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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **MICHAEL LONDON REEDY,** **Member No. 209653,** A Member of the State Bar.	)	Case No.: **07-C-12208-DFM** **DECISION**

This is a conviction referral proceeding, which is proceeding by default. The Office of the Chief Trial Counsel of the State Bar of California (hereafter "State Bar") is represented by Deputy Trial Counsel Ashod Mooradian. Even though respondent Michael London Reedy[1] has actual knowledge of this proceeding, he failed to appear either in person or through an attorney.

According to the State Bar, respondent should "receive discipline of not less than two years actual suspension and until Respondent complies with Standard 1.4(c)(ii) demonstrating rehabilitation, present fitness and learning and ability in the law and further until Respondent complies with *Rules of Procedure of the State Bar of California*, rule 205." (Original italics.) For the reasons set forth *post*, the court agrees. Moreover, the court independently concludes that it is also appropriate to include a three-year period of stayed suspension in its discipline recommendation. (Rules Proc. of State Bar, rule 205(a)(2); *In the Matter of Bailey* (Review

[1] Respondent was admitted to the practice of law in the State of California on December 4, 2000, and has been a member of the State Bar since that time.

Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220, 227-229; see also *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103, 110-111.)

I. Relevant Procedural History

A. Respondent's Conviction

In June 2007, a two-count felony information was filed against respondent in the San Diego Superior Court. In count 1, respondent was charged with the sale of marijuana (Health & Saf. Code, § 11360, subd. (a)). In count 2, respondent was charged with possession of marijuana for sale (Health & Saf. Code, § 11359). The charges in both counts 1 and 2 arose out of respondent's ownership of the California Green Room, which respondent claimed was a medical marijuana dispensary that was legal under Proposition 215, which resulted in California's Compassionate Use [of Marijuana] Act of 1996 (Health & Saf. Code, § 11362.5 et seq.).

On July 25, 2007, in accordance with a plea agreement, the charges against respondent were amended to dismiss felony counts 1 and 2 and to add by interlineations a misdemeanor count 3, which charged respondent with possession of a controlled substance – concentrated cannabis (Health & Saf. Code, § 11357, subd. (a)). That same day, respondent pleaded guilty to and was convicted on count 3. Thereafter, respondent was placed on three years' probation; committed to the custody of the sheriff for one day, with credit for time actually served of one day; fined $100 plus penalty assessments; and ordered to pay a restitution fine of $100.

B. Referral Order, Notice of Hearing & Respondent's Default

On October 5, 2007, the State Bar transmitted a copy of respondent's conviction to the review department. On October 26, 2007, the review department filed an order in which it referred respondent's conviction, which was not yet final, to the hearing department for a trial on the issue of whether the facts and circumstances surrounding them involved moral turpitude

(Bus. & Prof. Code, §§ 6101, 6102)[2] or other misconduct warranting discipline (see, e.g., *In re Kelley* (1990) 52 Cal.3d 487, 494). (Cal. Rules of Court, rule 9.10(a); Rules Proc. of State Bar, rule 320(a);[3] see also *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 609, fn. 3.)

On November 5, 2007, one of this court's case administrators properly served on respondent at his latest address shown on the official membership records of the State Bar (hereafter official address) by certified mail, return receipt requested, a notice of hearing on conviction with a copy of the review department's October 26, 2007, referral order attached to it. (§ 6002.1, subd. (c); rules 60(a) & (b), 600(b).) However, on November 23, 2007, the United States Postal Service thereafter returned to the State Bar Court that notice of hearing marked "Unclaimed." Service of the notice of hearing on respondent was deemed complete when mailed even though he did not receive it. (§ 6002.1, subd. (c); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108.)

On November 9, 2007, the review department filed an augmented referral order, which authorized this court to make a recommendation regarding discipline in the event that it finds that the facts and circumstances surrounding respondent's conviction involved moral turpitude or other misconduct warranting discipline. On November 15, 2007, one of this court's case administrators properly served on respondent a notice of augmented referral order with a copy of the review department's November 9, 2007, augmented referral order attached to it. (Rule 602(c).)

