

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

In the Matter of	)	Case No. <b>10-C-00922-LMA</b>
	)	
<b>WARREN WENDELL QUANN,</b>	)	<b>DECISION</b>
	)	
<b>Member No. 140032,</b>	)	
	)	
A Member of the State Bar.	)	
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**I. Introduction**

This contested conviction referral proceeding is based upon the conviction of respondent **Warren Wendell Quann** of a misdemeanor violation of title 26 United States Code section 7207, for submitting fraudulent documents to the Internal Revenue Service (IRS).

Based on clear and convincing evidence, this court finds that the facts and circumstances surrounding respondent’s violation of title 26 United States Code section 7207 involved moral turpitude and recommends, among other things, that respondent be suspended from the practice of law in California for one year, that execution of that suspension be stayed, and that he be placed on probation for two years with conditions, including that he be suspended from the practice of law for the first seven months of probation.

## II. Pertinent Procedural History

On August 18, 1998, respondent pleaded guilty to violating title 26 United States Code section 7207, a misdemeanor offense for delivering or disclosing false information to the IRS. He was sentenced on October 27, 1998.

On June 11, 2010, respondent's conviction having become final, 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 June 22, 2010, the State Bar Court issued and properly served a Notice of Hearing on Conviction on respondent. Respondent filed his response on July 9, 2010. (Rules Proc. of State Bar, rule 601.)<sup>1</sup>

The parties filed a joint Stipulation of Facts and Admission of Documents (Stipulation) on December 14, 2010.

Trial was held on December 14, 2010. Respondent represented himself. Deputy Trial Counsel Maria Oropeza represented the Office of the Chief Trial Counsel of the State Bar of California (State Bar).

This matter was submitted for decision on December 14, 2010.

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<sup>1</sup> As the evidentiary hearing in this proceeding was held on December 14, 2010, the *new* Rules of Procedure of the State Bar, effective January 1, 2011, are not applicable to this proceeding in the hearing department. Instead, the *former* Rules of Procedure continue to govern the proceeding in the hearing department. (See Rules Proc. of State Bar (eff. January 1, 2011), Preface, item 1.)

### **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; 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.)

The following findings of fact are based on the evidence, including the Stipulation entered by the parties, testimony introduced in this proceeding, and documents admitted into evidence.

#### **A. Jurisdiction**

Respondent was admitted to the practice of law in California on June 6, 1989, and has been a member of the State Bar of California since that time.

#### **B. Facts**

##### ***1. The Conviction***

On July 23, 1998, the United States of America filed case No. CRS 98-324 against respondent, alleging that he violated title 26 United States Code Section 7207 (submitting fraudulent documents to the IRS). On August 18, 1998, respondent executed a plea agreement with the United States Attorney, whereby respondent pleaded guilty to the misdemeanor violation of title 26 United States Code Section 7207.

Respondent was sentenced on October 27, 1998, to 24 months of probation with conditions, including, but not limited to performing 160 hours of community service, paying the IRS all taxes, interest and penalties owed, filing an amended 1992 tax return within one week of sentencing, and immediately paying a \$2,500 fine.

On November 4, 1998, the judgment in the criminal case was filed.

On January 26, 1999, a notice of lien for fine/restitution was entered by the recorder of Sacramento County, No. 199901260933.

Respondent's probation was terminated on October 26, 2000.

On January 8, 2001, a release of lien for fine/restitution was filed in the United States District Court for the Eastern District of California, acknowledging that the notice of lien for fine/restitution was released as to respondent.

## ***2. Facts and Circumstances Surrounding the Conviction<sup>2</sup>***

On April 27, 1995, in Sacramento, California, respondent submitted a fictitious receipt from Glide Memorial Church to an IRS auditor, who was auditing respondent's 1992 federal tax return. The receipt purported to document a cash \$1,300 charitable deduction that respondent had claimed on his 1992 tax return.

Respondent knew that the receipt was false when he submitted it to the IRS agents, and acted willfully. Additionally, respondent was aware that the \$1,300 deduction was false, when he claimed it on his 1992 return.

On June 10, 1996, respondent submitted a false invoice to the IRS, purporting to show that he had paid \$8,169 for a desk, which he had claimed as a business expense on his 1992 tax

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<sup>2</sup> There are few facts in the record concerning the surrounding circumstances of respondent's conviction. Most of the facts presented by respondent in his testimony involve respondent's explanation of what he contends the true facts were, many of which were contrary to the plea agreement he entered.

return. Respondent also submitted an altered credit card statement purporting to show that he had paid \$1,085 for a desk chair that he had also claimed as a business expense on his 1992 tax return. Respondent knew that the documents (i.e., the invoice for the desk and the altered credit card statement) were false when he submitted them to the IRS and acted willfully. The claimed deductions for these expenses were also false; and, respondent knew that they were false.

