

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 06-O-14583-RAP; 08-C-13152;
)	08-N-13483 (Cons.)
DENNIS HARRY JOHNSTON,)	
)	DECISION AND ORDER OF
Member No. 82017,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
A Member of the State Bar.)	

I. Introduction

This consolidated default proceeding is based upon the conviction of respondent **Dennis Harry Johnston** of a misdemeanor violation of Penal Code section 243, subdivision (e)(1) (battery of a spouse/cohabitant) and upon charges against respondent, filed by the Office of the Chief Trial Counsel of the State Bar of California (State Bar), alleging multiple acts of professional misconduct, including (1) failing to comply with probation conditions, (2) acts of moral turpitude (four counts), and (3) failing to comply with California Rules of Court, rule 9.20,¹ as ordered by the California Supreme Court on June 13, 2008, in S117701.

In the conviction referral matter, the court finds for the reasons stated, *post*, that the record presented does not permit the conclusion that the facts and circumstances surrounding respondent's conviction involve either moral turpitude or other misconduct warranting discipline.

¹ All references to rule 9.20 are to California Rules of Court, rule 9.20.

The court finds by clear and convincing evidence that respondent is culpable of the alleged counts of misconduct. In view of respondent's misconduct and the aggravating circumstances, the court recommends that respondent be disbarred from the practice of law.

II. Pertinent Procedural History

A. First Notice of Disciplinary Charges (Case No. 06-O-14583)

On September 8, 2008, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served on respondent a first Notice of Disciplinary Charges (NDC) in case No. 06-O-14583 at his official membership records address (official address) in accordance with Business and Professions Code section 6002.1, subdivision (c).²

Respondent did not file a response to the NDC. (Rules Proc. of State Bar, rule 103.)

B. The Criminal Conviction Matter (Case No. 08-C-13152)

By order filed October 6, 2008 (augmented on November 21, 2008), the Review Department of the State Bar Court referred this disciplinary proceeding to the hearing department, pursuant to rule 9.10(a) of the California Rules of Court, for a hearing and decision recommending the discipline to be imposed if the hearing department finds that the facts and circumstances surrounding respondent's misdemeanor violation of Penal Code section 243, subdivision (e)(1), involved moral turpitude or other misconduct warranting discipline.

Thereafter, on October 14, 2008, the State Bar Court issued a Notice of Hearing on Conviction (Notice of Hearing) and caused it to be properly served on respondent on that same date by certified mail, return receipt requested, at his official address. The mailing also contained a Notice of Assignment and Notice of Initial Status Conference. The mailing was returned to the court as unclaimed on November 7, 2008.

² References to section(s) are to the provisions of the California Business and Professions Code, unless otherwise noted.

On October 22, 2008, respondent was properly served with a Notice of Change of In-Person Status Conference, Date and Time, informing him that the in-person status conference had been changed to November 20, 2008.

Respondent did not file a response to the Notice of Hearing (Rules Proc. of State Bar, rule 601). Although he was served with proper notice, respondent failed to appear at the November 20, 2008 status conference.

On November 20, 2008, the court ordered that case Nos. 06-O-14583 and 08-C-13152 be consolidated.

On November 24, 2008, the Hearing Department of the State Bar Court sent a copy of the Notice of Augmented Referral Order and a copy of the augmented order to respondent at his official address, by first class mail through the United States Postal Service. Respondent did not file a response to the augmented order.

As of January 27, 2009, respondent had not filed a response to the NDC in case No. 06-O-14583; nor had he answered the Notice of Hearing on Conviction in case No. 08-C-13152.

On January 27, 2009, the State Bar filed and properly served a motion for entry of default on respondent in case Nos. 06-O-14583 and 08-C-13152. Respondent did not file an opposition to the default motion.

C. Second Notice of Disciplinary Charges (Case No. 08-N-13483)

On February 6, 2009, the State Bar filed and properly served a second NDC on respondent in case No. 08-N-13483 at his official address. The NDC was returned to State Bar as unclaimed on March 6, 2009.

On February 18, 2009, the court filed and properly served a Notice of Initial Status Conference on respondent; the notice stated, among other things, that an in-person initial status

conference was set for March 23, 2009 in case No 08-N-13483. Respondent did not appear at the initial status conference in case No. 08-N-13483 on March 23, 2009.