Respondent's response to the November 5, 2007, notice of hearing was due no later than November 30, 2007. (Rules 63(a), 601.) Respondent, however, failed to file a response to the

[2] Unless otherwise indicated, all further statutory references are to the Business and Professions Code.

[3] Unless otherwise indicated, all further references to rules are to these Rules of Procedure of the State Bar of California.

notice of hearing. Moreover, respondent's response to the November 15, 2007, notice of augmented referral order was due no later than December 10, 2007. (Rules 63(a), 603.) Respondent, however, also failed to file a response to the notice of the augmented order.

On March 3, 2008, DTC Mooradian spoke with respondent on the telephone. In that telephone conversation, respondent told DTC Mooradian that he would file a response to the notice of hearing no later than March 7, 2008. Respondent, however, failed to do so. Thereafter, on March 10, 2008, DTC Mooradian sent respondent a letter in which DTC Mooradian agreed to give respondent until 2:00 p.m. on March 13, 2008, to file his response. Respondent, however, again failed to file a response. Accordingly, after 2:00 p.m. on March 13, 2008, DTC Mooradian filed, and properly served on respondent, a motion for entry of respondent's default.

Respondent still failed to file a response. Therefore, on April 4, 2008, the court entered respondent's default and, as mandated by section 6007, subdivision (e), ordered that he be involuntarily enrolled as an inactive member of the State Bar.

C. Briefing and Submission

On May 2, 2008, the State Bar filed a request for waiver of default hearing and brief on culpability and discipline. On May 5, 2008, the court filed an order noting that the State Bar's brief on culpability and discipline contained an incorrect statement of fact and requesting additional briefing on the level of discipline. On May 29, 2008, the State Bar filed a supplemental brief on culpability and discipline.

Because respondent's default has been entered in this proceeding, the State Bar did not serve on respondent a copy of its May 2, 2008, request for waiver of default hearing and brief on culpability and discipline. For the same reason, the State Bar did not serve on respondent a copy of its May 29, 2008, supplemental brief on culpability and discipline. Those two documents are the *only* documents that set forth the State Bar's evidence and the State Bar's factual and legal

contentions about whether the facts and circumstances surrounding respondent's conviction involved moral turpitude or other misconduct warranting discipline. Nonetheless, the review department has clearly held that due process and fundamental fairness do not require that respondent be notified of the State Bar's evidence and legal and factual contentions regarding the issues of moral turpitude and other misconduct warranting discipline. (*In the Matter of Miller* (Review Dept., May 30, 2008, 05-C-04139) 5 Cal. State Bar Ct. Rptr. ___ [p. 8].) Accordingly, the court admits into evidence exhibits 1 through 4 to the State Bar's May 2, 2008, request for waiver of default hearing and brief on culpability and discipline. (Rule 202.)

II. Conviction Referral Proceedings

In attorney disciplinary proceedings, "the record of [an attorney's] conviction [is] conclusive evidence of guilt of the crime of which he or she has been convicted." (§ 6101, subd. (a); *In re Gross* (1983) 33 Cal.3d 561, 567.) Stated differently, an attorney's conviction is conclusive proof that the attorney committed all of the acts necessary to constitute the crime of which he or she was convicted. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 110.) However, at least with respect to crimes that do not inherently involve moral turpitude, such as respondent's misdemeanor conviction for possession of concentrated cannabis, "Whether those acts amount to professional misconduct . . . is a conclusion that can only be reached by an examination of the facts and circumstances surrounding the conviction." (*In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581, 589, fn. 6.) That is because it is the attorney's misconduct, not the conviction, that warrants discipline. (*In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 935, see also *In re Gross, supra*, 33 Cal.3d at p. 568.) In determining whether the facts and circumstances surrounding an attorney's conviction involve moral turpitude or other misconduct warranting discipline, the court may

consider any dismissed and pending criminal charges in addition to the charge of which the attorney was convicted. (*In re Langford* (1966) 64 Cal.2d 489, 496.)

