

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case No. **09-C-16813-LMA**
)
RYAN MICHAEL HERRON,)
) **DECISION**
)
Member No. 175216,)
)
A Member of the State Bar.)
_____)

I. Introduction

In this default conviction referral matter, respondent **Ryan Michael Herron** was convicted of one misdemeanor count of driving on a suspended/revoked license (California Vehicle Code § 14601.1(a)). While the facts and circumstances surrounding respondent’s conviction do not involve moral turpitude, the court finds that they do involve other misconduct warranting discipline. Consequently, the court recommends, among other things, that respondent be publically reprovved.

II. Pertinent Procedural History

On July 21, 2009, respondent appeared in the Orange County Superior Court and entered a guilty plea to a misdemeanor charge of driving on a suspended/revoked license. Respondent was sentenced that same day.

On December 9, 2009, the Office of the Chief Trial Counsel of the State Bar of California (“State Bar”) transmitted a certified copy of respondent’s record of conviction 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 January 5, 2010, the Review Department of the State Bar Court issued an order referring the present matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed if the facts and circumstances surrounding respondent's conviction were found to involve moral turpitude or other misconduct warranting discipline.

On January 11, 2010, the State Bar Court issued and served respondent with a Notice of Hearing on Conviction. This mailing was subsequently returned as undeliverable.

Following respondent's failure to appear at two properly noticed status conferences, the State Bar, on March 23, 2010, filed a motion for entry of default pursuant to rules 200 and 604 of the Rules of Procedure of the State Bar of California ("Rules of Procedure"). Respondent's default was entered on April 6, 2010. The order of entry of default was sent to respondent's official address by certified mail, return receipt requested. This mailing was subsequently returned as undeliverable.

Respondent was enrolled as an inactive member under Business and Professions Code section 6007, subdivision (e)(1), on April 9, 2010. The court took this matter under submission on May 3, 2010, following the filing of the State Bar's brief on culpability and discipline.

The State Bar's and the court's efforts to contact respondent were fruitless. The court concludes that respondent was given sufficient notice of the pendency of this proceeding to satisfy the requirements of due process. (*Jones v. Flowers, et al.* (2006) 547 U.S. 220 [126 S.Ct. 1708, 164 L.Ed.2d 415].)

III. 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; *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581, 588.)

A. Jurisdiction

Respondent was admitted to the practice of law in the State of California on December 6, 1994, and has been a member at all times since that date.

B. Facts and Circumstances Surrounding the Conviction

On October 8, 2007, respondent received a traffic citation for speeding. The citation directed respondent to appear in traffic court, but he failed to appear as directed.

Effective April 11, 2008, the California Department of Motor Vehicles suspended respondent's driving privileges.

On June 25, 2008, respondent received a traffic citation for making an unsafe left turn and failing to provide proof of insurance. The citation directed respondent to appear in traffic court, but he again failed to appear as directed.

On July 15, 2009, respondent was stopped by police officers because he was driving a vehicle with expired license plates. Respondent gave the police officers his expired California Driver's License and told the officers that he knew it was expired. Respondent was placed under arrest.

On July 16, 2009, the Orange County District Attorney's Office filed a felony complaint against respondent. In this complaint respondent was charged with two counts relating to respondent's July 15, 2009 arrest.

On July 21, 2009, respondent appeared in the Orange County Superior Court and pled guilty to Count Two—driving on a suspended/revoked license. Respondent was ordered to pay fines and assessments in the amount of \$450. Count One was dismissed.

C. Conclusions of Law

The Review Department referred the present matter to the Hearing Department for a hearing and decision as to whether the facts and circumstances surrounding respondent's criminal conviction involved moral turpitude or other misconduct warranting discipline and, if so found, a recommendation as to the discipline to be imposed. While the facts and circumstances of the present matter do not involve moral turpitude, the court finds that they do involve other misconduct warranting discipline. This conclusion is based on the circumstances surrounding respondent's conviction and the dereliction of his duty to appear in court following his traffic violations.

IV. Level of Discipline

The parties bear the burden of proving mitigating and aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, stds. 1.2(b) and (e).)¹

A. Mitigation

No mitigating factors were submitted into evidence. (Std. 1.2(e).) Respondent, however, has no prior record of discipline in 13 years of practice prior to engaging in his first act of misconduct in the current proceeding.² Practicing law for 13 years before committing misconduct constitutes some consideration as a mitigating circumstance. (See *Hawes v. State Bar* (1990) 51 Cal.3d 587, 596.)