On March 23, 2009, the court ordered that case No. 08-N-13483 be consolidated with case Nos. 06-O-14583 and 08-C-13152. The order was filed and properly served on March 30, 2009.

On the State Bar's motion, respondent's default was entered in the consolidated matter on April 9, 2009, and respondent was enrolled as an inactive member on April 12, 2009, under section 6007, subdivision (e). A copy of the Order of Entry of Default and Order Enrolling Inactive and Other Orders was sent to respondent's official address by certified mail on April 9, 2009. The mailing was returned as unclaimed on May 5, 2009.

The court granted a request to extend the time in which the State Bar had to submit its brief on discipline to May 6, 2009. The State Bar filed its brief on May 6, 2009, and the matter was taken under submission.

Respondent did not participate in the disciplinary proceedings.

III. Findings of Fact and Conclusions of Law

The court's findings in case Nos. 06-O-14583 and 08-N-13483 are based on the allegations contained in the NDCs as they are deemed admitted and no further proof is required to establish the truth of those allegations. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

Respondent is conclusively presumed, by the record of his conviction in this proceeding, to have committed all of the elements of the crime of which he was convicted. (Bus. & Prof. Code, § 6101, subd. (a); *In re Crooks* (1990) 51 Cal.3d 1090, 1097; *In re Duggan* (1976) 17 Cal.3d 416, 423; *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 the State of California on November 29, 1978, and has been a member at all times since that date.

B. First NDC (Case No. 06-O-14583)

On June 14, 2001, respondent pled guilty to and was convicted of violations of Vehicle Code section 23152(a) (driving under the influence), Vehicle Code section 23152(b) (driving with a blood alcohol of 0.08% or more), and Vehicle Code section 20002(a) (hit and run with property damage) in *People of the State of California v. Dennis Harry Johnston*, Orange County Superior Court case No. IR01HM00448 (the first conviction).

On June 14, 2001, respondent was sentenced in the first conviction to five years informal probation on terms and conditions. Pursuant to the probation terms and conditions in the first conviction, respondent was required to violate no laws and to pay various fees and fines. Respondent was also required to drive only with a valid driver's license, drive only with proof of valid auto liability insurance or financial liability as required by law, not drive a motor vehicle with a measurable amount of alcohol and drugs in his blood, and submit to chemical test of blood, breath or urine, on demand and as specified by any peace officer or probation officer with or without probable cause. The superior court also ordered respondent driver's license suspended for 18 months and ordered respondent to enroll in and complete a first offender alcohol program. Additionally, respondent was ordered to pay restitution to the victim. Probation in the first conviction was concurrent with probation in respondent's conviction in case number IR01HM01899. (See facts, *post.*)

On June 14, 2001, respondent was also convicted and sentenced in *People of the State of California v. Dennis Harry Johnston*, Orange County Superior Court case No. IRO1HM01899 (the second conviction). In the second conviction, respondent pled guilty to violations of Vehicle Code section 23152(a) (driving under the influence), Vehicle Code section 23152(b) (driving with a blood alcohol of 0.08% or more), and Vehicle Code section 14601.5(a) (driving with a suspended license).

On June 14, 2001, respondent was sentenced in the second conviction to 120 days in jail, sentence suspended, and to five years informal probation. Pursuant to the probation terms and conditions in the second conviction, respondent was required among other things, to violate no laws, not drive a motor vehicle with a measurable amount of alcohol and drugs in his blood, and spend 120 days in a residential treatment program. The court ordered the probation in the second conviction to run concurrent with probation in the first conviction.

On or about March 28, 2003, respondent entered into a Stipulation Regarding Facts, Conclusions of Law and Disposition with the State Bar of California in case Nos. 01 C-02575 and 01-C-04259 (the Stipulation).

On May 21, 2003, the hearing department filed an order approving the Stipulation. On that same date the order was properly served by mail upon respondent's counsel at her State Bar membership records address. The hearing department order recommended the disposition set forth in the Stipulation to the California Supreme Court.

