

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES

In the Matter of ) Case No.: **11-C-17780-RAP**  
)  
**JUDY LEE BERES,** ) **DECISION**  
)  
**Member No. 210161,** )  
)  
A Member of the State Bar. )

**Introduction**<sup>1</sup>

This criminal conviction disciplinary matter is based upon respondent Judy Lee Beres' misdemeanor convictions for violating Health and Safety Code section 11357, subdivision (c) (possession of more than one ounce of marijuana) and Penal Code section 273a(b) (child endangerment). After considering the evidence and the law, the court finds by clear and convincing evidence that respondent's criminal misconduct did not involve moral turpitude, but did involve other misconduct warranting discipline. Consequently, the court recommends that respondent be suspended from the practice of law for two years, that execution of the suspension be stayed, and that respondent be placed on probation for a period of two years, including a six-month period of actual suspension.

**Significant Procedural History**

On March 22, 2012, the Review Department of the State Bar Court filed an order referring this matter to the Hearing Department for a hearing and decision recommending the

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<sup>1</sup> 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.

discipline to be imposed if the Hearing Department finds that the facts and circumstances surrounding respondent's violations of Health and Safety Code section 11357, subdivision (c) and Penal Code section 273a(b) involved moral turpitude or other misconduct warranting discipline. On May 1, 2012, respondent filed a response to the order.

Trial was held on July 8, 9, and 13, 2012. Deputy Trial Counsel Mia Ellis and Kim Kasreliovich appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Attorney Stephen Strauss appeared for respondent. The matter was submitted for decision on July 13, 2012.

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

Respondent was admitted to the practice of law in California on December 1, 2000, and has been a member of the State Bar of California at all times since that date.

#### **Case No. 11-C-17780**

##### **Facts**

On August 20, 2010, officers from the Los Angeles Police Department executed a search and seizure warrant on respondent's residence. Respondent resided on the two top floors of this residence, along with her husband and six-year-old child. Respondent's nephew, Frank Delaney (Delaney), resided in a converted basement on the bottom level of the residence. Delaney rented the basement from respondent. There was both interior and exterior access between the upstairs and the converted basement.

Upon the execution of the search warrant, the police discovered numerous marijuana plants inside and outside respondent's residence.

The police found Delaney asleep in the basement. There they also discovered a hydroponic grow area with a light timer set for 12 hours and an electrical ballast to convert energy. In the hydroponic grow area, the police found and confiscated many marijuana plants,

most of which were approximately 2 feet to 8 feet in height. In the living room of the converted basement, police found and confiscated many additional marijuana plants and a notebook and notepad containing pay/owe sheets.

The upper two floors of respondent's residence had two bedrooms. One bedroom was an adult bedroom and the other was respondent's son's bedroom. The police found respondent's son asleep in the adult bedroom.<sup>2</sup> Neither respondent nor her husband were home at the time of the police search.<sup>3</sup>

In the adult bedroom where respondent's son was sleeping, the police found and confiscated: two semi-automatic rifles; two 12-gauge shotguns; one bolt-action rifle; one .22 caliber revolver; one 38-caliber revolver; one .357-caliber revolver loaded with 5 live rounds of ammunition; 34 rounds of .22 caliber ammunition; 28 rounds of 9mm ammunition; an envelope addressed to respondent containing a small amount of cocaine;<sup>4</sup> and 24 medium zip-lock bags.

The police found and confiscated one .22-caliber bolt-action rifle in the hallway closet, and four 12-gauge shotguns in the attic. The police also found an additional marijuana plant in the kitchen.

More marijuana plants were located in the backyard of respondent's residence. There the police found and confiscated several mature marijuana plants.<sup>5</sup>

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<sup>2</sup> Respondent contended that the adult bedroom was locked and the police lied about finding her son asleep in there the morning of the police action. Respondent's allegations, however, were not credible in light of the credible evidence to the contrary.

<sup>3</sup> Respondent's husband was in Oregon and respondent was walking the dog. Respondent testified that she felt secure in leaving her six-year-old son alone in the upstairs residence because he could contact Delaney by way of a voice communicator between the upper floors and Delaney's apartment.

<sup>4</sup> There is no clear and convincing evidence that respondent possessed or was aware of the cocaine found in the envelope. The envelope was found in a dresser drawer in the adult bedroom.

