

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES

In the Matter of	)	Case Nos. 09-C-15962-RAH; 10-C-01219;
	)	10-C-06274 (Cons.)
<b>JAMES WADE STEPHENS,</b>	)	
	)	
<b>Member No. 194788,</b>	)	<b>DECISION</b>
	)	
A Member of the State Bar.	)	
_____	)	

**1. Introduction**

This default conviction referral proceeding is based upon respondent **James Wade Stephens's** three criminal convictions: (1) a felony violation of Arizona Revised Statutes section 13-3415, subdivision (A) (possession of drug paraphernalia); (2) a misdemeanor violation of California Penal Code section 415, subdivision (1) (unlawfully fighting in public); and (3) a misdemeanor violation of California Penal Code section 602, subdivision (k) (trespass).

Based on clear and convincing evidence, this court finds that the facts and circumstances surrounding respondent's convictions did not involve moral turpitude but did involve other misconduct warranting discipline. Accordingly, the court recommends that respondent be suspended from the practice of law in California for one year, that execution of suspension be

stayed, and that he be suspended for a minimum of 90 days and until the State Bar Court grants a motion to terminate his suspension (Rules Proc. of State Bar, *former* rule 205).<sup>1</sup>

## **2. Procedural History**

### **A. Case No. 09-C-15962 (Possession of Drug Paraphernalia)**

On February 26, 2010, respondent was convicted on a felony violation of Arizona Revised Statutes section 13-3415, subdivision (A) (possession of drug paraphernalia). On July 28, 2010, the Review Department of the State Bar Court issued an order, referring this matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed if the Hearing Department finds that the facts and circumstances surrounding respondent's criminal violation involved moral turpitude or other misconduct warranting discipline.

On August 5, 2010, the State Bar Court issued and properly served a Notice of Hearing on Conviction on respondent. The notice was returned as undeliverable. Respondent did not file a response. (Rules Proc. of State Bar, former rule 600 et seq.)

On motion of the State Bar, respondent's default was entered on November 17, 2010. The order of entry of default was sent to respondent at his official address. Again, the mailing was returned as undeliverable.

Respondent was enrolled as an inactive member under Business and Professions Code section 6007, subdivision (e), on November 20, 2010.

### **B. Case No. 10-C-01219 (Unlawfully Fighting in Public)**

On April 5, 2010, respondent was convicted on a misdemeanor violation of California Penal Code section 415, subdivision (1) (unlawfully fighting in public). On September 28, 2010,

---

<sup>1</sup> The *new* Rules of Procedure of the State Bar effective January 1, 2011, are not applicable to this proceeding because the court has determined that injustice would otherwise result. Instead, the *former* Rules of Procedure of the State Bar continue to govern the proceeding in the hearing department. (See Rules Proc. of State Bar (eff. Jan. 1, 2011), Preface, item 3.)

the Review Department of the State Bar Court issued an order, referring this matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed if the Hearing Department finds that the facts and circumstances surrounding respondent's criminal violation involved moral turpitude or other misconduct warranting discipline.

On October 14, 2010, the State Bar Court issued and properly served a Notice of Hearing on Conviction on respondent. The notice was returned as undeliverable. Respondent did not file a response.

On motion of the State Bar, respondent's default was entered on January 14, 2011. The order of entry of default was sent to respondent at his official address. Again, the mailing was returned as undeliverable. Respondent was enrolled as an inactive member under Business and Professions Code section 6007, subdivision (e), on January 17, 2011.

**C. Case No. 10-C-06274 (Trespass)**

On May 7, 2010, respondent was convicted on a misdemeanor violation of California Penal Code section 602, subdivision (k) (trespass). On September 30, 2010, the Review Department of the State Bar Court issued an order, referring this matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed if the Hearing Department finds that the facts and circumstances surrounding respondent's criminal violation involved moral turpitude or other misconduct warranting discipline.

On October 14, 2010, the State Bar Court issued and properly served a Notice of Hearing on Conviction on respondent. The notice was returned as undeliverable. Respondent did not file a response.

On motion of the State Bar, respondent's default was entered on January 14, 2011. The order of entry of default was sent to respondent at his official address. Again, the mailing was returned as undeliverable. Respondent was enrolled as an inactive member under Business and

Professions Code section 6007, subdivision (e), on January 17, 2011.

On January 14, 2011, these three conviction referral matters were consolidated and submitted for decision on February 15, 2011.

### **3. Findings of Fact and Conclusions of Law**

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; and *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581, 588.) However, “[w]hether 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, supra*, 2 Cal. State Bar Ct. Rptr. 581, 589, fn. 6.)