The California Supreme Court filed an order on October 3, 2003, in which it ordered, among other things, that respondent be suspended from the practice of law for two years, that execution of the suspension be stayed, and that he be placed on probation for five years subject to the probation conditions, as recommended by the hearing

department in its Order Approving Stipulation, filed on May 21, 2003. (Supreme Court case No. S117701; State Bar Court case Nos. 01-C-02575 and 01-C-04259.) The Supreme Court Order, filed on October 3, 2003, became effective on November 2, 2003. That Supreme Court order was properly served upon respondent on or about October 3, 2003, by the Clerk of the California Supreme Court. Respondent received the October 3, 2003 California Supreme Court Order.

Among other probation conditions, respondent was required to:

1. Comply with the provisions of the State Bar Act and Rules of Professional Conduct;
2. Submit written quarterly reports to the Probation Unit of the Office of the Chief Trial Counsel (Probation Unit) on each January 10, April 10, July 10 and October 10 of the period of probation, stating under penalty of perjury that he has complied with all provisions of the State Bar Act and the Rules of Professional Conduct during the preceding calendar quarter or part thereof covered by the report and to file a final report no earlier than twenty days prior to the expiration of the probation period and no later than the last day of said period;
3. Answer fully, promptly and truthfully any inquiries of the Probation Unit and any probation monitor assigned under these conditions, which are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with the probation conditions;
4. Comply with all conditions of probation imposed in the underlying criminal matters and so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Probation Unit;

5. (a) Enter into a Participation Agreement with Lawyer Assistance Program (LAP) and comply with the terms and conditions of the Participation Agreement, as the agreement may be modified by respondent and LAP from time to time, and (b) furnish satisfactory evidence of his compliance with all the substance abuse treatment and monitoring conditions recommended by LAP to the Probation Unit.

On or about November 21, 2003, a probation deputy with the Office of Probation (previously known as the Probation Unit) wrote a letter to respondent. In that letter, the probation deputy outlined the terms and conditions of respondent's suspension and probation imposed pursuant to the October 3, 2003 Supreme Court Order. The November 21, 2003 letter specifically advised respondent regarding his obligations to file quarterly probation reports, underlying criminal matter reports, and LAP reports. Enclosed with the letter to respondent were (1) copies of the October 3, 2003 Supreme Court Order, (2) the relevant portion of the hearing department's order approving stipulation that set forth the conditions of respondent's probation, substance abuse conditions, and the court's modification to the stipulation, (3) a Quarterly Report Instruction Sheet, (4) an Ethics and Client Trust Accounting Schools Instruction Sheet, (5) a State Bar of California Ethics/Client Trust Account School Application Enrollment form, (6) an Ethics/Client Trust Accounting School schedule, (7) a Quarterly Report form specifically tailored for respondent to use in submitting his quarterly reports, and (8) a Notice of Counsel Representation form.

The probation deputy's November 21, 2003 letter to respondent was mailed on or about November 21, 2003 via the United States Postal Service, first class postage prepaid, in a sealed envelope addressed to respondent at his official State Bar membership records address. The November 21, 2003 letter was not returned as undeliverable or for any other reason by the

United States Postal Service. Respondent received the November 21, 2003 letter with its enclosures. A copy of the November 21, 2003 letter was also mailed to respondent's counsel.

On or about March 10, 2005, the criminal court set a hearing for March 30, 2005, in the conviction matters regarding respondent's failure to comply with his probation conditions. Respondent appeared for his probation violation hearing. On March 30, 2005, the court revoked respondent's probation in both of his conviction matters and set respondent's arraignment for April 13, 2005.

On or about April 11, 2005, respondent signed, under penalty of perjury, his April 10, 2005 quarterly report and submitted it to the Office of Probation. In that report, respondent stated he had complied with the conditions of probation/parole imposed upon him in the underlying criminal matter during the preceding calendar quarter. In that quarterly report, respondent did not acknowledge that during the preceding calendar quarter his criminal probation was modified, terminated or expired.

Respondent's arraignment regarding his probation violations in his conviction matters was continued to September 22, 2005.

Respondent and his counsel appeared for the September 22, 2005 probation violation arraignment. At that arraignment, respondent admitted that he had violated the terms of his criminal probation. On or about September 22, 2005, the court reinstated respondent's probation with the following modifications: (1) respondent was ordered to serve 20 days in jail and (2) the Department of Motor Vehicles would not reissue respondent's California driver's license unless respondent completed an approved drinking driver alcohol program.

