FILED DECEMBER 1, 2011

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **NATHAN JOSEPH SHERIDAN,** **Member No. 208940** A Member of the State Bar	)	Case Nos. **08-C-10826, 10-C-03556, 10-C-03557-DFM** **DECISION INCLUDING DISBARMENT RECOMMENDATION AND INVOLUNTARY INACTIVE ENROLLMENT ORDER**

INTRODUCTION

This disciplinary proceeding arises out of three separate criminal convictions of respondent **Nathan Joseph Sheridan** (Respondent) for petty theft and for additional related crimes. These are crimes of moral turpitude. During the trial of this matter, Respondent testified to the fact that, since the last of these three convictions, he has been arrested and convicted four more times for petty theft. For the reasons explained below, this court recommends, *inter alia*, that Respondent be disbarred from the practice of law.

PERTINENT PROCEDURAL HISTORY

The first of these convictions (Case No. 08-C-10826) was referred by the Review Department to the Hearing Department for handling on May 7, 2010. The remaining two cases were referred to the Hearing Department for handling on June 11, 2010.

On June 30, 2010, an initial status conference was held in all three cases. At that time, the three cases were consolidated and, by agreement of the parties, referred to a

second judge (Program Judge) for evaluation for possible inclusion in the Alternative Discipline Program (ADP).

On October 19, 2010, the Program Judge issued an order finding that Respondent was not eligible for the ADP, because he had withdrawn from the Lawyers Assistance Program on September 16, 2010. After the cases were returned to standard proceedings, a status conference with the undersigned was scheduled for November 15, 2010, in order to get the cases back on a trial schedule.

On November 1, 2010, the Review Department issued a recommendation in yet another conviction matter, Case No 10-C-03695, that Respondent be summarily disbarred because of a conviction for grand theft (Pen. Code, § 487). As a consequence of that recommendation, these matters were abated at the parties' request to allow that disbarment recommendation to become final.

On March 23, 2011, the Review Department issued an order reversing its prior disbarment recommendation, based on the fact that the grand theft conviction had subsequently been dismissed under Penal Code section 1385. The Review Department directed that a copy of that order be provided to the Hearing Department so that these three pending matters would proceed. A trial date of July 7, 2011, was then scheduled by the court.

On June 2, 2011, a status conference was held at the request of the parties to discuss the possibility that Respondent would be unavailable to participate in the trial of these matters because he had been ordered by the criminal court to participate in an in-patient recovery program for 90 days. After Respondent's counsel provided

documentation of that fact to this court, the trial date was continued to September 27, 2011.

Trial commenced on September 27, 2011, and was completed that same day. The State Bar was represented at trial by Hugh Radigan. Respondent was represented at trial by Daniel Woodford of Century Law Group LLP.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on the documentary and testimonial evidence admitted at trial.

Jurisdiction

Respondent was admitted to the practice of law in California on December 1, 2000, and has been a member of the State Bar at all relevant times. He has been on interim suspension because of the criminal convictions giving rise to this proceeding since May 28, 2010.

Case No. 08-C-10826

On November 29, 2007, Respondent was charged in Orange County Superior Court with misdemeanor petty theft (Pen. Code, §§ 484(a)–488) and misdemeanor entering a commercial building with intent to commit larceny (Pen. Code, §§ 459-460(b).) On January 18, 2008, Respondent pled "Not Guilty" to the charges.

On February 3, 2010[1], Respondent withdrew his prior "Not Guilty" plea and entered a "Guilty" plea to both counts. In this written plea, Respondent acknowledged in

[1] In the three plea agreements signed by Respondent, he routinely put the signature date as being "**1**/3/10" [i.e. January 3, 2010]. However, the date of the prosecutor's signature and the court's own record of the proceeding make clear that this handwritten date by Respondent was in error and should instead have been "**2**/3/10."

writing that "on Sept. 28, 2007 [he] stole the personal property of Target [and] entered the building with the intent to steal."

Case No. 10-C-03556

On November 5, 2008, Respondent was charged in Orange County Superior Court with misdemeanor petty theft (Pen. Code, §§ 484(a)–488). On August 31, 2009, Respondent pled "Not Guilty" to the charge.

On February 3, 2010, Respondent withdrew his prior "Not Guilty" plea and entered a "Guilty" plea to both counts. In this written plea, Respondent acknowledged in writing that "on Oct. 6, 2008 [he] stole the personal property of Long's Drug Store in O.C."

Case No. 08-C-03557

On November 17, 2008, Respondent was charged in Orange County Superior Court with misdemeanor grand theft (Pen. Code, § 487(a) and misdemeanor petty theft (Pen. Code, §§ 484(a)–488). On August 31, 2009, Respondent pled "Not Guilty" to the charges.

On February 3, 2010, Respondent withdrew his prior "Not Guilty" plea and entered a "Guilty" plea to the charge of misdemeanor grand theft. In this written plea, Respondent acknowledged in writing that "on Oct. 29, 2008 [he] took the real [sic] property of Costco (grand theft) which had a value over $400."