Respondent's criminal conduct did not involve the practice of law; and, no clients were involved or harmed as a result of respondent's criminal conduct.

### **C. Conclusions of Law**

As set forth, *ante*, 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 violations involved moral turpitude or other misconduct warranting discipline.

The term moral turpitude is defined broadly. (*Baker v. State Bar* (1989) 49 Cal.3d 804, 815, fn. 3.) An act of moral turpitude is any "act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man. [Citation.]" (*In re Craig* (1938) 12 Cal.2d 93, 97.) It has also been described as any crime or misconduct without excuse (*In re Hallinan* (1954) 43 Cal.2d 243, 251) or any dishonest or immoral act. "Although an evil intent is not necessary for moral turpitude [citations], some level of guilty knowledge or [moral culpability] is required. [Citation.]" (*In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 384.)

As the Supreme Court stated in *In re Lesansky* (2001) 25 Cal.4th 11, 16:

[W]e can provide this guidance: Criminal conduct not committed in the practice of law or against a client reveals moral turpitude if it shows a deficiency in any character trait necessary for the practice of law (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) or if it involves such a serious breach of a duty owed to another or to society, or such a flagrant disrespect for the law or for societal norms, that knowledge of the attorney's conduct would be likely to undermine public confidence in and respect for the legal profession.

Simply put, "an act of moral turpitude is an act contrary to honesty and good morals."

*In the Matter of Rech* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310, 315.

As previously indicated, respondent is conclusively presumed to have committed all of the elements of the crime of which he was convicted. (In re *Duggan*, *supra*, 17 Cal.3d at p. 423.) Respondent pleaded guilty to and was convicted of submitting fraudulent documents to the IRS in violation of title 26 United States Code section 7207. By his plea, respondent "agree[d] that he is guilty of the charge and that the facts set forth in the Factual Basis" attached to the Plea Agreement are accurate. (Exh. 1.) Specifically, respondent acknowledged as accurate the following facts: (1) he submitted to an IRS auditor, who was auditing respondent's 1992 federal tax return, a fictitious receipt purporting to document a charitable deduction that respondent had claimed on that return; (2) the claimed charitable deduction was false; (3) he knew that the receipt was false when he submitted it, and acted willfully; (4) he submitted to the IRS a false invoice purporting to show that he had paid \$8,169 for a desk that he had claimed as a business expense on his 1992 tax return; (5) he submitted an altered credit card statement purporting to show that he had paid \$1,085 for a desk chair that he had claimed as a business expense on his 1992 tax return; (6) the claimed deductions for these expenses were false as well; and (7) he knew that the documents were false when he submitted them, and acted willfully.

Based on the foregoing facts, the court concludes that the facts and circumstances surrounding respondent's criminal conviction involved moral turpitude.

#### **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).)<sup>3</sup>

##### **A. Mitigation**

Respondent was admitted to the practice of law in the State of California on June 6, 1989, and has no prior record of discipline. (Standard 1.2(e)(i).) Although respondent has no prior record of discipline, his misconduct began in April 1995, six years after he was admitted to the practice of law. Thus, respondent's discipline-free practice at the time of his misconduct in 1995 is given only slight weight as a mitigating factor. (Standard 1.2(e)(i); *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32, 44.)

The lack of client harm is a relevant mitigating factor in the context of a criminal conviction. (Std. 1.2(e)(iii); *In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406, 413.)

Respondent's stipulation as to facts and admission of documents displays candor and cooperation with the State Bar during the disciplinary proceeding. (Std. 1.2(e)(v).)

In July 1998, respondent was ordered to complete 160 hours of community service as a probation condition. Since completing his 160 hours of community service by working with the NAACP housing clinic, respondent has continued to provide services to the housing clinic by providing pro bono legal work and acting as a housing counselor for approximately

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

the last 11 years. The court notes that respondent's pro bono work/community service, which was established by respondent's own uncontroverted testimony, may be considered in mitigation notwithstanding that it does not meet the requirement that good character be established by a wide range of references. (*In the Matter of Crane and DePew* (Review Dept 1990) 1 Cal. State Bar Ct. Rptr. 139, 158, fn. 22.) Accordingly, respondent is given mitigating credit for his continuing pro bono work/community service. (Std. 1.2(e)(vi).)

