



discipline is warranted. For reasons explained more fully below, this court agrees with that contention and orders that respondent be privately reprimanded. More significantly, the court orders that respondent be placed on probation for three years and that he continue to participate in and comply with the alcohol-cessation programs in which he is currently enrolled.

## **II. PERTINENT PROCEDURAL HISTORY**

On December 3, 2007, the Review Department referred evidence of respondent's DUI conviction to the Hearing Department for further handling. On December 21, 2007, a notice of hearing on conviction was issued by this court and a status conference was ordered for February 6, 2008. On February 28, 2008, respondent filed his response to the notice of hearing. In his response, he waived finality of the conviction and denied that either the DUI conviction or the underlying conduct warranted discipline.

Trial was commenced and completed on July 17, 2008, followed by a period of post-trial briefing. The State Bar was represented at trial by Deputy Trial Counsel Jean Cha. Respondent acted as counsel for himself.

## **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The following facts are based on the evidence presented during the course of the trial of this matter and/or on the extensive stipulation of facts reached by the parties.

### **Jurisdiction**

Respondent was admitted to the practice of law on July 2, 2003, and since that time has been a member of the State Bar of California.

**Facts:**

Prior Conviction

Before the current DUI conviction, respondent had a prior wet reckless conviction in 2001. (Veh. Code, §23103.5.) This is an alcohol-related conviction. The circumstances of that conviction are as follows:

On February 14, 2001, respondent was involved in a single-car accident, driving into a lamp post. After self-reporting the incident to the police and then acknowledging having previously consumed alcohol, he was arrested and subsequently charged with violations of Vehicle Code section 23152, subsections (a) and (b), and, later, section 23103.5. Blood testing revealed that there was alcohol in his system but that his blood alcohol level was below .08 percent. Respondent eventually pled guilty to a violation of section 23103.5 [“wet reckless”].

At the time of this conviction, respondent was a law student and not yet a member of the State Bar. Respondent disclosed this conviction to the Committee of Bar Examiners on his Application for Moral Character.

At the time of his sentencing for the wet reckless, respondent acknowledged in writing that he “did willfully and unlawfully drive a vehicle with alcohol in [his] blood and drove with willful and wanton disregard for the safety of persons or property.” He further acknowledged that: “I understand that if I am charged and convicted of a similar offense in the future, my plea of guilty or no contest today may be used to increase my punishment for the new offense.” At the time of this 2001 plea, the law provided that if respondent were subsequently convicted of a DUI during the next seven years, his guilty plea under section 23103.5 would be treated as a prior offense and would result in the automatic suspension of his driver’s license for one year. This provision was subsequently extended to ten years. (See Veh. Code, §23540.)

As a result of this wet reckless conviction, respondent was placed on informal probation in 2001 for three years and, among other things, required to attend and complete a 12-hour DUI program. He had successfully completed both the DUI program and his probation prior to the 2007 accident.

#### Current Conviction

On Sunday, April 22, 2007, during the early afternoon, respondent rear-ended a vehicle while he was driving his Porsche under the influence of alcohol. Respondent was coming from his parents' residence and was going to meet a friend for lunch. He was traveling approximately 40 to 50 miles per hour and talking on his cell phone while approaching an intersection. He misjudged stopped traffic in front of him and then rear-ended a red Ferrari stopped for the light. Respondent did not have a driver's license with him at the time. The collision resulted in minor to moderate damage to both vehicles.

The police soon arrived at the accident scene. Respondent had difficulty talking and walking and was assessed by the police as being under the influence of alcohol. Respondent then admitted to drinking in response to a police officer's direct question.

Although respondent acknowledged drinking, he was not always cooperative with the police officers. He refused to participate in any field sobriety tests and, instead, started to walk away. He was then handcuffed and placed in a police car for transport to the Irvine Custody Facility for testing and booking. Once in the car, respondent violently kicked at the rear passenger window with his feet, causing the arresting officers to call for additional assistance at

the police station. When respondent arrived at the station, he fell to the ground and faked a seizure.<sup>1</sup>

At the station, respondent's blood was drawn for testing. The results of the blood draw indicated a blood alcohol level of 0.21%, three times the legal limit.