Moreover, in a conviction referral proceeding involving a crime that does not inherently involve moral turpitude, the State Bar has the burden to prove, by clear and convincing evidence, that the surrounding facts and circumstances involve either moral turpitude or other misconduct warranting discipline. (*In the Matter of Carr* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 756, 759-760, 764.) And this remains true even if the attorney's default has been entered. (*In the Matter of Miller, supra*, 5 Cal. State Bar Ct. Rptr. at p. ___ [p. 9].)

If the State Bar meets it burden and establishes that the surrounding facts and circumstances involve moral turpitude or other misconduct warranting discipline, the court must recommend an appropriate level of discipline "according to the gravity of the crime and the circumstances of the case. [Citation.]" (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 510; *In the Matter of Oheb, supra*, 4 Cal. State Bar Ct. Rptr. at p. 926.) Of course, if the State Bar fails to meet its burden of proof, the court will dismiss the proceeding with prejudice. (*In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260, 264-265.)

III. Findings of Fact and Conclusions of Law

The record establishes the following facts by clear and convincing evidence.[4] From about May 2006 through February 2007, respondent was the owner of the California Green Room (hereafter "Green Room"), which, as noted *ante*, respondent claimed was a "legal"

[4] These facts are established primarily, if not exclusively, from (1) the San Diego Police Department March 7, 2007, investigator's report written by detective Mark Carlson and (2) the San Diego Police Department February 21, 2007, investigator's report written by detective M. Lofftus. Copies of both of these reports are included in exhibit 2 to the State Bar's May 2, 2008, request for waiver of default hearing and brief on culpability and discipline. The court finds that detective Carlson's narrative summary of his March 7 and 8, 2007, telephone conversations with respondent (which is on pages 6 through 8 of the March 7, 2007, investigator's report) is extremely reliable.

medical marijuana dispensary. In his statement to police, respondent also claimed that he ran the Green Room as a non-profit private club with a closed membership of about 100 people and that each of the members had a physician's marijuana use recommendation. The court rejects both of respondent's claims and finds that the facts and circumstances surrounding respondent's misdemeanor conviction for possession of concentrated cannabis involve moral turpitude.

Respondent did not operate the Green Room as a non-profit club or medical marijuana dispensary. Nor did he operate it as some sort of a cooperative. The Green Room was in a single room office in a small office building on Camino Del Rio South, in San Diego. Respondent paid $800 a month rent. The Green Room purchased marijuana for an average of $300 an ounce and sold it for an average of $520 an ounce for an average profit of $220 an ounce. When the police executed a search warrant on the Green Room in March 2007, they seized financial records showing that, during 12 days in December 2006 and 3 days in March 2007, the Green Room made a total profit of $12,840 ($28,213 in sales less $15,373 in costs of goods [i.e., marijuana] sold). Stated differently, during those 15 days, the Green Room made a daily average profit of $856 ($12,840 divided by 15 days).

Assuming respondent operated the Green Room 5 days-a-week, 52 weeks-a-year, with a daily average profit of $856 and a monthly rental expense of $800, the Green Room would make an annual net profit of $212,960 ([$856 times 260 days] less [$800 times 12 months]). In short, the record clearly establishes that respondent operated the Green Room as a very profitable commercial enterprise. In fact, respondent admitted to having no other source of income. Moreover, the record establishes that respondent had at least 130 regular customers not just 100.

"Possession or use of marijuana is, of course, unlawful [citation], but measured by the morals of the day [citation], its possession or use does not constitute 'an act of baseness, vileness, or depravity . . . contrary to the accepted and customary rule of right and duty between

man and man' [citation], or indicate that an attorney is unable to meet the professional and fiduciary duties of his practice." (*In re Higbie* (1972) 6 Cal.3d 562, 572.) However, as noted ante, respondent did more than merely possess or use marijuana; he was in the business of selling it at a substantial profit as his sole means of livelihood.

