

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of) Case No.: **11-C-12129-LMA**
)
ROBERT DANIEL RODRIGUEZ,) **DECISION**
)
Member No. 242396,)
)
A Member of the State Bar.)

Introduction¹

This matter is before the court on order of reference filed by the Review Department of the State Bar Court on May 8, 2014, for a hearing and decision as to whether the facts and circumstances surrounding the misdemeanor violation of Penal Code section 273.5, subdivision (a) (willful infliction of corporal injury), of which respondent Robert Daniel Rodriguez (respondent) was convicted, involved moral turpitude or other misconduct warranting discipline, and, if so found, a recommendation as to the discipline to be imposed.

For the reasons stated below, the court finds that the facts and circumstances surrounding respondent's commission of the offense do not involve moral turpitude, but do constitute other misconduct warranting discipline. Based on the facts and circumstances, as well as the applicable mitigating and aggravating factors, the court recommends, among other things, a 60-day period of actual suspension.

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.

Significant Procedural History

On March 1, 2011, a jury found respondent guilty of violating Penal Code Section 273.5, subdivision (a), inflicting corporal injury. Following a lengthy appeal process, this conviction became final.

On April 15, 2014, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) transmitted evidence of finality of respondent's conviction to the Review Department. On May 8, 2014, the Review Department referred the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the facts and circumstances surrounding the conviction involved moral turpitude or other misconduct warranting discipline.

In accordance with the Review Department's referral order, this case proceeded to trial in the Hearing Department of the State Bar Court on September 23, 2014. The State Bar was represented by Deputy Trial Counsel Jonathan Cesena. Respondent represented himself. After four days of trial, the court took this matter under submission for decision on October 17, 2014.

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.” (*Id.* at p. 589, fn. 6.)

Jurisdiction

Respondent was admitted to the practice of law in California on June 1, 2006, and has been a member of the State Bar of California at all times since that date.

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Facts

The following facts are derived from the exhibits and testimony admitted into evidence at trial. In light of the credible and corroborated testimony presented by the police officer and respondent's live-in girlfriend, Margaretha Smit (Smit), the court found that certain aspects of respondent's testimony lacked credibility.

On the evening of December 19, 2009, respondent and Smit were living together and had a child together. After an argument with Smit, respondent hit Smit with his open hand on the side of her face, knocking her to the ground.²

Smit subsequently called the police. Officer Sliger from the Contra Costa County Sheriff's Department was dispatched to the scene. When Officer Sliger arrived he found Smit at her neighbor's house. Officer Sliger noticed that Smit had redness on the side of her face, a swollen lip, and dried blood on the corner of her mouth.

After conducting a police investigation, Officer Sliger determined that Smit had injuries consistent with her statement and that respondent did not have injuries consistent with his statement. Respondent admitted to hitting Smit. Sliger arrested respondent.

On March 1, 2011, a jury found respondent guilty of violating Penal Code Section 273.5, subdivision (a), inflicting corporal injury on the mother of his child on December 19, 2009. On

² Respondent testified that he acted in self-defense, that Smit abused him throughout their relationship, and that Smit was drunk on the night in question. The credible evidence before the court does not corroborate these assertions, and the court did not find respondent's testimony on these subjects to be credible.

April 1, 2011, the court sentenced respondent and ordered three years formal probation, 30 days in a work alternative program, attendance at a 52-week batterers/domestic violence program, completion of 20 hours of volunteer community service, and compliance with an outstanding protection order.

Conclusions

The court finds that the facts and circumstances surrounding respondent's conviction for violating Penal Code Section 273.5, subdivision (a), inflicting corporal injury on the mother of his child, do not involve moral turpitude, but do involve other misconduct warranting discipline.

Aggravation³

Lack of Insight

Respondent demonstrated a lack of insight regarding his misconduct. (See *In the Matter of Wyshak* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70, 83.) Despite significant and verified injuries to Smit – including a bloodied lip and mild concussion – and no verified injuries to respondent, he continues to argue that he did nothing wrong. During these proceedings, respondent has asserted that he acted in self-defense, that Smit was drunk,⁴ that Smit was injured because the face is a very sensitive area, that Smit only called the police because she wanted respondent out of her house because he was her “tenant,” and that there was prosecutorial misconduct during his criminal trial.

Respondent continues to look elsewhere for blame, but has yet to recognize and take responsibility for his own actions. “The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for his acts and come to grips with his culpability. [Citation.]” (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr.

³ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

⁴ This assertion was contradicted by the testimony of Smit's neighbor and Officer Sliger.

502, 511.) Respondent's lack of insight into his misconduct warrants some consideration in aggravation.

Harm to Client/Public/Administration of Justice (Std. 1.5(f).)