<sup>5</sup> Some of these plants were found inside a tent in the backyard.

In total, the police confiscated 56 immature marijuana plants and 27 mature marijuana plants from respondent's residence. The police also removed 14 guns from the residence. None of the guns confiscated by police were safely stored. The police described the marijuana operation at respondent's residence as "amateurish."

As a result of the search and seizure, respondent was arrested and charged with five felonies: (1) Penal Code section 273a(a) [child abuse]; (2) Health and Safety Code section 11359 [possession of marijuana for sale]; (3) Health and Safety Code section 11358 [cultivating marijuana]; (4) Health and Safety Code section 11350, subdivision (a) [possession of a controlled substance]; and (5) Health and Safety Code section 11370.1, subdivision (a) [possession of a controlled substance with a firearm].

The initial case was dismissed by the criminal court and then re-filed with the same charges on October 17, 2011. On November 16, 2011, respondent pled no contest to Penal Code section 273a(b) [child endangerment] and Health and Safety Code section 11357, subdivision (c) [possession of more than one ounce of marijuana].

#### *Respondent's Contentions*

Respondent testified that she was unaware of any firearms being in the adult bedroom, since all the firearms belonged to her husband. The evidence before the court shows that the firearms belonged to her husband, who obtained them upon the passing of his grandfather. Respondent also contends that her son was sufficiently trained in the use of firearms and that his being near a loaded gun would not be dangerous. Respondent presented the testimony of firearm's expert, John Brauneisen (Brauneisen), who testified that when respondent's son was five-years old, he instructed her son in the safe handling of a rifle. Also, Brauneisen believes that respondent's then six-year-old son did not have the strength to pull the trigger of the .357 revolver.

The court, however, does not accept Brauneisen's implication that an unsupervised six-year-old child can be expected to safely handle a loaded .357 magnum revolver because the child was given instructions on how to safely handle a rifle at the age of five. That implication or opinion is without merit. The court also does not accept Brauneisen's testimony that respondent's six-year-old child could not have had the required strength to pull the trigger of a .357 magnum revolver. Respondent's expert's opinion on this subject was not supported by any other type of evidence.

The court finds that at the time of her arrest, respondent was aware that her husband was in possession of numerous firearms and that the firearms were located somewhere in the residence. Despite that knowledge, respondent willfully left her six-year old son alone in the residence, relying on a six-year old to decide whether or not to communicate with Delaney, in the basement apartment.

Respondent further testified that she did not have access to the basement apartment that she rented to Delaney and was unaware of the hydroponic grow area and the marijuana plants that were discovered by police in the basement. Respondent denies any knowledge of the pay/owe sheets also discovered in the basement apartment. Respondent, however, was aware of numerous marijuana plants growing in the backyard of her residence, in view of and in proximity of her six-year-old son. Respondent asserted that the plants in the backyard were part of what she believed was her husband's legal marijuana collective, and that at the time of her arrest, respondent had a medical marijuana recommendation from her doctor.

Respondent's contentions regarding the legality of her possession of marijuana, however, are immaterial to this proceeding. She pled to and was convicted on a charge involving the illegal possession of marijuana. Respondent cannot now issue a collateral challenge of that conviction in this forum.

Respondent went on to argue that the only mistake she made was staying with her verbally abusive and controlling husband, which eventually led to her arrest and conviction. Respondent presented testimony from three witnesses on this issue.

Chester Howard (Howard), LCSW, BCD, a clinical social worker, treated respondent after her arrest as mandated by the court and reported his findings to the court in respondent's criminal matter. Respondent continued to treat with Howard voluntarily after the court mandated period expired. When Howard first met with respondent, she was showing signs of shock and trauma from the home invasion by the police. Howard opines that respondent suffered from emotional spousal abuse with a clinical diagnosis of post-traumatic stress disorder. Howard believes that respondent is not capable of abusing her son; that respondent would not endanger her son; and that she was not negligent in parenting her son. Howard observed no evidence of cocaine use or any type of drug abuse, and does not believe respondent used marijuana. Howard described respondent as a really good person. During his sessions with respondent, Howard counseled her on an escape plan or exit plan from her marriage, including finances, divorce, and relocation.

