

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of)	Case No.: 11-C-16695-LMA
)	
CLIFFORD KEN MAU,)	DECISION, ORDER OF INVOLUNTARY
)	INACTIVE ENROLLMENT, AND
Member No. 164305,)	ORDER VACATING STIPULATION
)	
<u>A Member of the State Bar.</u>)	

Introduction¹

Respondent Clifford Ken Mau was convicted of six felonies and two misdemeanors in the State of Hawaii for breaking into lockers at fitness centers and taking personal property. Respondent and the Office of the Chief Trial Counsel of the State Bar of California (State Bar) entered into a stipulation of facts and conclusions of law. That stipulation, however, was subsequently returned by the California Supreme Court for further consideration of the recommended discipline in light of the applicable attorney discipline standards.

While the parties remained bound by the facts and conclusions of law contained within the stipulation, they were permitted to add supplemental evidence at trial.

As illustrated below, the court finds that the facts and circumstances surrounding respondent's convictions involve moral turpitude. Based on the nature and extent of culpability,

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.

as well as the applicable mitigating and aggravating circumstances, this court recommends that respondent be disbarred.

Significant Procedural History

On January 26, 2012, the Review Department of the State Bar Court issued an order referring respondent's conviction matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed. On February 14, 2012, respondent filed his response.

Respondent and the State Bar entered into a stipulation of facts and conclusions of law in May 2012. The court approved the stipulation on May 15, 2012. The matter was then transmitted to the California Supreme Court.

On August 27, 2012, the California Supreme Court issued an order returning the present matter for further consideration of the recommended discipline in light of the applicable attorney discipline standards. Although the stipulation was returned, the parties were still bound by it unless a motion to withdraw or modify the stipulation was granted.

The matter was set for trial. The parties were bound by the facts and conclusions of law contained within the stipulation; however, they were permitted to add supplemental facts that did not contradict the stipulation and evidence supporting mitigation and aggravation.

This matter proceeded to trial on December 4, 2012. The State Bar was represented by Deputy Trial Counsel Robert Henderson. Respondent was represented by Jonathan Arons. This matter was taken under submission on December 4, 2012.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on May 26, 1993, and has been a member of the State Bar of California at all times since that date.

Facts

Beginning in 1991, respondent started battling drug addiction. In 1997 and 1998, respondent sought assistance in addressing his addiction and entered a rehabilitation program. In January 2002, respondent voluntarily placed himself on inactive status in California.

As detailed below, respondent was involved in several thefts of gym lockers at 24 Hour Fitness centers in Honolulu, Hawaii. These thefts all took place in April 2004. Respondent's then boyfriend, now husband, Larry Mantanona (Mantanona), was also involved in the thefts.

On April 7, 2004, respondent broke into the locker of a 24 Hour Fitness center and took various items of personal property worth more than \$300 without consent. (Count I.)

April 12, 2004, respondent broke into another locker of a 24 Hour Fitness center and took various items of personal property worth less than \$100 without consent. (Count II.)

On April 17, 2004, respondent gained unauthorized entrance to a 24 Hour Fitness center building using another person's membership card. Respondent then broke into a locker and took various items of personal property worth less than \$100 without consent. Respondent also took two credit cards from the locker without consent. Upon respondent's subsequent arrest, an additional wallet and credit card that was lost or taken from its owner without consent on April 17, 2004, were found in respondent's and Mantanona's vehicle. (Counts III, IV, V, and VI.)

On April 23, 2004, respondent and Mantanona received a credit/debit card with intent to use it, with knowledge that it was obtained without the owner's consent. That same day, respondent and Mantanona, used the credit/debit card to purchase a camera and DVD player and offered the credit/debit card to the cashier to electronically process the transaction worth \$549.23. (Counts VII and VIII.)

Respondent was arrested on April 23, 2004.

