

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO**

In the Matter of)	Case No.: 08-C-12923-PEM
)	
ROBERT RONALD LUX,)	DECISION AND DISCIPLINE ORDER;
)	ORDER SEALING CERTAIN
Member No. 189191,)	DOCUMENTS
)	
<u>A Member of the State Bar.</u>)	

Introduction¹

In this conviction referral proceeding, Robert Ronald Lux (respondent) was accepted for participation in the State Bar Court’s Alternative Discipline Program (ADP). As the court has found that respondent successfully completed the ADP, the court hereby orders, as set forth *post*, the imposition of discipline relating to a successful completion of the ADP.

Significant Procedural History

On October 30, 2008, respondent pled no contest to and was convicted of driving under the influence of alcohol with a blood alcohol level of .08% and causing injury. Respondent was subsequently sentenced and placed on formal probation for three years, ordered to serve 180 days in jail and given 135 days credit for residential treatment programs. He was also ordered to obtain substance abuse treatment, and his driving privilege was suspended.

¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

In June 2009, the State Bar of California, Office of the Chief Trial Counsel (State Bar) transmitted a copy of respondent's record of conviction, in case No. 08-C-12923, to the State Bar Court pursuant to Business and Professions Code sections 6101-6102 and California Rules of Court, rule 9.5, et seq.

On July 10, 2009, the Review Department of the State Bar Court issued an order referring case No. 08-C-12923 to the hearing department for a hearing and decision as to whether the facts and circumstances surrounding respondent's conviction involved moral turpitude or other misconduct warranting discipline and, if so found, a recommendation as to the discipline to be imposed.

On or about July 28, 2009, the undersigned judge was assigned to this matter. A Notice of Hearing on Conviction was filed against respondent on July 28, 2009.

Thereafter, at status conferences held in this matter on October 19 and November 10, 2009, and on January 10, 2010, respondent indicated that he wished to consider entering the ADP.

Respondent had previously contacted the State Bar's Lawyer Assistance Program (LAP) in July 2009, to assist him with his substance abuse issues and had signed a Participation Plan with the LAP on October 1, 2009.

On January 7, 2010, respondent submitted a nexus statement to the court which established a nexus between his substance abuse issues and his misconduct.

Subsequently, on February 8, 2010, the parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation). The Stipulation set forth the factual findings, legal conclusions, and mitigating and aggravating circumstances in this matter.

The court issued a Confidential Statement of Alternative Dispositions and Orders (Statement), dated February 8, 2010, formally advising the parties of (1) the discipline to be

imposed if respondent successfully completed the ADP and (2) the discipline which would be recommended to the Supreme Court if respondent failed to successfully complete, or was terminated from, the ADP. Respondent and his counsel executed the Contract and Waiver for Participation in the State Bar Court's ADP; the court accepted respondent for participation in the ADP; and respondent's period of participation in the ADP began on February 8, 2010.

Respondent thereafter participated successfully in both the LAP and the ADP. On December 6, 2011, after receiving a Certificate of One Year of Participation in the Lawyer Assistance Program – Substance Abuse, indicating that the LAP is not aware of the use of any unauthorized substances by respondent for at least one year prior to October 14, 2011, the court filed an order finding that respondent successfully completed the ADP.

The matter was submitted for decision on December 6, 2011.

Findings of Fact and Conclusions of Law

The parties' Stipulation, including the court's order approving the Stipulation, is attached hereto and incorporated by reference, as if fully set forth herein. Respondent stipulated to willfully violating Business and Professions Code section 6068, subdivision (a), based upon his violation of Vehicle Code section 23153, subdivision (b).

More specifically, respondent stipulated that on the morning of June 8, 2008, he drank two beers and ingested various prescription medicines. At 1:00 p.m. on that same date, while driving his car, respondent struck a motorcycle that was stopped at a traffic light. The impact threw the driver of the motorcycle over the handlebars of the motorcycle, causing him to land on the pavement. The cyclist suffered serious physical injuries as a result of the collision. Respondent had a blood alcohol level of .27% at the time he collided with the motorcycle.

On October 30, 2008, respondent entered a plea of no contest in Santa Clara County Superior Court to a felony charge of violating Vehicle Code section 23153, subdivision (b)

(driving under the influence with a blood alcohol level of .08% and causing injury). As noted, *ante*, respondent was placed on formal probation for three years, ordered to serve 180 days in jail and given 135 days credit for residential treatment programs. He was also ordered to obtain substance abuse treatment, and his driving privilege was suspended.

The parties stipulated that the facts and circumstances surrounding respondent's conviction did not involve moral turpitude, but did constitute other misconduct warranting discipline.

Aggravation and Mitigation²

The parties stipulated to factors in aggravation and mitigation.

In aggravation, respondent's misconduct harmed the victim of the motorcycle accident, who suffered serious physical harm and whose medical bills exceeded \$40,000. Additionally, respondent had a blood alcohol level of .27% at the time he collided with the motorcycle.