On May 17, 2007, respondent was charged with violations of California Vehicle Code section 23152(a) [driving while under the influence of alcohol or drugs, a misdemeanor] and section 23152(b) [driving with a blood alcohol of 0.08% or more, a misdemeanor]. Both charges included the fact that respondent had previously been convicted of the wet reckless violation in 2001.

On October 10, 2007, respondent pled guilty to both of the above charges.

#### Past History with Alcohol

Respondent has long recognized that he has had a problem with alcohol abuse. In 2003 or 2004, he began to attend Alcoholic Anonymous meetings and had a sponsor. Unfortunately, his success at recovery was only sporadically successful and was subject to significant relapses. The problem continued to grow, reaching its "peak" (as he describes it) in December 2006. By then, respondent had been admitted to the State Bar and was working as an attorney for a private employer.

In January 2007, respondent voluntarily took time off from work to deal with his alcoholism. Between January 2007 and August 1, 2007 (after the DUI arrest in April 2007), respondent was not employed or otherwise practicing law. From January 16, 2007 through February 16, 2007, he voluntarily checked himself into the Betty Ford Center for a 30-day inpatient rehabilitation program. After leaving the Betty Ford Center program, respondent

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<sup>1</sup> In the instant proceeding respondent testified, and this court finds, that respondent's lack of cooperation with the police was the result of his inebriated state.

relapsed again in April 2007, again voluntarily obtaining medical attention for his condition even before his arrest on April 22.

Since his DUI arrest, respondent has taken additional significant steps to address his problem with alcohol. Some of those steps have been as a consequence of the criminal proceeding; others have been voluntary.

On August 7, 2007, respondent voluntarily joined the Lawyers Assistance Program and is in full compliance with his recommended treatment plan.

On January 16, 2008, respondent voluntarily entered an in-patient alcohol rehabilitation program at Hoag Hospital, Newport Beach, California.

On February 1, 2008, respondent voluntarily entered the Harbor Justice Center DUI Court Program. That program is an approximately 18-month program and has the following requirements: 1) alcohol testing three times per week; 2) group therapy once per week; 3) individual therapy once every two weeks; 4) meeting with a criminal probation officer once per week; 5) curfew of 10:00 p.m. every day of the week; 6) attendance at five AA meetings per week; and 7) various scheduled criminal court dates to monitor progress. Abstinence is required and no alcohol is allowed on the premises of the participant's home, with random house check being made by the authorities to monitor compliance. Respondent is in full compliance with the requirements of that program. Non-compliance results in severe sanctions, including jail time and removal from the program. On completion of this DUI Court Program, respondent is eligible to have Case No. 07HM04308 dismissed. The program is offered in lieu of standard DUI court proceedings.

On January 29, 2008, respondent also entered the SB-38 Program. That program is an 18-month alcohol education program through the Department of Motor Vehicles and consists of

extensive weekly group sessions, numerous mandatory face-to-face interviews, and participation in educational sessions. Respondent is also in full compliance with this program. Participation in the program is suggested by the DMV.

Respondent has remained sober since his arrest on April 22, 2007. He attributes his current success to the ongoing court programs and readily acknowledges that his unassisted efforts at sobriety in the past had been unsuccessful.

### **Is Discipline Warranted?**

The court finds that the conduct related to respondent's 2007 criminal conviction does not constitute moral turpitude. (See *In re Kelley* (1990) 52 Cal.3d 487, 494; *In re Carr* (1988) 46 Cal.3d 1089, 1091; *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208, 214-217; *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108, 116; cf. *In re Alkow* (1966) 64 Cal.2d 838, 841.) However, the court does find that respondent's conduct does warrant discipline.