Participation in Recovery Court

As part of Respondent's plea agreements on February 3, 2010, he signed an agreement to participate in the Orange County Superior Court's Recovery Court Program. As part of this written agreement, Respondent agreed, *inter alia*: (1) not to

commit any crimes while he was in the program; (2) to cooperate with his treatment plan as directed by his treating psychiatrist, doctor and/or therapist; and (3) to take his prescribed medication as directed. At trial, Respondent described the program as assigning a "Recovery team" to monitor his condition and compliance, which team included his treating medical providers, a probation officer, and a public defender. Respondent meets twice weekly with his probation officer, who discusses with him his activities and compliance with the program requirements. In addition, he meets in court on nearly a weekly basis with the Recovery Court judge, who receives reports from both Respondent and his Recovery team about Respondent's progress and his compliance with the program requirements.

The Recovery Court program is scheduled to last for 18 months. Respondent has now been in the program for more than 18 months and has not yet graduated. At trial, Respondent explained that his graduation has been deferred because he has been arrested and convicted since November 2010 of four more instances of theft ("2011 convictions'), all of which misconduct was committed by Respondent while he was participating in the Recovery Program.[2]

At trial, Respondent testified that the 2011 convictions resulted from a decision by him in November 2010 to discontinue taking the medicine being prescribed by his psychiatrist. Respondent stated that he was depressed, unwilling to accept the psychiatrist's diagnosis that he was bipolar, and unhappy that the doctor had told him to

[2] Those convictions have not yet been referred to the Hearing Department for handling. A request by Respondent at trial to delay the present matter until all of Respondent's convictions could be consolidated at some point in the future was denied by this court. Evidence of those convictions, however, was provided through Respondent's testimony without objection by either side.

continue taking the medication even after Respondent complained of having suicidal ideations. Respondent remained off his medications for more than five months -- until he was arrested and incarcerated in April 2011. During that period, Respondent testified that he again became unable to control his conduct and again began to shoplifting from various venders.

As previously indicated, Respondent was obligated by the written terms of the Recovery Program to cooperate with his medical treatment plan as directed by his treating psychiatrist and to take his prescribed medications. Respondent's conduct was a serious and sustained violation of those rules. Respondent, in fact, did not tell the prescribing psychiatrist, his probation officer, or the Orange County Superior Court of the fact that he was not taking the medicine prescribed by his doctor until after Respondent had been arrested, notwithstanding the weekly sessions he was having with the court and various members of his Recovery Team throughout that five-month period.

Aggravating Circumstances

The State Bar of California must prove aggravation by clear and convincing evidence. (Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b) ("standards" or "std.").)[3] The court finds the following with respect to alleged aggravating factors.

Multiple Acts of Misconduct

Respondent is charged here with misconduct resulting in three criminal convictions, and he has acknowledged other instances of theft, some but not all resulting

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

in subsequent criminal convictions. These multiple acts of misconduct are an aggravating factor. (Std. 1.2(b)(ii).)

Uncharged Violations

Evidence of uncharged misconduct may be considered in aggravation where it is elicited for a relevant purpose and is based on the respondent's own evidence. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 35-36.)

While none of the 2011 convictions has yet been referred to the Hearing Department for handling, Respondent's testimony regarding his illegal activities, his violations of the terms of the Recovery Program, and his ongoing failure to disclose his true condition to the Orange County Recovery Court or his probation officer constitute significant aggravating factors in this matter.

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).) The court finds the following with respect to alleged mitigating factors.

No Prior Discipline

Respondent practiced law without discipline for more than six years, but less than seven years, prior to first being arrested for petty theft in 2007. This period of discipline-free practice entitles Respondent to very little weight in mitigation. (Std. 1.2(e)(i); *Kelly v. State Bar* (1988) 45 Cal.3d 649, 658 [seven and one-half years without discipline insufficient for mitigation credit]; *Smith v. State Bar* (1985) 38 Cal.3d 525, 540 [six years of blemish-free practice "not a strong mitigating factor"]; *In the Matter of Greenwood*

(Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831, 837 [six years of blemish-free practice entitled to no mitigative weight].)

Emotional/Mental Health Difficulties

Mental health and extreme emotional difficulties may be considered mitigating where (1) it is established by expert testimony that they were responsible for the attorney's misconduct and (2) clear and convincing evidence establishes that the attorney no longer suffers from such difficulties. (Std. 1.2(e)(iv); *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 701-702.)

The evidence offered by Respondent regarding the emotional and mental health difficulties he had in the past does not provide clear and convincing evidence that his problems are a mitigating factor here. There was no expert testimony, or other convincing evidence, showing the required nexus between Respondent's claimed emotional problems and his misconduct. More significantly, there was certainly not sufficient evidence for this court to conclude that any emotional/mental problems suffered by Respondent in the past have now been satisfactorily resolved. That is especially true, given his recurring criminal conduct earlier this year and his history of not being honest with either his treating physician or the judicial authorities assigned to supervise his recovery efforts.