On or about October 11, 2005, respondent signed, under penalty of perjury, his October 10, 2005 quarterly report. In that quarterly report respondent stated that he had complied with the conditions of probation/parole imposed upon him in the underlying criminal matter during

the preceding calendar quarter. On or about October 12, 2005, respondent submitted the October 10, 2005 quarterly to the Office of Probation. In that report, respondent did not acknowledge that during the preceding calendar quarter his criminal probation was modified, terminated or expired.

On or about January 30, 2006, proof was filed with the criminal court showing that respondent had completed his jail sentence.

On or about March 18, 2006, respondent was arrested for violating Vehicle Code section 23152(a) (driving under the influence) and violating Vehicle Code section 23152(b) (driving with a blood alcohol of 0.08% or more).

On or about March 30, 2006, respondent appeared before the court with his public defender in *People of the State of California v. Dennis Harry Johnston*, Orange County Superior Court case No. 06NM03219 (the third conviction). On or about March 30, 2006, respondent pled guilty to driving under the influence and was sentenced to 90 days in the Orange County jail with the imposition of the sentence suspended. The second count was dismissed. Respondent was placed on three years informal probation on terms and conditions, including paying various fines and fees.

Pursuant to the terms of his probation conditions in the first and second conviction matters, respondent was required to violate no laws. On or about March 30, 2006, however, respondent pled guilty to the crime of driving under the influence. The commission of said crime was a violation of respondent's criminal probation.

On March 30, 2006, respondent pled guilty to the crime of driving under the influence. Yet, on or about May 11, 2006, respondent signed, under penalty of perjury, his April 10, 2006 quarterly report stating that he had complied with the conditions of probation/parole imposed upon him in the underlying criminal matter during the preceding calendar quarter. On or about

May 15, 2006, respondent submitted his April 10, 2006 quarterly report to the Office of Probation.

On or about December 24, 2005, respondent was arrested for violating Penal Code section 243(e)(1)(battery of a spouse/cohabitant).

On or about June 27, 2006, respondent appeared in court with counsel in *People of the State of California v. Dennis Harry Johnston*, Orange County Superior Court case No. 06NM03420. Respondent pled guilty to battery of a cohabitant and requested immediate sentencing. On or about June 27, 2006, respondent was placed on three years informal probation on terms and conditions in Superior Court case No. 06NM03420 (the fourth conviction). Pursuant to his probation conditions in the fourth conviction, respondent was required to violate no laws, pay various fees and fines, attend and complete a Domestic Violence Batterer's Treatment Program, complete eight hours of community service, and comply with the terms of a protective order.

On or about July 11, 2006, respondent signed, under penalty of perjury, his July 10, 2006 quarterly report and represented that during the preceding calendar quarter, he had complied with all provisions of the State Bar Act and Rules of Professional Conduct. On or about July 11, 2006, respondent submitted his July 10, 2006 quarterly report to the Office of Probation.

On or about October 2, 2006, Pam Poley (Poley), Clinical Director for LAP, wrote to respondent regarding his participation in LAP. In the October 2, 2006 letter, Poley told respondent that due to his non-compliance with the LAP recommendations, his participation in LAP was terminated effective September 28, 2006. On or about October 2, 2006, Poley properly mailed the letter to respondent at his State Bar membership records address. Respondent received the October 2, 2006 letter.

On or about September 28, 2006, respondent was terminated from LAP for failure to comply with LAP recommendations and thereby failed to comply with terms of his probation.

On or about October 12, 2007, respondent belatedly submitted the quarterly report that was due on October 10, 2007 to the Office of Probation. Despite having been terminated from LAP on September 28, 2006, in his quarterly report filed on October 12, 2007, respondent represented to the Office of Probation that during the preceding calendar quarter, he had complied with all the terms and conditions of the Lawyer Assistance Program of the State Bar of California.

