

# PUBLIC MATTER

**FILED**

OCT 23 2012

STATE BAR COURT OF CALIFORNIA

STATE BAR COURT CLERK'S OFFICE  
SAN FRANCISCO

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of	)	Case No.: 12-C-10078-PEM
	)	
<b>TIMOTHY JOHN STOCK ,</b>	)	
	)	
<b>Member No. 132487,</b>	)	<b>DECISION</b>
	)	
<u>A Member of the State Bar.</u>	)	

## Introduction<sup>1</sup>

This contested conviction referral proceeding is based upon the felony conviction of respondent Timothy John Stock on December 16, 2011, of a violation of Health and Safety Code section 11359 (possession of marijuana for sale). The Office of Chief Trial Counsel of the State Bar of California (State Bar) was represented in this proceeding by Deputy Trial Counsel Christine Souhrada. Respondent was represented by attorney Russell W. Carlson.

For the reasons stated below, this court finds that the facts and circumstances surrounding respondent's commission of that offense involved moral turpitude. After considering the facts and the law, the court recommends that respondent be suspended from the practice of law for a period of three years, that suspension be stayed, and that be placed on probation for three years with conditions, including an actual suspension of two years from the practice of law and until he proves to the satisfaction of the State Bar Court, his rehabilitation, fitness to practice and present

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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.

learning and ability in the general law pursuant to Standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct. The court also recommends that respondent be given credit for the period of his interim suspension, which commenced on March 30, 2012.

### **Significant Procedural History**

By order filed March 1, 2012, the State Bar Court Review Department ordered that since respondent had been convicted of violation of Health and Safety Code section 11359 (possession of marijuana for sale), a felony, that respondent be suspended from the practice of law pending the final disposition of the matter. By order filed March 22, 2012, the State Bar Court Review Department classified respondent's felony conviction as a crime which may or may not involve moral turpitude and referred this disciplinary proceeding to the Hearing Department for a hearing regarding whether the facts and circumstances surrounding the crime of which respondent was convicted involved moral turpitude or other misconduct warranting discipline, and if so, for a recommendation as to the discipline that should be imposed.

On March 29, 2012, the State Bar Court issued and properly served a Notice of Hearing on Conviction on respondent. Respondent filed a response on April 18, 2012.

A one-day trial was held on August 14, 2012, and following closing arguments the court took the proceedings under submission.

### **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.)

### **Jurisdiction**

Respondent was admitted to the practice of law in California on December 14, 1987, and has been a member of the State Bar of California at all times since that date. Moreover, respondent has been a member of the State Bar of Illinois since 1974 and a member of the State Bar of Pennsylvania since 1978.

### **Facts**

#### *Respondent's Conviction*

Pursuant to a two-count felony complaint filed December 15, 2010, in *The People of the State of California v. Timothy John Stock*, respondent was charged with a violation of section 11359 of the Health and Safety Code in that respondent did unlawfully possess for the purpose of sale marijuana. Respondent was also charged with a violation of Health and Safety Code section 11358 in that respondent did unlawfully plant, cultivate, harvest, dry, and process marijuana.

On December 16, 2011, respondent pled nolo contendere to one count of possession of marijuana for sale. Respondent waived referral to probation and requested immediate judgment. The court ordered that imposition of judgment and sentence be suspended and that respondent be placed on formal probation for a period of five years from the date of the order on the following general and specific conditions:

Respondent would serve five days in the Sacramento County Jail. While in confinement, respondent must comply with all the rules and regulations of the County Jail and conduct himself in a proper manner and said term would be consecutive to all other terms. Respondent would receive credit for time served of five days and was required pursuant to Health and Safety Code section 11590 to register as a convicted drug offender with the chief of police of the city or the

sheriff of the county in which respondent resides. Respondent, among other things, was to participate in a drug rehabilitation program and pay a \$200 restitution fine.

*Facts and Circumstances Surrounding Respondent's Conviction*

Sometime in June 2010 respondent was approached by someone named Brian, who asked him if he would be interested in renting a warehouse to be subleased to people who were going to develop a large scale marijuana growing operation. Respondent agreed. In exchange for renting the warehouse, respondent was paid \$3,000 a month which he declared on his income tax returns.<sup>2</sup> Respondent knew the warehouse was going to be used to grow marijuana.<sup>3</sup> While respondent's name was on the lease, he was not given a key to the warehouse nor did he go into the area of the warehouse where the plants were grown.

On December 9, 2010, special agents responded to the warehouse regarding a marijuana cultivation investigation. The agents served a search warrant on the warehouse leased by respondent and located and seized approximately 7,783 marijuana plants. Clearly the evidence is that this was a large scale marijuana growing operation.