Upon entry of respondent's default, the factual allegations set forth in the State Bar's statements of facts and circumstances surrounding the convictions, filed pursuant to former rule 604(c)(3) of the Rules of Procedure of the State Bar, must be deemed admitted unless otherwise ordered by the court based on contrary evidence, and no further proof will be required to establish the truth of such facts. (Rules Proc. of State Bar, former rule 604(c)(4).)

#### **A. Jurisdiction**

Respondent was admitted to the practice of law in California on April 27, 1998, and has been a member of the State Bar at all times since.

#### **B. Case No. 09-C-15962 (Possession of Drug Paraphernalia)**

##### ***(1) Facts***

On August 30, 2009, respondent was pulled over at the United States Border Patrol Checkpoint in Yuma County, Arizona. Border patrol officers smelled the odor of marijuana

emanating from respondent's car. Respondent was directed to move his vehicle to a designated inspection area. Upon doing so, respondent began yelling at the border patrol agents. The border patrol agents asked a passenger in respondent's vehicle, later identified as Melra Davis, to exit the vehicle. Ms. Davis told the border patrol agents that respondent had hit her while traveling on Interstate 8. She then asked to be transported to a hospital. She further stated that she was afraid that respondent was going to kill her.

Upon searching respondent's vehicle, border patrol agents found 16.5 grams of marijuana and glass pipes with burnt marijuana residue. Respondent advised the border patrol agents that he had a medical marijuana card from the State of California. At one point, respondent began yelling at a border patrol agent, "You're a piece of shit cop who doesn't know the fucking law." Respondent was placed under arrest on assault and possession of marijuana and drug paraphernalia charges. He was subsequently indicted on charges of possession of narcotic drugs, possession of marijuana and possession of drug paraphernalia.

On February 26, 2010, in the Superior Court of Arizona, County of Yuma, case No. S1400CR2009-1200, respondent pled guilty to violation of Arizona Revised Statutes section 13-3415, subdivision (A), Possession of Drug Paraphernalia – to wit: Containers and Pipes, a felony which may or may not involve moral turpitude or other misconduct warranting discipline. The charges of possession of narcotic drugs and possession of marijuana were dismissed. Respondent was sentenced to probation.

## ***(2) Conclusion***

As the State Bar noted, the elements of the offense for which respondent was convicted under the Arizona Revised Statutes section 13-3415, subdivision (A), do not constitute a felony

under California law and California Health and Safety Code section 11364, subdivision (a), which appears to be closest to the Arizona Statutes, is a misdemeanor.<sup>2</sup>

In *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52, an experienced family law attorney engaged in an altercation with police who had been summoned when he refused to leave his estranged wife's apartment and was convicted for battery on a police officer. In *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208, an attorney was convicted of several drunk driving offenses in which some involved assaultive or uncooperative conduct toward arresting officers. The court found in both of these cases that the facts and circumstances surrounding the attorneys' criminal convictions did not involve moral turpitude but did involve other misconduct warranting discipline.

Similarly, in this matter, the facts and circumstances surrounding respondent's conviction of possession of drug paraphernalia did not constitute moral turpitude.

However, given that verbal attacks and physical force were involved in respondent's possession of drug paraphernalia, the court finds that the facts and circumstances surrounding respondent's conviction of violating Arizona Revised Statutes section 13-3415, subdivision (A), while not involving moral turpitude, do constitute other misconduct warranting discipline.

### **C. Case No. 10-C-01219 (Unlawfully Fighting in Public)**

#### ***(1) Facts***

On December 8, 2009, about 7:00 a.m., in front of the Alano Club and Christ Lutheran

---

<sup>2</sup> Arizona Revised Statutes section 13-3415, subdivision (A), provides, in general, that it is unlawful for any person to use or to possess with intent to use any drug paraphernalia to introduce into the human body any narcotic drug.

Similarly, California Health and Safety Code section 11364, subdivision (a), provides that it is unlawful to possess an opium pipe or any device or paraphernalia used for unlawfully injecting or smoking a controlled substance.

Church in San Diego, California, respondent walked up to Kerry Magee and shouted, “We’re all going to jail today, Kerry.” Then, respondent walked up briskly to John Owens, yelled derogatory terms at Kerry such as “nigger” and “faggot” and threw a hot cup of coffee at Owens from a Starbucks® cup he had in his hand. The coffee spilled across Owens’s chest, lower neck area, and face, drenching his shirt and causing pain and discomfort from the hot liquid.

Respondent waited across and violently smashed a Starbucks® bottled beverage on the sidewalk and waited for the police to arrive. Respondent’s conduct was in violation of a temporary restraining order to protect Owens, an employee of Christ Lutheran Church, which prohibited respondent to be within 100 yards of Owens or of that location, effective since August 13, 2009.