On or about April 9, 2008, respondent submitted his quarterly report that was due on April 10, 2008, to the Office of Probation. In the April 10, 2008 quarterly report, despite having been terminated from LAP on September 28, 2006, respondent represented to the Office of Probation that during the preceding calendar quarter, he had complied with all the terms and conditions of the Lawyer Assistance Program of the State Bar of California.

As of the September 8, 2008 filing of the NDC in case No. 06-O-14583, respondent had not filed the required quarterly reports that were due on January 10, April 10, and July 10, 2007, and the report due on July 10, 2008.

Count 1: Failure to Comply With Probation Conditions (§ 6068, Subd. (k))

Section 6068, subdivision (k), provides that it is the duty of an attorney to comply with all conditions attached to a disciplinary probation.

By being terminated from the Lawyer Assistance Program, by not filing with the Office of Probation the required quarterly reports that were due on January 10, April 10, and July 10, 2007, and the report due on July 10, 2008, and by belatedly filing the quarterly report that was due on October 10, 2007, respondent failed to comply with conditions attached to his probation under Supreme Court Order S117701 in willful violation of section 6068, subdivision (k).

Count 2: Moral Turpitude (Bus. & Prof. Code § 6106)

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption.

As set forth, *ante*, pursuant to the terms of respondent's criminal probation, imposed on June 14, 2001, in both his first and second conviction matters, respondent was sentenced to five years informal probation on terms and conditions. On March 10, 2005, the court in the conviction matters set a hearing for March 30, 2005, regarding respondent's failure to comply with his criminal probation conditions. Respondent's probation in both of his conviction matters was revoked at the March 30th hearing, and probation violation arraignment was set. Thereafter, on or about April 11, 2005, respondent signed and submitted, under penalty of perjury, his April 10, 2005 quarterly report to the Office of Probation. In that report, respondent represented that he had complied with the conditions of his criminal probation.

By misrepresenting to the Office of Probation in his April 2005 quarterly report that he had complied with the terms of his criminal probation, when he knew he knew he had not, respondent committed an act of dishonesty in willful violation of section 6106.

Count 3: Moral Turpitude (Bus. & Prof. Code § 6106)

As set forth, *ante*, on or about March 18, 2006, respondent was arrested for violating Vehicle Code section 23152(a) (driving under the influence) and violating Vehicle Code section 23152(b) (driving with a blood alcohol of 0.08% or more). On or about March 30, 2006, respondent pled guilty to the crime of driving under the influence and was sentenced (the third conviction). The second count was dismissed. Respondent was placed on three years informal probation on terms and conditions. Pursuant to the terms of his probation conditions in the first and second conviction matters, respondent was required to violate no laws. Thus, the

commission of the March 18, 2006 crime of driving under the influence was a violation of respondent's criminal probation.

Despite pleading guilty to a crime on March 30, 2006, on or about May 11, 2006, respondent signed, under penalty of perjury, his April 10, 2006 quarterly report stating that he had complied with the conditions of probation/parole imposed upon him in the underlying criminal matter during the preceding calendar quarter. On or about May 15, 2006, respondent submitted his April 10, 2006 quarterly report to the Office of Probation.

By misrepresenting in his quarterly report that he had complied with the terms of his criminal probation, when he knew he had not, respondent committed an act of dishonesty in willful violation of section 6106.

Count 4: Moral Turpitude (Bus. & Prof. Code § 6106)

On or about December 24, 2005, respondent was arrested for violating Penal Code section 243(e)(1)(battery of a spouse/cohabitant). Thereafter, on or about June 27, 2006, respondent appeared in court and pled guilty to battery of a cohabitant. On June 27, 2006, respondent was sentenced and placed on three years informal probation on terms and conditions (the fourth conviction).

On or about July 11, 2006, respondent signed, under penalty of perjury, his July 10, 2006 quarterly report and represented that during the preceding calendar quarter, he had complied with all provisions of the State Bar Act and Rules of Professional Conduct. On or about July 11, 2006, respondent submitted his July 10, 2006 quarterly report to the Office of Probation.

By falsely representing to the Office of Probation in his quarterly report that he complied with all provisions of the State Bar Act and Rules of Professional Conduct, when he knew he had pled guilty and was found guilty of committing a crime and, therefore, also knew that he had not

complied with all provisions of the State Bar Act and Rules of Professional Conduct, respondent committed an act of dishonesty in willful violation of section 6106.