Respondent has had two alcohol-related automobile accidents and convictions, including the most recent DUI. Respondent readily agrees that at the time of the second accident and arrest, he had a significant and uncontrolled problem with alcohol abuse. Under such circumstances, discipline is appropriate in order to prevent those problems from resulting in harm to the public, the courts, or the profession. (*In re Kelley, supra*, 52 Cal.3d at pp. 495-496, 487; *In the Matter of Carr, supra*, 2 Cal. State Bar Ct. Rptr. at p. 117; cf. *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal State Bar Ct. Rptr. 260, 272 [member had voluntarily undergone successful rehabilitation program and had been substance-free for five (5) years].)

The fact that respondent's first conviction was not for a DUI and occurred prior to his admission to the bar does not make discipline inappropriate or unnecessary here. The purpose of

discipline is not to punish the member but rather to protect the public, the courts, and the profession. Where the conduct and circumstances underlying the conviction demonstrates that steps need to be taken to protect the public, the profession, and/or the courts, there is no requirement that either the State Bar or this court must wait until sufficient misconduct has occurred to result in a second criminal conviction. (See instead *In re Hickey* (1990) 50 Cal.3d 571; *In re Rohan* (1978) 21 Cal.3d 195.) While it is true that a first DUI conviction for most members is generally not referred to this court for possible discipline, there is no universal “one bite” rule for DUI convictions.<sup>2</sup> Nor is an alcohol-related conviction occurring before the member’s admission to the State Bar to be necessarily ignored, especially where it is part of the evidence providing clear and convincing evidence that there is a current need to protect the public, courts, and/or profession.

### **Aggravating Circumstances**

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b).)<sup>3</sup>

### **Significant Harm**

Respondent has been involved in two alcohol-related accidents. In at least the second accident, he damaged a very valuable car occupied by two other people. While such consequences are slight in comparison to what they might have been, it nonetheless constitutes an aggravating circumstance. (Std. 1.2(b)(iv).)

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<sup>2</sup> Similarly, the fact that a member has received a second DUI conviction does not necessarily mean that discipline will be assessed. (*In the Matter of Respondent I, supra.*)

<sup>3</sup> All further references to standard(s) are to this source.

## **Mitigating Circumstances**

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).)

### **Cooperation**

Respondent entered into an extensive stipulation of facts, conduct for which respondent is entitled to some mitigation. (Std. 1.2(e)(v); see also *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443.)

### **Emotional and Physical Disabilities**

Where misconduct has been caused by a member's problems with substance abuse, mitigation credit can be given on proof that the "disorder has since been cured or so controlled that it is unlikely to again lead to misconduct." (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 595; *In re Naney* (1990) 51 Cal.3d 186, 197.)

Respondent has undertaken significant efforts, both before and after his 2007 DUI conviction, to put behind him his problems with alcohol. He has been alcohol-free since the April 2007 accident. While there are significant reasons to believe that he will not have a recurrence of his problems, the evidence is not sufficiently clear and convincing at this time for this court to afford him mitigation credit.

The first failure of proof comes from the absence of any expert testimony at trial that he has overcome his problems or that alcohol-related misconduct is not likely to recur in the future.

Second, respondent's current efforts at rehabilitation have been under the supervision of the criminal courts and have largely been undertaken because of the problems faced by respondent in that arena and here. Reduced weight is given to the fact that a person has not continued addictive behavior where that conduct has occurred only while the person is in prison,

on probation, or otherwise under the active supervision of the criminal authorities. (*In re Gossage* (2000) 23 Cal. 4th 1080, 1099; *In re Menna* (1995) 11 Cal.4th 975, 989; *Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 941.) Such caution by the court is particularly appropriate here since similar efforts taken by respondent in the past, without the oversight of a court, have not prevented relapses and subsequent misconduct. Finally, respondent is only midway through the various rehabilitation programs. It is his ability to remain sober after the programs that will define whether he has successfully rehabilitated himself. (*In re Hickey, supra*, 50 Cal.3d at p. 581.)