Charlotte Magee (Magee) is a retired social worker and long-time friend of respondent. Respondent has confided problems with her marriage to Magee on many occasions. Magee described respondent's husband as controlling and verbally abusive to respondent. Magee has heard respondent's husband's derogatory statements to respondent about her weight and lack of money. In early 2010, Magee went as far as to call a women's shelter, in an attempt to intervene on respondent's behalf. Magee believes respondent gave her son good care.

Maryann Adamo (Adamo), respondent's mother-in-law, took care of respondent's son for about five months after respondent's arrest. Adamo believes that her son's addiction is the root cause of this situation and feels that respondent has done nothing wrong. In addition, Adamo

testified that she made home jewelry for respondent and placed them in zip-locked baggies. Adamo identified that jewelry given to respondent and baggies from police photographs.

There is insufficient evidence to determine that respondent was aware of the hydroponic grow area and the pay/owe sheets in the basement; however, as noted above, respondent clearly was aware of the numerous marijuana plants in the backyard and the guns in the house.

*The State Bar's Contentions*

The State Bar argues that respondent endangered her son by: (1) allowing Delaney to install the hydroponic grow area in the basement apartment in an area under her son's bedroom; and (2) the haphazard installation of the electrical equipment may have caused a fire. According to police, the hydroponic grow area's lighting system was an electrical danger due to the poor installation of the electrical equipment. The State Bar, however, failed to present clear and convincing evidence that respondent was aware of the hydroponic grow area in the basement apartment. Also, without additional testimony of someone with some type of expertise in electrical wiring, the court is left to guess as to whether the installation of the electrical system was so negligent as to be a danger to the occupants.

The State Bar also contends that respondent misrepresented that her cooperation in a federal prosecution against her husband resulted in a plea bargain in her criminal matter. Other than respondent's testimony, there is no evidence that respondent's cooperation with federal prosecutors resulted in a plea bargain in respondent's criminal matter. Douglas Fong (Fong), an Assistant United States Attorney, was the prosecutor in the Dean Wright prosecution. Fong had no contact with the prosecutors in respondent's matter regarding any plea agreement in respondent's criminal case and is not aware of anyone connected with his case interceding on respondent's behalf. That being said, the court did not receive any testimony from the district attorney handling respondent's criminal matter. Consequently, the court lacks sufficient

evidence to determine whether respondent's cooperation in the federal matter was taken into account in her criminal plea bargain.

### **Conclusions of Law**

There is no clear and convincing evidence that respondent was a principal in the marijuana growing operation. There is also insufficient evidence to establish that respondent's misconduct was motivated by financial gain. That being said, respondent, as an attorney, was aware of the illegality of her actions. And beyond her own criminal misconduct, she was willing to turn a blind-eye to the extensive criminal operations occurring in her own home. Consequently, the court finds that respondent's convictions of Penal Code section 273a(b) and Health and Safety Code section 11357, subdivision (c) do not involve moral turpitude, but do constitute other misconduct warranting discipline.

### **Aggravation<sup>6</sup>**

#### **Lack of Insight**

Respondent demonstrated a lack of insight regarding her misconduct. (See *In the Matter of Wyshak* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70, 83.) Despite the police intervention and criminal proceedings, she does not accept the fact that her actions endangered her minor son. While "[t]he law does not require false penitence[,] ... it does require that the respondent accept responsibility for [her] acts and come to grips with [her] culpability. [Citation.]" (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) Respondent's demonstrated lack of insight into her misconduct warrants consideration in aggravation.

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<sup>6</sup> All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

## **Mitigation**

### **No Prior Record (Std. 1.2(e)(i))**

Respondent has been an attorney since December 1, 2000, with no prior record of discipline. Accordingly, respondent is entitled to some mitigation for her nine-plus years of practice prior to the present misconduct.

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

At the time of her misconduct, respondent was suffering from the effects of extreme emotional difficulties due to the verbal and emotional abuse of her husband. (*Read v. State Bar* (1991) 53 Cal.3d 394, 424-425 [Severe emotional problems which can be related to misconduct at issue can be considered to have a mitigating effect].)

### **Cooperation with State Bar (Std. 1.2(e)(v))**

At trial, respondent entered into a stipulation to facts and exhibits. Respondent's cooperation with the State Bar warrants consideration in mitigation.