In mitigation, respondent was admitted to the practice of law in 1997 and has no prior record of discipline. (Std. 1.2(e)(i).) At the time of the accident, respondent suffered from emotional and physical difficulties. He was in the midst of a painful separation and divorce, which led to his alcoholism. Since the divorce, respondent's family situation has stabilized and he shares custody of his children with his ex-wife. His alcoholism is being treated through counseling and participation in the State Bar LAP. (Std. 1.2(e)(iv).) Respondent was cooperative with the victim of the accident during the civil litigation brought against him by the victim and, likewise, was cooperative throughout this disciplinary proceeding. (Std. 1.2(e)(v).) Additionally, respondent provided evidence of his good character by submitting seven letters attesting to his good character. The letters came from a wide range of references in the legal and general community and from people who are aware of the full extent of respondent's

² All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

misconduct. (Std. 1.2(e)(vi).) Respondent showed remorse for his misconduct and recognition of his wrongdoing by immediately seeking in-patient treatment for his substance abuse issues. (Std. 1.2(e)(vii).)

Furthermore, respondent's successful completion of the ADP, which required his successful participation in the LAP, as well as the Certificate of One Year Participation in the Lawyer Assistance Program – Substance Use, qualify as clear and convincing evidence that respondent no longer suffers from the substance abuse issues, which led to his misconduct. Accordingly, it is appropriate to consider respondent's successful completion of the ADP as a mitigating circumstance in this matter. (Std. 1.2(e)(iv).)

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney but, rather, to protect the public, to preserve public confidence in the legal profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

The parties submitted briefs on the issue of discipline. After considering the parties' briefs, including the case law and standards cited therein, the court advised the parties of the discipline that would be ordered if respondent successfully completed the ADP and the discipline that would be recommended to the Supreme Court if respondent was terminated from, or failed to successfully complete, the ADP.

In determining the appropriate alternative discipline to recommend if respondent successfully completed the ADP or was terminated from, or failed to successfully complete, the ADP, the court considered the discipline recommended by the parties, as well as certain standards and case law. In particular, the court considered standards 1.2, 1.3, 1.4, 1.5, 1.6, and

3.4, and *In re Kelley* (1990) 52 Cal.3d 487 and *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208.

After agreeing to the court's proposed high and low levels of discipline, respondent executed the Contract to participate in the ADP, and respondent's period of participation in the ADP commenced.

Thereafter, respondent successfully participated in the ADP and - as set forth in the court's December 6, 2011 Alternative Discipline Program Status Conference Order - successfully completed the ADP. Because respondent has now successfully completed the ADP, this court, in turn, now imposes the lower level of discipline, set forth more fully below.

Discipline Order

Accordingly, it is ordered that respondent Robert Ronald Lux, State Bar Number 189191, is hereby privately reprovved. Pursuant to the provisions of rule 5.127(a) (former rule 270(a)) of the Rules of Procedure of the State Bar of California (Rules of Procedure),³ the private reprovval will be effective when this decision becomes final. Furthermore, pursuant to rule 9.19(a) of the California Rules of Court and rule 5.128 (former rule 271) of the Rules of Procedure, the court finds that the interest of respondent and the protection of the public will be served by the following specified conditions being attached to the private reprovval imposed in this matter. Failure to comply with any condition(s) attached to this private reprovval may constitute cause for a separate proceeding for willful breach of rule 1-110 of the Rules of Professional Conduct of the State Bar of California. Respondent is hereby ordered to comply with the following conditions attached to his private reprovval for two years following the effective date of the private reprovval.

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

³ Effective January 1, 2011, new Rules of Procedure became effective.

2. Within ten (10) days of any change, respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California (Office of Probation), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;
3. Within thirty (30) days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of reprobation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the reprobation condition period, respondent must promptly meet with the probation deputy as directed and upon request;
4. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the reprobation condition period. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of reprobation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than thirty (30) days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the reprobation condition period and no later than the last day of the reprobation condition period;

5. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation which are directed to respondent personally or in writing relating to whether respondent is complying or has complied with the reprobation conditions;
6. Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation;⁴ and
7. Unless, respondent has been terminated from the Lawyer Assistance Program (LAP) prior to his successful completion of the LAP, respondent must fully comply with all provisions and conditions of his Participation Agreement/Plan with the LAP and must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and the State Bar Court with information regarding the terms and conditions of respondent's participation in the LAP and respondent's compliance or non-compliance with LAP requirements. Revocation

⁴ Respondent is not ordered to provide satisfactory proof of attendance at a session of the State Bar Ethics School, as the misconduct in this matter is unrelated to the practice of law.

of the written waiver of release of LAP information is a violation of this condition. However, if respondent has successfully completed the LAP, respondent need not comply with this condition.

Direction re Decision and Order Sealing Certain Documents

The court directs a court case administrator to file this Decision and Order Sealing Certain Documents. Thereafter, pursuant to rule 5.388(c) (former rule 806(c)) of the Rules of Procedure of the State Bar of California (Rules of Procedure), all other documents not previously filed in this matter are ordered sealed pursuant to rule 5.12 (former rule 23) of the Rules of Procedure.

It is further ordered that protected and sealed material will only be disclosed to: (1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their official duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosure. All persons to whom protected material is disclosed will be given a copy of this order sealing the documents by the person making the disclosure.

IT IS SO ORDERED.

Dated: January _____, 2012

PAT McELROY
Judge of the State Bar Court