Count 5: Moral Turpitude (Bus. & Prof. Code § 6106)

Pursuant to the conditions of respondent's probation imposed in the October 3, 2003 Supreme Court Order (Supreme Court case No. S117701; State Bar Court case Nos. 01-C-02575 and 01-C-04259), respondent was required to comply with all the substance abuse and monitoring conditions recommended by LAP. On or about October 2, 2006, the clinical director of LAP sent a letter to respondent, wherein she informed him that due to his non-compliance with the LAP recommendations, his participation in LAP was terminated effective September 28, 2006.³ Respondent's termination from LAP, based on his non-compliance with LAP recommendations, was a violation of the probation conditions imposed pursuant to S117701.

Despite having been terminated from LAP on September 28, 2006, in his quarterly report submitted to the Office of Probation on or about October 12, 2007, respondent represented that during the preceding calendar quarter, he had complied with all the terms and conditions of the Lawyer Assistance Program of the State Bar of California. Likewise, despite having been terminated from LAP on September 28, 2006, in his quarterly report submitted to the Office of Probation on or about April 9, 2008, respondent represented that during the preceding calendar quarter, he had complied with all the terms and conditions of the Lawyer Assistance Program of the State Bar of California.

By representing to the Office of Probation in his October 2007 quarterly report and his April 2008 quarterly report that he was in compliance with his LAP conditions when he knew that he had been terminated from the Lawyer Assistance Program due to his non-compliance

³ The October 2, 2006 letter was sent to respondent's official address; respondent received the letter.

with LAP conditions, respondent committed an act of dishonesty in willful violation of section 6106.

C. Conviction Referral Matter (Case No. 08-C-13152)

On December 24, 2005, respondent committed a battery against “Jane Doe,” with whom he was cohabitating. On March 15, 2006, a misdemeanor criminal complaint was filed against respondent in Orange County Superior Court, case No. 06NM03420, charging respondent with violating section 243(e)(1) of the Penal Code (Domestic Violence - Battery).

On June 27, 2006, with the assistance of counsel, respondent pled guilty to violating Penal Code section 243 (e)(1) (Domestic Violence - Battery). On that same date, the court accepted respondent’s plea, and respondent was convicted of a misdemeanor battery on the basis of his plea. Respondent was sentenced to three years informal probation on terms and conditions.

Conclusions of Law

The review department referred respondent’s conviction to this court for trial on the issues of whether the facts and circumstances surrounding the commission of the crime involved moral turpitude or other misconduct warranting discipline, and if so, for a recommendation as to the discipline to be imposed. (Cal. Rules of Court, rule 9.10(a); Rules Proc. of State Bar, rule 320(a).) As noted, *ante*, respondent is conclusively presumed, by the record of his conviction in this proceeding, to have committed all of the elements of the crime of which he was convicted. (Bus. & Prof. Code, § 6101, subd. (a); *In re Crooks* (1990) 51 Cal.3d 1090, 1097; *In re Duggan* (1976) 17 Cal.3d 416, 423; *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581, 588.) The review department, however, would not have referred this matter to the hearing department for a determination of whether misconduct occurred, if respondent’s

conviction per se established misconduct. (See *In the Matter of Carr* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 756, 761.)

“In all conviction referral cases, including defaults, the State Bar is required to present by clear and convincing evidence any facts it maintains are relevant to the conviction. . . . [I]n a conviction referral matter, there is an additional built-in prophylactic measure that, even after a default, any fact or circumstance relied on must still be proven.” (*In the Matter of Miller* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 110, 115-116.)

In this conviction referral matter, the only evidence before the court is respondent’s misdemeanor battery conviction. However, a record of conviction alone does not establish professional misconduct. (*In the Matter of Carr*, supra, 1 Cal. State Bar Ct. Rptr. 756, 761.) In this matter, the State Bar did not present clear and convincing evidence or, indeed, any evidence of the facts and circumstances surrounding respondent’s conviction. Thus, the court concludes that the record does not clearly and convincingly establish that the facts and circumstances surrounding respondent’s conviction involve either moral turpitude or other misconduct warranting discipline.