The passage of more than 14 years of successful post-misconduct practice without charges of additional misconduct demonstrates respondent's ability to adhere to standards of professional behavior, which is a mitigating factor. (Std. 1.2(e)(viii); see *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

#### **B. Aggravation**

It is the State Bar's burden to establish aggravating circumstances by clear and convincing evidence. (Standard 1.2(b).) The court finds that the State Bar did not establish, by clear and convincing evidence, any factors in aggravation.

### **V. 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."

The applicable standards provide a range of sanctions ranging from actual suspension to disbarment. (Stds. 1.6 and 3.2.)



Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline.

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.”<sup>4</sup>

The standards, however, “do not mandate a specific discipline.” (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has been long-held that the court “is not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, we are permitted to temper the letter of the law with considerations peculiar to the offense and the offender.” (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) While the standards are entitled to great weight (*In re Silvertown* (2005) 36 Cal.4th 81, 92), they do not provide for mandatory disciplinary outcomes. Although the standards were established as guidelines, “ultimately, the proper recommendation of discipline rest[s] on a balanced consideration of the unique factors in each case.” (*In the Matter of Oheb, supra*, 4 Cal. State Bar Ct. Rptr. 920, 940.)

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<sup>4</sup> As shown in the discussion of cases, *post*, standard 3.2 cannot forcefully be argued as a rationale for imposing disbarment or even a two-year actual suspension on the facts before the court. Disbarment is the ultimate degree of discipline reserved for an attorney’s misconduct of the most acute and egregious nature. “[S]trict reliance on standard 3.2 does not appear to adequately fulfill the goal of ensuring that the State Bar Court’s disciplinary recommendations are fair and consistent.” (*In re Young* (1989) 49 Cal.3d 257, 268.)

The Supreme Court and the Review Department of the State Bar Court have declined to rigidly apply the standards as mandatory sanctions.

In *In re Young* (1989) 49 Cal.3d 257, 268, the Supreme Court stated, “[t]he Standards for Attorney Sanctions are instructive, but they are simply guidelines for the State Bar and we are not compelled to follow them. [Citations.] We do not apply rigid disciplinary standards, but rather resolve each case on its own facts.”

Moreover, “discipline 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 fact, this court’s discipline recommendations in conviction referral proceedings are often based “on a wide scope of evidence not directly connected to the crimes themselves.” (*In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679, 688-689.)

“[I]n the final analysis, as the Supreme Court has made clear, our consideration of the Standards cannot yield a recommendation which, on the record, is arbitrary or rigid [citation], or about which ‘grave doubts’ exist as to the recommendation’s propriety. [Citation.] Moreover, the weight to be accorded the Standards will depend on the degree to which they are apt to the case at bench.” (*In the Matter of Oheb*, supra, 4 Cal. State Bar Ct. Rptr. 920, 940.)

In this case, respondent submitted falsified receipts and/or invoices to the IRS to substantiate tax deductions and/or business expenses on his tax return. It is well-settled that the primary rule of ethics is “common honesty – without which the profession is worse than valueless in the place it holds in the administration of justice.” (*Tatlow v. State Bar* (1936) 5 Cal.2d 520, 524.) While dishonesty is a serious ethical violation, respondent’s misconduct is far

from the kind of flagrant crime involving moral turpitude that would warrant disbarment or a two-year suspension.

In addition to the standards, the court looks to cases law for guidance and finds the following cases to be instructive.

In *In the Matter of Distefano* (1975) 13 Cal.3d 476, the Supreme Court disbarred an attorney, who filed 13 false income tax returns under the names of third parties over a two-year period in order to gain refunds therefrom, and forged returns, W-2 forms and refund checks. As the court stated, “the trial court [in the criminal action] was dealing with [Distefano] as a citizen, whereas we are dealing with him as a lawyer. As we have previously observed, the responsibilities of a lawyer differ from those of a layman; ‘Correspondingly, our duty to the public and to lawyers of the state in this respect differs from that of the trial judge in administering criminal law.’ [Citation.]” (*In re Distefano, supra*, 13 Cal.3d 476, 481.) The Supreme Court further pointed out that the attorney’s misconduct could have subjected innocent third parties to investigation by the IRS.

Like Distefano, respondent was convicted of a crime that involved moral turpitude. But, respondent’s criminal conviction did not involve acts nearly as egregious or extensive as Distefano’s; nor did respondent put innocent individuals at risk of harm.