## **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(a) provides, in pertinent part, that when two or more acts of misconduct are found in a single disciplinary proceeding, and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions.

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 3.4 provides that final conviction of an attorney of a crime which does not involve moral turpitude, but which does involve other misconduct warranting discipline, must result in a sanction as prescribed under the standards for misconduct in original disciplinary proceedings appropriate to the extent and nature of the member's misconduct.

The State Bar argues that respondent's criminal convictions involve moral turpitude and that the court should issue a recommendation of disbarment. Respondent contends that her criminal convictions do not involve moral turpitude and that any discipline recommendation should not include a term of actual suspension. As noted above, the court found that respondent's criminal convictions did not involve moral turpitude. That being said, the court still has significant concerns regarding the facts and circumstances surrounding respondent's criminal misconduct.

In determining the appropriate level of discipline, the court has been unable to identify any case law directly on point. The court, however, found some guidance in *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552.

In *Deierling*, the attorney was arrested while tending to some 25 marijuana plants. Upon arrest, a loaded revolver was found in the attorney's possession. A subsequent search of the attorney's house revealed marijuana paraphernalia and several firearms. The attorney pled to one felony count of possession of marijuana for sale. Noting the attorney's role as a principal, his motive of potential financial gain, and his awareness of the illegality of his actions, the Review Department found that the circumstances surrounding his conviction involved moral turpitude. In mitigation, the attorney was found to be successfully dealing with his long time addiction to marijuana. The Review Department recommended that the attorney be suspended from the practice of law for four years, stayed, with four years' probation including a 30-month actual suspension.

While the present case has some similarities, it is clearly distinguishable from *Deierling* on two grounds. First, *Deierling* involved a felony conviction involving moral turpitude. Consequently, standard 3.2—which mandates disbarment or, at a minimum, two years’ actual suspension for a conviction of a crime involving moral turpitude—was applicable. Here, on the other hand, respondent was convicted on two misdemeanor charges that did not involve moral turpitude. As a result, standard 3.2 does not apply.

Second, in *Deierling*, the Review Department found that the attorney played a principal role in the marijuana cultivation and distribution. In the present case, there is a lack of clear and convincing evidence that respondent played a principal role in the operation.

Although the evidence indicates that respondent did not play a principal role in the marijuana business, she did demonstrate a willingness to turn a blind-eye to the criminal operation that derived from her home. Worse yet, respondent endangered her six-year-old son by subjecting him to that same environment. These serious lapses of moral judgment give the court cause to recommend discipline including a period of significant actual suspension.

Therefore, after thorough consideration of the present misconduct, the standards and case law, as well as the extensive mitigating and aggravating circumstances, the court recommends, among other things, that respondent be actually suspended for six months.

### **Recommendations**

It is recommended that respondent Judy Lee Beres, State Bar Number 210161, be suspended from the practice of law in California for two years, that execution of that period of suspension be stayed, and that respondent be placed on probation<sup>7</sup> for a period of two years subject to the following conditions:

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<sup>7</sup> 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.)

1. Respondent Judy Lee Beres is suspended from the practice of law for the first six months 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. 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.
5. During the probation period, respondent must report in writing quarterly to the Office of Probation. The reports must be postmarked no later than each January 10, April 10, July 10, and October 10 of the probation period. Under penalty of perjury, respondent must state in each report whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of respondent's probation conditions during the preceding calendar quarter or applicable reporting period. If the first report would cover less than 30 days, no report is required at that time; however, the following report must cover the period of time from the commencement of probation to the end of that next quarter. In addition to all quarterly reports, a final report must be postmarked no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.
6. 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.
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.)
8. Respondent must comply with all conditions of respondent's criminal probation and must so declare under penalty of perjury in any quarterly report required to be filed with the Office of Probation. If respondent has completed probation in the underlying criminal matter, or completes it during the period of her disciplinary probation,

respondent must provide to the Office of Probation satisfactory documentary evidence of the successful completion of the criminal probation in the quarterly report due after such completion. If such satisfactory evidence is provided, respondent will be deemed to have fully satisfied this probation condition.

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.

### **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.

Dated: September 24, 2012

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RICHARD A. PLATEL  
Judge of the State Bar Court