The court emphasizes that its current unwillingness to afford mitigation credit to respondent for overcoming his past alcohol abuse problem does not signify any criticism of respondent's current efforts or any unspoken belief by the court that respondent will not be successful in his rehabilitation efforts. Although the report cards to date have been consistently good, there are not yet enough of them for this court to celebrate a graduation.

### **Remorse/Remediation**

While it is premature for this court to give respondent mitigation for overcoming his past problems with alcoholism, it is not too early to give him credit for his clear remorse for those problems and for his past and continuing significant efforts to overcome them. (*In re Hickey, supra*, 50 Cal.3d at p. 579; *In the Matter of Carr, supra*, 2 Cal. State Bar Ct. Rptr. at p. 118.) Unlike the member in *Kelley*, respondent has recognized and acknowledged his problem and has an extensive track record of taking steps to deal with it, both before and after the current arrest. He also has taken steps in the past to avoid having the problem impact his professional life. These are significant mitigating facts, providing strong evidence that only "relatively minimal

discipline” is warranted or necessary to ensure that the public and profession will be protected. (*In re Kelley, supra*, 52 Cal.3d at pp. 498.)

#### **IV. DISCUSSION**

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession, and maintain the highest possible professional standards for attorneys. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.) In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Although the standards are not binding, they are to be afforded great weight because “they promote the consistent and uniform application of disciplinary measures.” (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.) Nevertheless, the court is “not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, we are permitted to temper the letter of the law with considerations peculiar to the offense and the offender.” (*In the Matter of Van Sickle* (2006) 4 Cal. State Bar Ct. Rptr. 980, 994, quoting *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) In addition, the courts consider relevant decisional law for guidance. (See *In the Matter of Van Sickle, supra*; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

Standard 3.4 provides that the discipline to be assessed shall be “appropriate to the nature and extent of the misconduct found to have been committed by the member.” In this

situation that discipline is measured almost entirely by the prophylactic measures needed to ensure that respondent's current multi-prong campaign to overcome his past problem with alcohol is, in fact, successful. In *Kelley*, the Supreme Court concluded that only "relatively minimal discipline" was warranted for a member who had two DUI's. In that instance, the court carved out a significant period of probation and attached it to a public reproof. The member there was still in denial of her problem with alcohol, had two recent DUI convictions, had a history of violating the terms of her criminal probation, and had been both dishonest and uncooperative with the arresting officers.

In the present situation, a significant period of probation is also necessary. However, the court concludes that only a private reproof is appropriate or necessary. To date, respondent's actions have not involved his clients or his professional activities, due in part to his voluntarily discontinuing his professional duties because of his problem. Respondent has credibly expressed his remorse for his prior conduct; acknowledged his need to overcome his problem with alcohol; and demonstrated, with both words and deeds, his commitment to accomplishing that goal. Unlike *Kelley*, it is not necessary here to convince respondent of the inappropriateness of his conduct; nor is it necessary to provide him any additional motivation to seek rehabilitation. The principal purpose of discipline here is to create an ongoing oversight process to ensure that he is successful in the rehabilitative process that is already well underway. That can be accomplished with a private reproof and an extensive period of probation.

## V. DISCIPLINE

Accordingly, it is ordered that respondent **SUNIL SURESH PATEL** is hereby privately reproofed. Pursuant to the provisions of rule 270(a) of the Rules of Procedure, the reproof shall be effective when this decision becomes final. Further, pursuant to rule 9.19 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 conditions specified below being attached to the reproof imposed in this matter. Failure to comply with any of the conditions attached to this reproof may constitute cause for a separate proceeding for wilful breach of rule 1-110 of the Rules of Professional Conduct.