In *In re Chira* (1986) 42 Cal.3d 904, the attorney, who had been convicted of conspiracy to impede the lawful function of the IRS in violation of 18 U.S.C. section 371, participated in a tax shelter plan and signed a backdated conditional sales contract for his automobile. The Supreme Court, finding the tax violation involved moral turpitude, ordered that the attorney be suspended from the practice of law for one year, stayed, and that he be placed on probation for three years. While the attorney’s tax violation involved moral turpitude, the court held that a

period of actual suspension was not justified, in light of the fact that the attorney was so devastated by the conviction that he was unable to practice law for three years, that he had a 24-year discipline free history prior to his criminal conviction, that his misconduct was in connection with his personal affairs, and that he did not stand to gain any tax benefits.

Another case, *In re Chernik* (1989) 49 Cal.3d 467, also involved the attorney's conviction of conspiracy to impede the lawful function of the IRS in violation of 18 U.S.C. section 371. Attorney Chernik, like Chira, had a long discipline free history prior to his criminal conviction. But, while finding many similarities to *Chira*, the Supreme Court distinguished the attorney's situation in *Chernik* from that of the attorney in *Chira*, because Chernik's misconduct was directly related to the practice of law. The Supreme Court suspended Chernik from the practice of law for three years, stayed, and placed him on probation for three years, including an actual suspension for one year.

In the instant matter, respondent's criminal conduct, like Chira's was not directly related to the practice of law.

In *In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, the attorney filed three annual federal tax returns claiming fraudulent deductions for charitable contributions. He was convicted of making and subscribing a false income tax return in violation of 26 U.S.C. 7601(1). The California Supreme Court issued an order, holding that respondent's conviction involved moral turpitude and referred the matter to the State Bar Court for a hearing and recommendation as to discipline. The Review Department of the State Bar Court imposed a seven month actual suspension, noting that although the application of standard 3.2 recommends disbarment for crimes involving moral turpitude, it was declining to recommend disbarment. The review department cited Moriarty's showing of mitigating circumstances, the disposition of

similar matters by the Supreme Court, and the fact that Moriarty's criminal co-defendant, an attorney whose culpability was more aggravated than Moriarty's, was actually suspended for only 90 days.

The court finds the gravity of respondent's crime and professional misconduct and the circumstances surrounding his case to be similar to that of the attorney in *Moriarty*. Both Moriarty and respondent were convicted of crimes that involved moral turpitude, but which did not involve the practice of law. Moriarty had been in practice for seven years at the time his misconduct began; similarly, respondent had been in practice for six years at the time his misconduct began. Respondent has 14 years of successful post-misconduct practice without charges of additional misconduct; Moriarty had only six years of post-misconduct practice without incident. Both respondent and Moriarty were cooperative in their respective disciplinary proceedings; and, both have shown a continued a commitment to community service.

Thus, in light of the standards and case law and after balancing all relevant factors, including the underlying misconduct, the lack of any aggravating factors, the mitigating circumstances that include candor and cooperation with the State Bar, no client harm, pro bono work/community services, and the passage of a considerable period of time since the misconduct occurred without any further charges of misconduct, the court has determined that a seven-month actual suspension would be commensurate with the gravity of respondent's misconduct and would be adequate for the protection of the public, the courts and the legal profession.

## **VI. Discipline Recommendations**

### **A. Recommended Discipline**

The court recommends that respondent **Warren Wendell Quann** be suspended from the practice of law in the State of California for a period of one year, that execution of the

suspension be stayed, and that he be placed on probation for a period of two years subject to the following conditions:

1. Respondent must be actually suspended from the practice of law for the first seven months of probation;
2. During the period of probation, respondent must comply with the State Bar Act and the Rules of Professional Conduct;
3. 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 of probation. 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 probation during the preceding calendar quarter. If the first report will cover less than thirty (30) days, that report must be submitted on the next following 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 probation period and no later than the last day of the probation period;
4. 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 conditions contained herein;
5. 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 Business and Professions Code section 6002.1;

6. Within one year of the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the 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, 90015-2299, and passage of the test given at the end of that 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);
7. The period of probation must commence on the effective date of the order of the Supreme Court imposing discipline in this matter; and
8. At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for two years that is stayed, will be satisfied and that suspension will be terminated.

**B. Multistate Professional Responsibility Examination**

It is further recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court's disciplinary order in this matter 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. Willful failure to comply with rule 9.20 may result in disbarment or suspension.<sup>5</sup>

**D. Costs**

It is 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: March \_\_, 2011

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**LUCY ARMENDARIZ**  
Judge of the State Bar Court

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<sup>5</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.)