Community Service

Respondent testified that he now regularly performs considerable community service and, before being enrolled ineligible to practice, previously performed regular pro bono work. Respondent, however, offered only his own testimony to establish those efforts. As a result, this court assigns some, but only modest, weight to this mitigation

evidence. (See *Calvert v. State Bar* (1991) 54 Cal.3d 765, 785 [pro bono and community service is a mitigating factor]; but see *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 840 [limited mitigation weight for community service established only by respondent's testimony].)

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, the court is 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; *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) In addition, the courts consider relevant decisional law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Frazier*, *supra*, 1 Cal. State Bar Ct. Rptr. at p. 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.)

It is well-settled that petty theft is a criminal offense involving moral turpitude. (See *In re Rothrock* (1944) 25 Cal.2d 588.) The record of conviction is conclusive evidence of guilt of the crimes of which Respondent was convicted. (Bus. & Prof. Code, § 6101.) A convicted attorney is conclusively presumed to have committed all of the acts necessary to constitute the offense. (*In re Duggan* (1976) 17 Cal.3d 416, 423.) A plea of guilty is deemed to be a conviction. (*In re Rothrock*, *supra*, 25 Cal.3d at p. 589.)

Business and Professions Code section 6106 provides: "The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension." Similarly, section 6101 of the Business and Professions Code provides in pertinent part: "Conviction of a felony or misdemeanor, involving moral turpitude, constitutes a cause for disbarment or suspension."

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."

It is the recommendation that Respondent be disbarred from the practice of law. The courts have repeated emphasized that honesty is one of the most fundamental rules of

ethics for attorneys. (See, e.g., *Borre v. State Bar* (1991) 52 Cal.3d 1047, 1053; *Levin v. State Bar* (1989) 47 Cal.3d 1140, 1147; *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 596.) Respondent's sustained history of stealing represents conduct and ethics antithetical to the values required and expected of an attorney. His ongoing acts of dishonesty are especially troubling, given that they continued (1) after he had been arrested for theft; (2) after he had been criminally convicted of prior instances of theft; (3) after disciplinary proceedings for such misconduct had been initiated against him by the State Bar and State Bar Court; and (4) after he had been under the close supervision of a probation officer, a formal Recovery Team (including several therapists), and the Orange County Superior Court's Recovery Court for more than a year.

Respondent's explanation at trial for his most recent misconduct and convictions, that they resulted from his ongoing decision from November 2010 to April 2011 to go off his prescribed medications, is far more aggravating than it is mitigating. This decision by Respondent was contrary to the express terms of his agreement with the criminal authorities. It was contrary to the express medical judgment and recommendations of his attending therapists. And there has been no evidence presented to this court that it was medically justified. Further, Respondent continued to refuse to take his prescribed medication even after he was aware that he had resumed stealing. Finally, throughout this more-than-five-month period, Respondent was concealing his conduct from his probation officer and the Recovery Court and he was sitting quiet while others were assuring the court that he was in full compliance with his Recovery Court Program obligations.

Respondent has testified that he is now on the road to recovery. This court sincerely hopes for Respondent that such is the case. But before Respondent should be

allowed to resume the practice of law, he must be required to demonstrate that such recovery has, in fact, occurred. Under the circumstances here, that showing should require more than mere verbal assurances by Respondent to this court. To protect the profession, he must be required to show that he has lived an exemplary life for a sustained period of time without the constraints of the oversight by his probation officer and the criminal courts.

RECOMMENDED DISCIPLINE

Disbarment

The court recommends that respondent **Nathan Joseph Sheridan,** Member No. 208940, be disbarred from the practice of law in the State of California and that his name be stricken from the Roll of Attorneys of all persons admitted to practice in this state.

Rule 9.20

The court further recommends that Respondent be ordered to comply with California Rules of Court, rule 9.20 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 matter.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that such costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Respondent must also reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds, and such payment is enforceable as provided under Business and Professions Code section 6140.5.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that **Nathan Joseph Sheridan,** Member No. 208940**,** be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after service of this decision and order by mail. (Rules Proc. of State Bar, rule 5.111(d)(1).)[4]

Dated: December _____, 2011.

DONALD F. MILES
Judge of the State Bar Court

[4] An inactive member of the State Bar of California cannot lawfully practice law in this state. (Bus. & Prof. Code, § 6126, subd. (b); see also Bus. & Prof. Code, § 6125.) It is a crime for an attorney who has been enrolled inactive (or disbarred) to practice law, to attempt to practice of law, or to even hold himself or herself out as entitled to practice law. (*Ibid*.) Moreover, an attorney who has been enrolled inactive (or disbarred) may not lawfully represent others before any state agency or in any state administrative hearing even if laypersons are otherwise authorized to do so. (*Ibid*.; *Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 66-73.)