**Conclusions of Law**

Respondent argues that his crime did not involve moral turpitude because he was not directly involved in the criminal enterprise; he had no control over his tenants' criminal activities; and the issue on the legality of the use of marijuana is an ongoing debate in California.

The court rejects these and other respondent's contentions.

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

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<sup>2</sup> At least part of the reason respondent collected the \$3,000 was to support himself as he had not worked much due to an unexpected illness and to pay for his daughter's upcoming wedding.

<sup>3</sup> Respondent testified that he had been made the same offer in 2009 and he turned the offer down.

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.) "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.

In *In re Cohen* (1974) 11 Cal.3d 416, the attorney, like respondent, also pleaded guilty to possession of marijuana for sale. The Supreme Court found that the facts and circumstances surrounding the commission of his offense involved moral turpitude in that he knew he was in violation of the law; he voluntarily and knowingly assisted in the transportation of marijuana; and that he violated the oath of office by failing to support the state's laws and to maintain the respect due to the courts of justice.

Similarly, in *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552, the attorney was convicted of one felony count of possession of marijuana for sale. The Review Department concluded that the circumstances showing his role as a principal, his motive of potential financial gain and his awareness of illegality of his actions demonstrate that moral turpitude was involved in the circumstances surrounding his conviction.

Here, respondent pled nolo contendere to possession of marijuana for sale. There is no question that possession of marijuana for sale constitutes illicit drug trafficking. To sell a

substance that is illegal is to engage in the corruption of others. While respondent's offense does not involve moral turpitude as a matter of law, an examination of the facts and circumstances surrounding it yields uncontroverted evidence (1) that respondent was aware of the laws proscribing possession and distribution of marijuana; (2) that he leased a warehouse knowing that the tenants he was subleasing the warehouse to were engaged in the cultivation and distribution of marijuana; and (3) that he leased the warehouse to the distributors in part for the purpose of financial gain.

Therefore, this court concludes that the facts and circumstances surrounding respondent's conviction for possession of marijuana for sale involved moral turpitude.

**Aggravation<sup>4</sup>**

There are no aggravating factors shown by clear and convincing evidence.

**Mitigation**

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

Respondent does not have a prior record of discipline. He was admitted to practice in 1987, and his misconduct occurred in 2010. Thus, he practiced law discipline-and-misconduct-free for 23 years.<sup>5</sup> Respondent's 23 years of discipline-free practice preceding his misconduct is a compelling mitigating circumstance. "Absence of a prior disciplinary record is an important mitigating circumstance when an attorney has practiced for a significant period of time." (*In re Young* (1989) 49 Cal.3d 257, 269.)

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

Respondent's emotional and physical difficulties are a mitigating factor.

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<sup>4</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.

<sup>5</sup> Respondent incorrectly stated in his trial brief that he has no prior disciplinary record in more than 35 years of practice.

In 1995 and 1996 respondent pled guilty to driving under the influence of alcohol.

In March 2010, respondent was admitted into the hospital. Before then respondent drank a bottle of wine every day. Respondent was diagnosed with stage II colon cancer and underwent emergency surgery on April 14, 2010. Shortly after his surgery, respondent became very depressed and was diagnosed with clinical depression. He believes that his depression was the result of his isolation and inability to work where he could interact with colleagues. To treat his depression he was prescribed medication and the dose was adjusted higher within a couple of months.

Beginning in September 2010, respondent began to noticeably suffer additional pain as a result of the surgery.

Respondent testified that his financial, emotional and physical difficulties affected his judgment. He was in a bad place. Through participation in court ordered drug diversion program and Alcoholics Anonymous meetings, he has developed insight into why he allowed himself to become involved into this illegal activity. He testified that he would not have gotten himself into this mess if he had a support system in 2010 as he does now.

**Candor/Cooperation to Victims/State Bar (Std. 1.2(e)(v).)**

Respondent's cooperation with the investigation of the marijuana cultivation operation is a mitigating factor, as attested to by Scott Bachmann, one of the arresting special officers.

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

Respondent presented the testimony and declarations of six character witnesses who testified to his honesty and integrity. Their testimony is entitled to some weight but it was not an extraordinary demonstration of good character attested to by a wide range of references in the legal and general communities and who are aware of the full extent of the member's misconduct.

Respondent has shown continuing community service through his teaching in business and real estate law at Sacramento City College for many years.

**Remorse/Recognition of Wrongdoing (Std. 1.2(e)(vii).)**

Arresting special officer Scott Bachmann testified at this hearing that although respondent leased the warehouse, it appeared that he did not have the keys to the warehouse. He also testified that nothing Jonathan Donahue, who was arrested at the warehouse, said in the police report was trustworthy. He agreed that respondent was not the mastermind of this marijuana cultivation operation. Moreover, he testified that respondent was very forthcoming with him in his investigation of the marijuana cultivation operation.