On January 6, 2005, respondent was convicted, as follows:

Count	Hawaii Revised Statute	Offense	Hawaii Classification	Minimum CA Classification	Moral Turpitude Classification
I	708-830 708-831(2)	Second Deg. Theft	Felony	Misdemeanor	Moral Turpitude Per Se
II	708-830 708-833	Fourth Deg. Theft	Misdemeanor	Misdemeanor	Moral Turpitude Per Se
III	708-811	Burglary Second Deg.	Felony	Misdemeanor	Moral Turpitude Per Se
IV	708-830 708-833	Fourth Deg. Theft	Misdemeanor	Misdemeanor	Moral Turpitude Per Se
V	708-8102	Credit Card Theft	Felony	Misdemeanor	Moral Turpitude Per Se
VI	708-8102	Credit Card Theft	Felony	Misdemeanor	Moral Turpitude Per Se
VII	708-8102	Credit Card Theft	Felony	Misdemeanor	Moral Turpitude Per Se
VIII	708-839.7	Third Deg. Identity Theft	Felony	Misdemeanor	Moral Turpitude Per Se

Immediately following his arrest, respondent did not enter a drug treatment program. Instead, he attempted to rehabilitate himself by re-evaluating his life and his friends and attended a court-ordered 12-step program and was subject to random urine tests. In 2005, respondent served time in prison for his theft convictions.

From 2004 to 2006, respondent went through extreme financial, familial, and emotional difficulties. After coming out to his traditional Chinese parents as a gay man, respondent was shunned by his family. In 2004, respondent's mother defrauded him of all of his assets. In late 2004, respondent was forced to sue her in order to regain the monies that she had deceptively taken. Respondent recovered his property in 2006.

On September 26, 2007, respondent was charged with Driving Under the Influence (DUI) in *Hawaii State v. Clifford Mau*, First Circuit Honolulu Division case no. 1DTA-07-12684. On March 28, 2008, respondent pled no contest to the DUI charge.²

² Respondent acknowledged that he had a prior DUI conviction in 1988.

By March 2008, respondent paid all restitution and court fees associated with his 2004 criminal case. Respondent also completed training and education to obtain his Certified Substance Abuse Counselor Certification.

Respondent did not report the aforementioned criminal convictions to the State Bar until on or about 2011. He currently drinks one or two glasses of alcohol several times a week and believes that the only substance he needs to stop doing is crack cocaine.

Conclusions of Law

The facts and circumstances surrounding respondent's January 6, 2005 convictions involve moral turpitude.³

Aggravation⁴

Multiple Acts (Std. 1.2(b)(ii))

Respondent was convicted on eight counts of criminal misconduct involving several incidents and victims. Multiple acts of misconduct are an aggravating factor.

Significant Harm (Std. 1.2(b)(iv))

Respondent's misconduct resulted in significant harm. The victims of respondent's criminal misconduct were personally violated and deprived of their money, credit cards, and possessions.

Bad Faith, Dishonesty, Concealment, and Overreaching (Std. 1.2(b)(iii))

The court rejects the parties' stipulation that respondent's misconduct should be aggravated because it was surrounded by dishonesty. (Std. 1.2(b)(iii).) Dishonesty was an inherent element of respondent's criminal misconduct. The Review Department has long held

³ The court acknowledges that the Review Department already reached this conclusion in its January 26, 2012 referral order.

⁴ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

that it is duplicative, and therefore improper, to find aggravation based on acts involving bad faith, dishonesty, or concealment when the same acts are relied on to establish the attorney's culpability on the underlying offense. (E.g., *In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166, 176; *In the Matter of Fandey* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767, 777.) The same logic applies here. Consequently, the court does not assign additional aggravation for dishonesty.

Uncharged Misconduct

As noted above, respondent failed to report his criminal convictions to the State Bar within 30 days. The requirement to report criminal convictions is clearly laid out in section 6068, subdivision (o)(5). Consequently, the court rejects respondent's explanation that he relied on his attorney's advice to keep his mouth shut. Respondent's decision not to report his criminal convictions for approximately six years warrants consideration in aggravation as uncharged misconduct.

Mitigation

No Prior Record of Discipline (Std. 1.2(e)(i))

Respondent was licensed to practice law in California for almost eleven years prior to the commencement of the instant misconduct. During that span, he had no prior record of discipline. Respondent's lack of a prior record of discipline is entitled to some weight in mitigation.

Candor/Cooperation with State Bar (Std. 1.2(e)(v))

Respondent entered into an extensive stipulation of facts and conclusions of law. Respondent's cooperation with the State Bar warrants consideration in mitigation.