On December 11, 2009, a two-count criminal complaint was filed charging respondent with a violation of Penal Code section 273.6, subdivision (a), for disobeying a court order, a misdemeanor, and Penal Code section 242 for battery, also a misdemeanor.

On April 5, 2010, in a matter entitled *State v. James Wade Stephens*, Superior Court of California, County of San Diego, case No. M097727, respondent pled guilty to a violation of California Penal Code section 415, subdivision (1) – unlawfully fighting in public or challenging another person in a public place to fight, one count misdemeanor, as a lesser included offense of count 2, which alleged a violation of Penal Code section 242 (battery). The violation of a court order count was dismissed. Respondent was sentenced to three years’ probation and ordered to stay away from Kerry Magee, John Owens and Christ Lutheran Church on Cass Street in San Diego, California.

## **(2) Conclusion**

The facts and circumstances surrounding respondent’s misdemeanor conviction of Penal Code section 415, subdivision (1), did not constitute moral turpitude. But respondent's acts of verbal attacks on and physical harm to Kerry Magee and John Owens do constitute other

misconduct warranting discipline.

**D. Case No. 10-C-06274 (Trespass)**

*(1) Facts*

As of October 29, 2009, Debra Stephens had received several threatening messages from respondent, who was at the time, her soon-to-be ex-spouse after 18 years of marriage. Debra called the police and reported the events which caused her to fear for her life.

On October 21, 2009, Debra went to her mother-in law's house in San Diego. By chance, respondent was in the living room. Had Debra known that respondent was at the house, she would not have entered. Upon seeing Debra who is five feet tall where respondent is six feet tall, respondent immediately walked towards her at a fast pace with his arms open, yelling, "I'm going to crucify you for what you did to me." Respondent stopped inches away from Debra's face. Debra, in fear for her safety, ran out of the house to her car, got in, locked the doors and fumbled for her keys. Respondent chased after her and yelled at her through the passenger door window and pounded on the glass. Frightened for her safety, Debra was finally able to safely pull out and drive away without further incident.

On October 22, 2009, Debra and respondent appeared before family court in downtown El Cajon, California, for their marital dissolution matter. When the court awarded Debra the El Cajon house and its contents, respondent yelled out, "Fuck this shit." He was asked to leave the premises. Respondent waited for two hours across the street of the courthouse. The bailiff observed respondent's actions; once the court papers were completed, the bailiff escorted Debra to her car. That same day, Debra went to the house and had the locks changed. The home was vacant and on the market.

On October 23, 2009, Debra's realtor telephoned her, informing her that respondent broke into the El Cajon house and wrote on the family room wall, "God knows my ex-wife



Debra Stephens is possessed by satan, (sic) but God wants her back! She is a lost child of God. My ex-wife Debra Stephens, my house, my wall, I paid for it.” The house was completely empty except for an open kitchen drawer with a large kitchen knife which had been intentionally left by respondent to send a message to Debra.

On January 26, 2010, a two-count domestic violence complaint was filed, charging respondent with a violation of Penal Code section 594, subdivisions (a) and (b)(2)(A), for vandalism by unlawfully and maliciously damaging and destroying the real and personal property of another and Penal Code section 602 subdivision (k), for trespassing with the intent to interfere with the property rights of another, both misdemeanors.

On May 7, 2010, in a matter entitled *State v. James Wade Stephens*, Superior Court of California, County of San Diego, case No. C297712DV, respondent pled guilty to a violation of California Penal Code section 602, subdivision (k) – trespassing, one count misdemeanor. The vandalism count was dismissed. Respondent was sentenced to three years’ probation and ordered to stay away from Debra Stephens.

## **(2) Conclusion**

The facts and circumstances surrounding respondent’s misdemeanor conviction of Penal Code section 602, subdivision (k), did not constitute moral turpitude. But respondent's acts of trespassing into Debra’s house, physical threats and leaving a large kitchen knife as an intimidating message to Debra do constitute other misconduct warranting discipline.

## **4. Mitigation and Aggravation**

The parties bear the burden of establishing mitigation and aggravation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(b) and (e).)<sup>3</sup>

---

<sup>3</sup>All further references to standards are to this source.

## **A. Mitigation**

No mitigation was submitted into evidence. (Std. 1.2(e).) But respondent's lack of a prior record of discipline in 11 years of practice of law at the time of his misconduct in 2009 is a mitigating factor. (Std. 1.2(e)(i).) "Absence of a prior disciplinary record is an important mitigating circumstance when an attorney has practiced for a significant period of time." (*In re Young* (1989) 49 Cal.3d 257, 269.)