Respondent is hereby ordered to comply with the following conditions<sup>4</sup> attached to his private reproof for a period of three years following the effective date of the reproof imposed in this matter:

1. Respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct.
2. Respondent must maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation, his current office address and telephone number or, *if no office is maintained*, an address to be used for State Bar purposes. (Bus. & Prof. Code, § 6002.1, subd. (a).) Respondent must also maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation, his current home address and telephone number. (See Bus. & Prof. Code, § 6002.1, subd. (a)(5).) Respondent must notify the Membership Records Office and the Office of Probation of any change in any of this information no later than 10 days after the change.
3. Respondent must report, in writing, to the State Bar's Office of Probation no later than January 10, April 10, July 10 and October 10 of each year or part thereof in which

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<sup>4</sup>See rule 271, Rules of Proc. of State Bar (motions to modify conditions attached to reprovals are governed by rules 550-554 of the Rules of Procedure).

respondent is on probation (reporting dates).<sup>5</sup> However, if respondent's probation begins less than 30 days before a reporting date, respondent may submit the first report no later than the second reporting date after the beginning of his probation. In each report, respondent must state that it covers the preceding calendar quarter or applicable portion thereof and certify by affidavit or under penalty of perjury under the laws of the State of California as follows:

- (a) in the first report, whether respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation since the beginning of probation; and
  - (b) in each subsequent report, whether respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation during that period. During the last 20 days of this probation, respondent must submit a final report covering any period of probation remaining after and not covered by the last quarterly report required under this probation condition. In this final report, respondent must certify to the matters set forth in subparagraph (b) of this probation condition by affidavit or under penalty of perjury under the laws of the State of California.
4. Subject to the proper or good faith assertion of any applicable privilege, respondent must fully, promptly, and truthfully answer any inquiries of the State Bar's Office of Probation that are directed to respondent, whether orally or in writing, relating to whether respondent is complying or has complied with the conditions of this probation.

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<sup>5</sup> To comply with this requirement, the required report, duly completed, signed and dated, must be received by the Office of Probation on or before the reporting deadline.

5. Within one year after the effective date of this order, respondent must attend and satisfactorily complete (a) the State Bar's Ethics School and he must provide satisfactory proof of such completion to the State Bar's Office of Probation within that same timeframe. This condition of probation is separate and apart from respondent's California Minimum Continuing Legal Education (MCLE) requirements; accordingly, respondent is ordered not to claim any MCLE credit for attending and completing this course. (Rules Proc. of State Bar, rule 3201.)
6. Respondent must take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.)
7. Respondent must comply with all provisions and conditions of his Participation Agreement with the Lawyer Assistance Program (LAP) and 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 LAP and his compliance with the LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. Respondent is to notify the Office of Probation immediately in the event he is terminated from LAP for any reason.
8. Respondent must comply with all terms and conditions of any probation in the underlying criminal action which gave rise to this disciplinary proceeding.
9. Respondent must continue participation in the Orange County drinking driver program and attest and report to the Office of Probation in his quarterly reports that he is fully compliant with the program's requirements as understood to include, but are not limited to, attendance at group sessions, alcohol education, face-to-face counseling, and AA

meetings. Respondent is to notify the Office of Probation immediately in the event he is terminated from this program for any reason.

10. Respondent shall provide the Office of Probation with medical waivers on its request and with access to all of respondent's medical records; revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation shall be confidential and no information concerning them or their contents shall be given to anyone except members of the State Bar's Office of Probation, Office of Investigation, Office of Trial Counsel, and the State Bar Court who are directly involved with maintaining or enforcing this order of probation.<sup>6</sup>
11. Respondent's probation will commence on the effective date of this order imposing discipline in this matter.

Dated: January \_\_\_\_\_, 2009

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DONALD F. MILES

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<sup>6</sup> *In the Matter of Carr, supra*, 2 Cal. State Bar Ct. Rptr. at p. 120.