In sum, the record establishes that respondent owned the Green Room, that respondent was making substantial profits selling marijuana in the Green Room, and that respondent was aware of the illegality of his actions. Under Supreme Court opinions in similar cases, these facts establish that the facts and circumstances surrounding respondent's conviction involved moral turpitude. (*In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552, 560, citing *In re Possino* (1984) 37 Cal.3d 163, 168, fn. 3; *In re Cohen* (1974) 11 Cal.3d 416, 421.)

IV. AGGRAVATING AND MITIGATING CIRCUMSTANCES

A. Aggravating Circumstances

Respondent's failure to participate in this disciplinary proceeding before the entry of his default is a serious aggravating factor because it establishes that he fails to understand and appreciate his duty as an officer of the court to participate in disciplinary proceedings. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Std. 1.2(b)(vi);[5] *In the Matter of Bailey*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 225; *In the Matter of Stansbury*, *supra*, 4 Cal. State Bar Ct. Rptr. at pp. 109-110.)

B. Mitigating Circumstances

There is no evidence of any mitigating circumstances.

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

[5] All further references to standards are to this source.

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.) Second, the court looks to decisional law for guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 3.2 provides: "Final conviction of a member of a crime which involves moral turpitude, either inherently or in the facts and circumstances surrounding the crime's commission shall result in disbarment. Only if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than a two-year actual suspension, prospective to any interim suspension imposed, irrespective of mitigating circumstances."

Even though there are no compelling mitigating circumstances present in this proceeding, the State Bar does not seek and the court declines to recommend respondent's disbarment under standard 3.2 for his misdemeanor conviction. Not all serious drug convictions have resulted in disbarment. For example, in *In re Kreamer* (1975) 14 Cal.3d 524, the Supreme Court placed the attorney on three years' stayed suspension and three years' probation, but no actual suspension, for his misdemeanor conviction for possession of marijuana and *felony* conviction of conspiracy to possess marijuana with the intent to distribute. (See also *In re Cohen, supra*, 11 Cal.3d 416.)

Even though disbarment is not warranted in this proceeding, there is nothing in the record suggesting that it would be inappropriate for the court to recommend that respondent be placed on a two years' actual suspension as provided in standard 3.2. In that regard, the Supreme Court's opinion in *In re Cohen, supra*, 11 Cal.3d 416 is instructive. In *Cohen*, the Supreme

Court imposed three years' stayed suspension and two years' actual suspension on the attorney for his conviction of possession of marijuana for sale. Even though the amount of drugs involved in *Cohen* was substantially greater than those involved here, there was substantial mitigation in *Cohen* not present here. On balance, the court concludes that it is appropriate to recommend that respondent receive the same level of discipline as the attorney in *Cohen*.

VI. RECOMMENDED DISCIPLINE

The court recommends that respondent **MICHAEL LONDON REEDY** be suspended from the practice of law in the State of California for a period of three years, that execution of the three-year suspension be stayed, and that he be actually suspended from the practice of law for two years and until (1) he files and the State Bar Court grants a motion, under rule 205 of the Rules of Procedure of the State Bar, to terminate his actual suspension and (2) he shows proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice, and present learning and ability in the general law in accordance with standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.

The court also recommends that REEDY be ordered to comply with the conditions of probation, if any, hereinafter imposed on him by the State Bar Court as a condition for terminating his actual suspension. (Rules Proc. of State Bar, rule 205(g).)

VII. MPRE, RULE 9.20 & COSTS

The court recommends that REEDY be ordered to take and pass the Multistate Professional Responsibility Examination (hereafter "MPRE") within the period of his actual suspension and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same time period. Failure to pass the MPRE within the specified time results in actual suspension by the review department, without further hearing, until passage. (But see also Cal. Rules of Court, rule 9.10(b); Rules Proc. of State Bar, rules 320, 321(a).)

The court also recommends that REEDY be ordered to comply with the requirements of rule 9.20 of the California Rules of Court and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this proceeding.[6]

Finally, the court recommends that costs be awarded to the State Bar in accordance with California Business and Professions Code section 6086.10 and are enforceable both as provided in California Business and Professions Code section 6140.7 and as a money judgment.

Dated: October _____, 2009

DONALD F. MILES
Judge of the State Bar Court

[6] Reedy is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)