B. Aggravation

No factors in aggravation have been found.

¹ All further references to standard(s) are to this source.

² Pursuant to Evidence Code section 452, subdivision (h), the court takes judicial notice of respondent's membership records.

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 possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

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.)

The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) However, the standards are not mandatory; they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Standard 3.4 provides that a final conviction of an attorney of a crime which does not involve moral turpitude, but which does involve other misconduct warranting discipline shall result in a sanction appropriate to the nature and extent of the misconduct found to have been committed by the member.

The State Bar recommends that respondent receive a public reproof. As addressed by the State Bar, there is no case law on point involving a conviction for driving on a suspended license. The court, therefore, looks to analogous matters for assistance.

The court found *In re Kelley* (1990) 52 Cal.3d 487, to be helpful. In *Kelley*, the Supreme Court ordered that an attorney with two convictions for driving under the influence of alcohol be publicly reproofed and placed on probation for three years. In mitigation, the attorney: (1) had no

prior record of discipline; (2) was extensively involved in community service, and (3) cooperated during the disciplinary proceedings. No aggravating circumstances were found.

While the conduct in *Kelley* was more egregious, the present matter involves considerably less mitigation and a blatant disregard for the legal system. Consequently, the court finds a level of discipline roughly similar to *Kelley* to be appropriate.

Accordingly, the court orders, as outlined below, that respondent receive a public reproof.

VI. Recommendation

It is ordered that respondent Ryan Michael Herron is hereby publicly reproofed. Pursuant to the provisions of rule 270(a) of the Rules of Procedure, the public reproof will be effective when this decision becomes final. Furthermore, 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 following specified conditions being attached to the public reproof imposed in this matter. Failure to comply with any conditions attached to this reproof 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 public reproof for a period of one year following the effective date of the public reproof imposed in this matter:

1. During the one-year period in which these conditions are in effect, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;
2. Within thirty (30) days after the effective date of his public reproof, respondent must contact the Office of Probation and schedule a meeting with a probation deputy to discuss these conditions attached to his public reproof. Upon the direction of the Office of Probation, respondent must meet with a probation deputy either in-person or by telephone. During the one-

year period in which these conditions are in effect, respondent must promptly meet with probation deputies as directed and upon request.

3. Within ten (10) days of any change, respondent must report to the Membership Records Office of the State Bar, 180 Howard Street, San Francisco, California, 94105-1639, and to the Office of Probation, all changes of information, including current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;

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 period during which these conditions are in effect. Under penalty of perjury, respondent must state whether he has complied with the State Bar Act, the Rules of Professional Conduct and all conditions attached to his reprobation within the preceding calendar quarter. If the first report will cover less than thirty (30) calendar days, that report must be submitted on the reporting date for the next calendar quarter and must cover the extended period. In addition to all quarterly reports, respondent must submit a final report, containing the same information required by the quarterly reports. The final report must be submitted no earlier than twenty (20) days before the last day of the period during which these conditions are in effect and no later than the last day of that period;

5. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully, all inquiries of the Office of Probation which are directed to him personally or in writing relating to whether respondent is complying or has complied with the conditions attached to this reprobation; and

6. Within one year of the effective date of this public reprobation, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, given periodically by the State Bar at either 180 Howard Street, San Francisco,

California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015, and passage of the test given at the end of the session. Arrangements to attend Ethics School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education (“MCLE”) requirement, and respondent will not receive MCLE credit for attending Ethics School (Rules Proc. of State Bar, rule 3201.).

It is further ordered that respondent take and pass the Multistate Professional Responsibility Examination (“MPRE”) administered by the National Conference of Bar Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) and provide proof of passage to the Office of Probation, within one year after the effective date of the public reprobation imposed in this matter. Failure to pass the MPRE within the specified time results in actual suspension by the Review Department, without further hearing, until passage. (But see Cal. Rules of Court, rule 9.10(b), and Rules Proc. of State Bar, rule 321(a)(1) and (3).)

VII. Costs

The court orders 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.

IT IS SO ORDERED.

Dated: July _____, 2010

LUCY M. ARMENDARIZ
Judge of the State Bar Court