Extreme Emotional/Physical Difficulties (Std. 1.2(e)(iv))

Respondent offered mitigation evidence of extreme emotional difficulty resulting from emotional and financial problems relating to his family. As noted above, respondent was

shunned by his family after revealing his sexual orientation. And in 2004, he was forced into litigation with his mother, who had defrauded him of all his assets. Respondent's emotional and financial difficulties occurring at the time of the misconduct warrant some consideration in mitigation.

Good Character (Std. 1.2(e)(vi))

Respondent presented testimony from five character witnesses, including an attorney, who were aware of his misconduct and attested to his good character. This evidence warrants consideration in mitigation.

Passage of Time and Rehabilitation (Std. 1.2(e)(viii))

While the parties stipulated otherwise, the record does not establish full rehabilitation by clear and convincing evidence. Aside from some court-ordered counseling, respondent has not participated in any drug treatment programs. He presented testimony and an evaluation from clinical psychologist Dr. Edward Bieda, but has not been in therapy. And although respondent was convicted for DUI in 2007, he continues to drink one or two glasses of alcohol several times a week.

While respondent's "self treatment" and lack of criminal convictions over the past six years are encouraging, it is unclear whether he is truly rehabilitated or simply has been fortunate enough not to experience a triggering circumstance or event. Respondent's failure to participate in a consistent program of addiction counseling or therapy gives the court cause to believe that it may be the later. Consequently, the record does not establish full rehabilitation by clear and convincing evidence. (See *In the Matter of Rech* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310, 316-317 [employment and four years good behavior did not establish full rehabilitation from a serious criminal record].)

Discussion

Standard 1.3 provides that the primary purposes of disciplinary proceedings “are 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.”

Standard 1.6(b) provides, in pertinent part, that the specific sanction for the particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions.

Standard 3.2 provides that an attorney’s conviction of a crime which involves moral turpitude, either inherently or in the facts and circumstances surrounding the crime’s commission, must result in disbarment. Only if the most compelling mitigating circumstances clearly predominate, will disbarment not be imposed, in which case the discipline must not be less than two years’ actual suspension, prospective to any interim suspension, regardless of mitigating circumstances.

However, the standards “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 standards in talismanic fashion. As the final and independent arbiter of discipline, [the Supreme Court is] 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 Silverton* (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* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

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 recommendation 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 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.)

The State Bar recommends that respondent be disbarred. Respondent recommends that he be actually suspended from the practice of law for a period of three years, as recommended in the original stipulation.

Disbarment, not suspension, is “the rule rather than the exception in cases [involving conviction] of serious crimes involving moral turpitude. . . .” *In re Bogart* (1973) 9 Cal.3d 743, 748. Here, respondent, while addicted to crack cocaine, wholly abandoned his ethical compass and engaged in a one-month crime spree. After pleading to six felony and two misdemeanor theft offenses, respondent failed to report these criminal convictions to the State Bar for another six years.

Considering his extensive and egregious criminal misconduct, the standards call for respondent’s disbarment absent the most compelling mitigating circumstances. While the present misconduct did not involve the practice of law and the aforementioned mitigating circumstances were found, these factors, especially when considered with the evidence in

aggravation, do not rise to the level of compelling mitigation. Consequently, the court does not have a reasonable basis to depart from standard 3.2.

Therefore, having considered the nature and extent of the misconduct, the aggravating and mitigating circumstances, as well as the case law, the court finds that respondent's disbarment is necessary to protect the public, the courts, and the legal community; to maintain high professional standards; and to preserve public confidence in the legal profession.

Recommendations

It is recommended that respondent **Clifford Ken Mau**, State Bar Number 164305, be disbarred from the practice of law in California and respondent's name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

It is further recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

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.

Order of Involuntary Inactive Enrollment

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule

5.111(D)(2) of the State Bar Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Order Vacating Stipulation

The order filed May 15, 2012, approving the parties' Stipulation Re Facts, Conclusions of Law and Disposition in the above-entitled matter is hereby vacated.

Dated: February _____, 2013

LUCY ARMENDARIZ
Judge of the State Bar Court