## **B. Aggravation**

Respondent committed multiple acts of wrongdoing by trespassing, possessing drug paraphernalia, and hurling verbal and physical attacks. (Std. 1.2(b)(ii).)

Respondent's violent and aggressive behavior harmed significantly the public and demonstrated his lack of respect for the court and its orders. He was asked to leave the family courtroom and he disregarded the restraining orders. Debra Stephens and John Owens continue to fear for their safety. (Std. 1.2(b)(iv).)

Respondent's failure to cooperate with the State Bar before the entry of his default, including filing an answer to the three notices of hearing on conviction, is also a serious aggravating factor. (Std. 1.2(b)(vi).)

## **5. Discussion**

In determining the appropriate discipline to recommend in this matter, the court looks at the purposes of disciplinary proceedings and sanctions. Standard 1.3 sets forth the purposes of disciplinary proceedings and sanctions as "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession."

In this criminal conviction case involving other misconduct warranting discipline, the standards provide for the imposition of sanctions ranging from reproof to disbarment depending

on the nature and extent of the attorney's misconduct. (Std. 3.4.) While the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

“[D]iscipline is imposed according to the gravity of the crime and the circumstances of the case.” (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 510.)

In its motion for entry of default, the State Bar urges, among other things, that respondent be actually suspended for 90 days to adequately protect the public. The court agrees.

The following cases are instructive.

In *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52, the Review Department found that the attorney provoked a dangerous and risky confrontation with the police in his own domestic dispute and that he should have known better given his extensive experience in handling family law matters. Considering the aggravating circumstances such as his prior discipline, use of alcohol, and lack of appreciation for the seriousness of his misconduct, the court suspended the attorney for two years, stayed, and placed him on probation for two years with a 60-day actual suspension, for his criminal conviction of the misdemeanor battery on a police officer.

In *In re Otto* (1989) 48 Cal.3d 970, an attorney was convicted of two misdemeanors (assault by means likely to produce great bodily injury and infliction of corporal punishment on a cohabitant of the opposite sex resulting in a traumatic condition). The court concluded that his acts did not involve moral turpitude but did constitute other misconduct warranting discipline. The attorney was suspended for two years, stayed, and placed on probation for two years with an actual suspension of six months.

In recommending discipline, the “paramount concern is protection of the public, the courts and the integrity of the legal profession.” (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) An attorney's failure to accept responsibility for actions which are wrong or to understand that

wrongfulness is considered an aggravating factor. (*Carter v. State Bar* (1988) 44 Cal.3d 1091, 1100-1101.) The court is seriously concerned about the possibility of similar misconduct recurring, particularly since this proceeding involves three incidents within one year. Respondent has offered no indication that this will not happen again.

In September 2010, Deputy Trial Counsel Elina Kreditor of the State Bar had advised respondent that he must file a response to the notice of hearing on conviction. Instead of cooperating with the State Bar, respondent defaulted in this disciplinary proceeding. He told the State Bar that he was experiencing certain medical and psychological difficulties which resulted in the misconduct at issue. He also informed the State Bar about his attendance at an outpatient rehabilitation program for his addiction and other psychological issues. But the court has no information about the underlying cause of his misconduct or of any mitigating circumstances surrounding his misconduct absent his participation in this proceeding.

In light of the standards and case law and after balancing all relevant factors, including the underlying misconduct, the aggravating factors, and the lack of any compelling mitigating circumstances, the court has determined that a 90-day actual suspension would commensurate with the gravity of respondent's act and would be adequate for the protection of the public, the courts and the legal profession.

## **6. Recommendations**

### **A. Discipline**

Accordingly, the court hereby recommends that respondent **James Wade Stephens** be suspended from the practice of law in California for one year, that said suspension be stayed, and that respondent be suspended from the practice of law for a minimum of 90 days. He is to remain suspended until he files and the State Bar Court grants a motion to terminate his suspension. (Rules Proc. of State Bar, former rule 205.)

It is recommended that respondent be ordered to comply with any probation conditions imposed by the State Bar Court as a condition for terminating his suspension. (Rules Proc. of State Bar, former rule 205(g).)

It is also recommended that if respondent remains suspended for two years or more, he will remain suspended until he has shown proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law. (Standard 1.4(c)(ii) and Rules Proc. of State Bar, former rule 205.)

#### **B. Multistate Professional Responsibility Exam**

It is further recommended that respondent take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order, or during the period of his suspension, whichever is longer, and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).)

#### **C. California Rules of Court, Rule 9.20**

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.<sup>4</sup>

---

<sup>4</sup> Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

**D. Costs**

It is further recommended 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.

Dated: May \_\_\_\_\_, 2011

---

**RICHARD A. HONN**  
Judge of the State Bar Court