 24, 2009, which reflects that the LAP was not aware of the use of any unauthorized substances by respondent for at least one year prior to the date of the certificate.

Respondent also successfully completed the ADP. Respondent's successful completion of the ADP, which required his successful participation in the LAP, as well as the certificate

from the LAP, 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. (Std. 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.)

After reviewing the State Bar's brief on the issue of discipline, which was received by the court on December 14, 2007, and considering the Standards for Attorney Sanctions for Professional Misconduct and case law cited therein, the parties' stipulation setting forth the facts, conclusions of law, and the aggravating and mitigating circumstances in this matter, and respondent's written statement regarding the nexus between his substance abuse issue and his misconduct, the court advised the parties of the discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP and the discipline which would be recommended 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 State Bar, as well as certain standards and case law. In particular, the court considered standards 1.2, 1.3, 1.4, 1.5, 1.6, 2.6, and 3.4, and the case law cited in the State Bar's discipline brief, including *In re Kelley* (1990) 52 Cal.3d 487 and *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208.

After agreeing to the discipline which the court would recommend to the Supreme Court if respondent successfully completed or was terminated from, or failed to successfully complete, the ADP, respondent executed the Contract to participate in the ADP and began his participation in the ADP.

Thereafter, respondent successfully participated in the ADP and, as set forth in the court's September 29 and October 19, 2009, orders, the court found that respondent has successfully completed the ADP. Accordingly, the court will recommend to the Supreme Court the imposition of the discipline set forth in the court's Confidential Statement of Alternative Dispositions and Orders if respondent successfully completed the ADP.

RECOMMENDED DISCIPLINE

IT IS HEREBY RECOMMENDED that respondent **EARLY MARLOW HAWKINS**, State Bar Number 119827, be suspended from the practice of law in California for two (2) years, that execution of that period of suspension be stayed, and that he be placed on probation for a period of three (3) years³ subject to the following conditions:

1. During the probation period, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
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,

³ The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

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 probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation 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 period of probation and no later than the last day of the probation 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 probation 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 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 matters and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation; and
8. Respondent must comply with all provisions and conditions of his Participation Agreement/Plan with the Lawyer Assistance Program (LAP) and must provide the Office of Probation with certification of completion of the LAP. Respondent must immediately report any non-compliance with any provision(s) or condition(s) of his Participation Agreement/Plan to the Office of Probation. Respondent must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent's participation in the LAP and his compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. Respondent will be relieved of this condition upon providing to the Office of Probation satisfactory certification of completion of the LAP.

It is also recommended that, at the expiration of the period of probation, if Early Marlow Hawkins has complied with all conditions of probation, the two (2) year period of stayed suspension will be satisfied and that suspension will be terminated.

It is further recommended that Early Marlow Hawkins take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court's disciplinary order in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

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.

DIRECTION RE DECISION AND ORDER SEALING CERTAIN DOCUMENTS

The court directs a court case administrator to file the parties' Stipulation Re Facts and Conclusions of Law⁴ and this Decision and 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

⁴ The Stipulation is to be filed nunc pro tunc to September 29, 2009 (the date of the court's Submission Order).

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: December _____, 2009

DONALD F. MILES
Judge of the State Bar Court