D. Second Notice of Disciplinary Charges (Case No. 08-N-13483)

On June 13, 2008, the California Supreme Court filed order No. S117701 [State Bar Court case No. 06-PM-10815] (the Supreme Court order). In that order, the Supreme Court revoked respondent’s probation, lifted the stayed suspension, ordered that respondent be suspended for 24 months; that execution of the suspension be stayed; and that he be placed on probation for five years on condition that he be actually suspended for 120 days. Among other things, the Supreme Court ordered respondent to comply with rule 9.20(a) and (c), within 30 and 40 days, respectively, after the effective date of the Supreme Court order.

Rule 9.20(c) mandates that respondent “file with the Clerk of the State Bar Court an affidavit showing that he . . . has fully complied with those provisions of the order entered under this rule.”

On or about June 13, 2008, the Clerk of the Supreme Court of the State of California properly served upon respondent a copy of the Supreme Court order, imposing discipline and directing respondent to comply with rule 9.20. Respondent received the Supreme Court order.

The Supreme Court Order became effective on July 13, 2008.

On or about July 24, 2008, a probation deputy of the Office of Probation sent a letter to respondent reminding him of the obligation to comply with rule 9.20. Enclosed with the letter was an accurate copy of the Supreme Court Order, as well as a form approved by the State Bar Court Executive Committee for reporting compliance with rule 9.20. The probation deputy mailed the letter and enclosures by placing the documents in a sealed envelope addressed to respondent at his official State Bar membership records address. The packet was properly deposited for collection and mailing, by first-class mail with postage thereon fully prepaid, through the United States Postal Service. The July 24, 2008 letter and enclosures were not returned by the United States Postal Service as undeliverable or for any other reason.

Respondent was to have filed the rule 9.20 affidavit no later than August 22, 2008, but to date he has not done so and has offered no explanation to this court for his noncompliance. Whether respondent is aware of the requirements of rule 9.20 or of his obligation to comply with those requirements is immaterial. “Willfulness” in the context of rule 9.20 does not require actual knowledge of the provision which is violated. The Supreme Court has disbarred attorneys whose failure to keep their official addresses current prevented them from learning that they had been ordered to comply with rule 9.20. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

Therefore, the State Bar has established by clear and convincing evidence that respondent willfully failed to comply with rule 9.20, as ordered by the Supreme Court in S117701.

IV. Mitigating and Aggravating Circumstances

A. Mitigation

No mitigating evidence was offered or received. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)⁴

B. Aggravation

There are several aggravating factors. (Std. 1.2(b).)

Respondent has two prior records of discipline. (Std. 1.2(b)(i).)

1. In May 2003, respondent stipulated, among other things, to a two-year stayed suspension and a five-year probation. In that stipulation, respondent stipulated that his June 2001 convictions for drunk driving, and hit and run with property damage violated his duty to obey the law of this state (Bus. & Prof. Code, § 6068, subd. (a)) and involved other misconduct warranting discipline. Additionally, he stipulated to an extensive history of being arrested on alcohol related matters and to two prior convictions for drunk driving. (Supreme Court case No. filed October 3, 2003; State Bar Court case Nos. 01-C-02575 and 01-C-04259.)
2. In 2008, the Supreme Court revoked respondent's probation, lifted the stayed suspension, ordered that respondent be suspended for 24 months, that execution of the 24-month suspension be stayed, and that

⁴ All further references to standards are to this source.

respondent be placed on a five-year period of probation on terms and conditions, including that he be actually suspended for 120 days, with credit given for 49 days of inactive enrollment, for failing to timely file quarterly probation reports and failing to report his non-compliance with the terms of the LAP monitoring program. (Supreme Court case No. S117701, filed June 13, 2008; State Bar Court case No. 06-PM-10815.)

Respondent committed multiple acts of wrongdoing, including violating several probation conditions, engaging in acts of moral turpitude, and violating rule 9.20 of the California Rules of Court. (Std. 1.2(b)(ii).)

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct by failing to comply with rule 9.20(c), even after the NDC in case No. 08-N-13483 was filed. (Std. 1.2(b)(v).)

Respondent's failure to participate in this disciplinary matter prior to the entry of his default is a serious aggravating factor. (Std. 1.2(b)(vi).)