Respondent's conduct caused physical harm to Smit. She suffered a swollen lip and a minor concussion, resulting in painful headaches and blurred vision. The harm respondent caused Smit warrants some consideration in aggravation.

Mitigation

No Prior Record of Discipline (Std. 1.6(a).)

Respondent has no prior record of discipline. That said, he was admitted to practice law in California in 2006. With the underlying misconduct occurring only three years later, respondent's lack of a prior record of discipline does not warrant any consideration in mitigation.

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 2.12(b) provides that suspension or reproof is appropriate for a final misdemeanor conviction not involving moral turpitude, but involving other misconduct warranting discipline.

The State Bar argued that respondent's misconduct warrants discipline including a six-month period of actual suspension. Respondent, on the other hand, argued that he should not be suspended.

The State Bar's recommendation was based on *In re Otto* (1989) 48 Cal.3d 970. *Otto* is an abbreviated decision that includes no discussion regarding the underlying facts or aggravating and mitigating factors. In *Otto*, an attorney, who was sentenced to 90 days in jail for two felony convictions, was suspended for six months. The two felony charges – assault by means likely to produce great bodily injury and infliction of corporal punishment on a cohabitant – were subsequently reduced to misdemeanors. As the facts and circumstances in *Otto* were not articulated, it cannot be reasonably cited as precedent.⁵

Finding no case law directly on point, the court looked to analogous matters for assistance. The court found *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52, to be somewhat helpful.

In *Stewart*, an attorney was visiting with his 18-month-old son, but the electricity in his apartment had been turned off. He then took his son to his estranged wife's apartment and requested that he be allowed to conduct his visit there. When she refused, the attorney, who was

⁵ It is worth noting that while the attorney in *Otto* was sentenced to 90 days in jail, respondent received probation. And while the attorney in *Otto* was convicted on two felonies, respondent was convicted on one misdemeanor. These factors imply that the criminal misconduct in *Otto* was more serious than the present matter.

under the influence of alcohol, intimidated his way into his wife's apartment by citing Penal Code sections. Two uniformed police officers arrived on the scene, and the attorney refused to leave the apartment without his son. When the officers attempted to escort the attorney out of the apartment, he jerked away. The attorney and one of the officers then got into a physical altercation causing them both to sustain cuts and bruises. The attorney was handcuffed and arrested. He then became abusive towards the officers, using profanities and racial epithets.

The attorney subsequently received a misdemeanor conviction of battery on a police officer. In aggravation, the attorney demonstrated a lack of insight and indifference to the seriousness of his misconduct. The attorney also had a prior record of discipline⁶ and committed additional uncharged criminal offenses, including trespass. No mitigating circumstances were found. The Review Department recommended, among other things, that the attorney be suspended from the practice of law for two years, stayed, with two years' probation, and a 60-day actual suspension.

The present matter shares some qualities with *Stewart*, but has several different dynamics. Like *Stewart*, the present case centers around a tumultuous domestic relationship. Both matters involved some degree of violence; however, the present case is more egregious in that the victim of the physical violence was a domestic partner. This fact, however, is counterbalanced by the more extensive aggravating circumstances found in *Stewart*, including the attorney's prior record of discipline. Balancing all relevant factors, the court concludes that the present case warrants a level of discipline similar to that imposed in *Stewart*.

⁶ The attorney's prior discipline consisted of, among other things, a 90-day suspension for failing to perform legal services with competence, commingling entrusted funds, failing to promptly pay out entrusted funds, and misappropriating \$1,000 in client funds. The attorney's present and prior discipline were close in time to one another.

While some warning signs existed, such as respondent's yelling and prior restraining orders, the evidence indicates that this is his first battery/assault conviction. It is hoped that this experience has been sufficient to dissuade respondent from similar future misconduct; however, his unwillingness to fully come to grips with his misconduct is cause for concern. Accordingly, the court recommends, among other things, that respondent receive a 60-day period of actual suspension.

Recommendations

It is recommended that respondent **Robert Daniel Rodriguez**, State Bar Number 242396, be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that respondent be placed on probation⁷ for a period of two years subject to the following conditions:

1. Respondent is suspended from the practice of law for the first 60 days of probation.
2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation.
3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.
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 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 of the conditions of respondent's probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.

⁷ The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

5. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with respondent's probation conditions.
6. Within 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 probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request.
7. Within one year after the effective date of the discipline herein, respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. 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.)

At the expiration of the probation period, if respondent has complied with all conditions of probation, respondent will be relieved of the stayed suspension.

Multistate Professional Responsibility Examination

It is 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 order imposing discipline 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.

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: January _____, 2015

LUCY ARMENDARIZ
Judge of the State Bar Court