This court believes that respondent was not fully aware of the extent of the enterprise because he did not have a key to the warehouse where the marijuana was grown and he never saw the plants. Nevertheless, respondent knew or should have known that such an enterprise was to happen when he agreed to sublease the warehouse in 2010.

The court finds respondent's remorse and recognition of wrongdoing as compelling mitigating evidence. He has recognized his misconduct and demonstrated full candor and acknowledgment of responsibility for his wrongdoing.

**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 final conviction of a member of the State Bar of a crime involving moral turpitude constitutes cause for suspension or disbarment. (Bus. & Prof. Code, § 6101, subd. (a).)



The applicable standards provide a broad range of sanctions ranging from actual suspension to disbarment. (Std. 1.6, 2.3, and 3.2.)

Standard 1.6(b) provides that the specific discipline 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 2.3 provides that culpability of an act of moral turpitude, fraud or intentional dishonesty, or of concealment of a material fact, must result in actual suspension or disbarment depending upon the degree of harm to the victim, the magnitude of the misconduct, and the extent to which it relates to the member's practice of law.

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."

Here, respondent's misconduct involved one felony conviction of possession of marijuana for sale. Respondent provided compelling mitigating evidence, including lack of prior record of discipline, emotional and physical difficulties, good character, community service, cooperation with the investigation of the criminal activities and remorse.

The State Bar urges that respondent be disbarred under standard 3.2 and in support of its recommendation, cited *In re Cohen, supra*, 11 Cal.3d 416 (two years' actual suspension for conviction of possession of marijuana for sale) and *In re Kreamer* (1975) 14 Cal.3d 524 (no actual suspension for conviction of possession with intent to distribute marijuana).

Respondent, however, argues that his misconduct did not involve moral turpitude and it was not as egregious as that of the attorneys in *Cohen* and *Kreamer* and that a stayed suspension with probation would suffice.

It is well settled that 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 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 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*, *supra*, 4 Cal. State Bar Ct. Rptr. 920, 940.)

In this instant matter, the gravamen of respondent's misconduct was knowingly subleasing his warehouse for an illegal activity at a time when he was suffering from emotional and physical difficulties.

In addition to *Cohen* and *Kreamer* cited by the State Bar, the court also finds *In the Matter of Deierling*, *supra*, 1 Cal. State Bar Ct. Rptr. 552 to be instructive. There, an actual suspension of two years was imposed for the attorney's one count of violation of Health and Safety Code section 11359. The Review Department found that disbarment was not warranted and that the disciplinary result was “consistent with the balance of factors present and clearly in line with comparable Supreme Court decisions arising from similar offenses.” (*Id.* at p. 556.)

In light of the standards and case law and after balancing all relevant factors, including the underlying misconduct, no aggravating factor, the compelling mitigating circumstances that included no prior record of discipline in 23 years of practice, emotional and physical difficulties at the time of the misconduct, recognition of wrongdoing, and cooperation with the criminal investigation, the court has determined that a two-year actual suspension would commensurate with the gravity of respondent's act and would be adequate for the protection of the public, the courts and the legal profession. Recommending disbarment would not be fair or consistent with the court's goal.

### **Recommendations**

It is recommended that respondent Timothy John Stock, State Bar Number 132487, be suspended from the practice of law in California for three years, that execution of that period of suspension be stayed, and that respondent be placed on probation<sup>6</sup> for a period of three years subject to the following conditions:

1. Respondent Timothy John Stock is suspended from the practice of law for a minimum of two years of probation, and respondent will remain suspended until the following requirement(s) are satisfied:
  - i. He must provide proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).) Credit toward the period of actual suspension should be given for the period of interim suspension which commenced on March 30, 2012.
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 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

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<sup>6</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.)

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.

4. 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.
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 his 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 Exam**

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, or during the period of respondent's suspension, whichever is longer and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

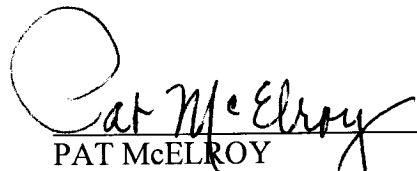
**California Rules of Court, Rule 9.20**

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: October 23, 2012

  
PAT McELROY  
Judge of the State Bar Court

## CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, On October 23, 2012, I deposited a true copy of the following document(s):

DECISION

in a sealed envelope for collection and mailing on that date as follows:


- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

RUSSELL W. CARLSON  
CARLSON & GEVELINGER  
2020 MARCONI AVE  
SACRAMENTO, CA 95821

- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Christine Ann Souhrada, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on October 23, 2012.

  
Laurretta Cramer  
Case Administrator  
State Bar Court