V. Discussion

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.)

Respondent's misconduct involved failing to comply with conditions attached to his probation, committing acts of moral turpitude, and failing to comply with rule 9.20. The standards provide a broad range of sanctions ranging from suspension to disbarment, depending upon the gravity of the offenses and the harm to the victim. (Stds. 1.6, 1.7, 2.3 and 2.6.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions.

Standard 1.7(b) provides that if a member has a record of two prior impositions of discipline, the degree of discipline in the current proceeding must be disbarment unless the most compelling mitigating circumstances clearly predominate. Respondent has two prior records of discipline and no mitigation.

Standards 2.3 and 2.6 apply in this matter.

Standard 2.3 provides: “Culpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member’s acts within the practice of law.”

Standard 2.6 provides for discipline ranging from suspension to disbarment for violations of section 6068, subdivision (k), depending on the gravity of the offense or the harm to the client.

The standards, however, are only guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) “[E]ach case must be resolved on its own particular facts and not by application of rigid standards.” (*Id.* at p. 251.) The court will look to applicable case law for guidance. Nevertheless, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The State Bar urges disbarment. The court agrees with the State Bar's recommendation.

In these consolidated matters, respondent violated rule 9.20, engaged in acts of moral turpitude, and failed to comply with several conditions of his probation, in violation of section 6068, subdivision (k). Among his probation violations, respondent failed to submit several quarterly reports, and untimely filed a quarterly report.

“[A] probation ‘reporting requirement permits the State Bar to monitor [an attorney probationer’s] compliance with professional standards.’” (*In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759, 763, citing *Ritter v. State Bar* (1985) 40 Cal.3d 595, 605.) In addition, “an attorney probationer’s filing of quarterly probation reports is an important step towards the attorney’s rehabilitation.” (*In the Matter of Weiner, supra*, 3 Cal. State Bar Ct. Rptr. at p. 763.) Thus, respondent’s failure to file several quarterly reports and his failure to timely file a quarterly report warrants significant discipline.

Respondent’s acts of moral turpitude, involving misrepresentations in his April 2005 quarterly report (Count 2, *ante*), in his April 2006 quarterly report (Count 3, *ante*), in his in his July 2006 quarterly report (Count 4, *ante*), and in his October 2007 quarterly report (Count 5, *ante*), all made under penalty of perjury, are of serious concern to this court.

Moreover, respondent’s willful failure to comply with rule 9.20 is extremely serious misconduct for which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Such failure to comply with rule 9.20 undermines its prophylactic function in ensuring that all concerned parties learn about an attorney’s suspension from the practice of law. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187.) Respondent has demonstrated an unwillingness to comply with the professional

obligations and rules of court imposed on California attorneys, although he has been given opportunities to do so.

Additionally, failing to appear and participate in this hearing shows that respondent comprehends neither the seriousness of the charges against him, nor his duty as an officer of the court to participate in disciplinary proceedings. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.) His failure to participate in this proceeding leaves the court without information about the underlying cause of respondent's misconduct or of any mitigating circumstances surrounding his misconduct.

Accordingly, lesser discipline than disbarment is not warranted. In view of the serious and unexplained nature of respondent's misconduct, the lack of participation in these proceedings, the lack of any mitigating factors, the existence of a prior disciplinary record, and respondent's failure to comply with orders of the California Supreme Court, the court recommends disbarment as the only adequate means of protecting the public and the integrity of the legal profession.

VI. Recommended Discipline

Accordingly, the court hereby recommends that respondent **Dennis Harry Johnston** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this State.

It is also recommended that the Supreme Court order respondent to comply with California Rules of Court, rule 9.20, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter.⁵

⁵ Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar*, *supra*, 44 Cal.3d 337, 341.)

VII. Costs

The court recommends 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.

VIII. Order of Involuntary Inactive Enrollment

It is ordered that respondent be transferred to involuntary inactive enrollment status. (Bus. & Prof. Code, § 6007(c)(4), and Rules Proc. of State Bar, rule 220(c).) The inactive enrollment will become effective three calendar days after service of this order.

Dated: July 30, 2009

RICHARD A. PLATEL
Judge of the State Bar Court