

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case No.: 12-C-10773-DFM
)
JEROME D. STARK,)
) DECISION
Member No. 67663,)
)
A Member of the State Bar.)

INTRODUCTION

This contested conviction referral proceeding arises from the agreement by respondent **Jerome D. Stark** (Respondent) to enter a guilty plea to a misdemeanor violation of Vehicle Code section 23103(a) [reckless driving]. (Cal. Rules of Court, rule 9.10(a); Bus. & Prof. Code, §§ 6101, 6102;¹ Rules Proc. of State Bar, rules 5.340 et seq.) The issues in this proceeding are whether the facts and circumstances surrounding Respondent’s resulting conviction involved moral turpitude (§§ 6101, 6102) or other misconduct warranting discipline (see, e.g., *In re Kelley* (1990) 52 Cal.3d 487, 494); and, if so, what the appropriate level of discipline to be imposed should be.

¹ Except where otherwise indicated, all further statutory references to section(s) are to the Business and Professions Code.

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) was represented at trial by Deputy Trial Counsel Meredith McKittrick. Respondent was represented by Kenneth A. Bryant of the law firm of Bryant & Bryant.

For the reasons stated below, the court finds that the facts and circumstances surrounding Respondent's conviction did not involve moral turpitude but did involve other misconduct warranting discipline. After evaluating the gravity of the crime, the circumstances of the case, and the aggravating and mitigating factors, the court concludes that the appropriate level of discipline in this proceeding is a private reproof with conditions of reproof described more fully below.

PERTINENT PROCEDURAL HISTORY

On September 22, 2011, Respondent was charged by the Orange County District Attorney with a felony violation of Penal Code section 245(c) [assault on a police officer with a deadly weapon]. On February 2, 2012, Respondent agreed to accept a plea agreement whereby he would agree to enter a guilty plea to a misdemeanor violation of Vehicle Code section 23103(a) [reckless driving] and the felony charge would be dismissed.

On May 11, 2012, after receiving evidence of the finality of Respondent's conviction, the Review Department referred the conviction to the Hearing Department for further handling. On May 31, 2012, a notice of hearing on conviction and a notice of assignment were issued by this court, and a status conference was ordered for July 9, 2012. On June 20, 2012, Respondent filed his response to the criminal referral. On July 9, 2012, the matter was scheduled to commence trial on September 27, 2012, with a three-day estimate. Trial was commenced on September 27, 2012, and completed on October 1, 2012.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Jurisdiction

Respondent was admitted to the practice of law in California on December 18, 1975, and has been a member of the State Bar at all relevant times.

Factual Circumstances Surrounding Criminal Conviction

On September 21, 2011, Respondent drove to the John Wayne Airport (JWA) in Orange County to pick up his adult son, James. James had been stationed in Iraq for the last several months and was returning to participate in the celebration of his sister's recent marriage. Respondent was delighted that his son would be home for the celebration.

The plane was scheduled to land at JWA shortly after 9:00 p.m. Respondent arrived at the airport terminal passenger arrival level at just about that exact time. Because it is necessary for his son to get off the plane after it has landed, travel through the terminal, pick up his checked luggage at the baggage claim area, and then make his way to the passenger arrival area, it was necessary for Respondent to make a number of unsuccessful trips through the terminal passenger arrival area before his son came out of the terminal. On the fourth circuit, however, Respondent saw James standing on the sidewalk by the roadway near Terminal A.

There are essentially five traffic lanes in front of Terminal A, but only the middle three lanes are authorized for "drive-thru" traffic. Those three "drive-thru" lanes are designated Lanes #1-3, counting from the left lane to the right. On the right (west) side of Lane #3 is the authorized passenger loading zone right next to the terminal. On the left (east) side of Lane #1 is a parking lane restricted to emergency vehicles. All of the three "drive-thru" lanes are one-way in the same direction, headed from north to south past the terminals.

Unfortunately, when Respondent saw his son standing outside of Terminal A, the presence of other cars swooping in to pick up other arriving passengers prevented Respondent

from being able to pull his SUV into the loading zone for the son to get into the car. Rather than drive farther down the terminal drive until an available spot next in the loading zone opened up, Respondent merely stopped his car in the far right “drive-thru” lane (Lane # 3) long enough for James to deposit his luggage in the back seat of the SUV and then get in the car. Both James and Respondent recalled that this entire process took less than 10 seconds. While Respondent recalled that there was another car doing the same thing at the same time directly in front of Respondent’s vehicle, this is not an approved procedure at the airport, since it tends to impede the flow of other vehicles.

Once James was in the car, Respondent was intent on getting back to their home in Tustin as quickly as possible, so that both he and his son could get some sleep. Respondent had been up since 5:00 a.m. (albeit with a nap), and the various legs of the son’s trip home had taken well over a day to complete. Respondent then started to drive away, still in Lane #3.

To regulate the flow of traffic at the airport, the Orange County Sheriff’s Office employs “Special Sheriff Officers.” At the time that Respondent made his “stop-and-go” pick-up of his son by Terminal A, that area of the terminal arrival area was being monitored by Special Sheriff Officer Richard Moree. Officer Moree observed that Respondent had improperly stopped his car in Lane #3, and he decided that he was going to chastise Respondent for his doing so by having him pull over to the loading zone so that Moree could “talk to the driver and warn him about stopping in the #3 lane and impeding traffic.” (Exh. 8, p. 2.)

Just as Respondent started to drive away from the spot where he had picked up his son, Officer Moree used his flashlight to get Respondent’s attention, so that he could signal Respondent to pull the car over to the curb. Moree did this by shining his flashlight directly into Respondent’s eyes and also into the eyes of the son. As Moree testified at trial, when he began to signal Respondent to pull over to the far right curb, he (Moree) also began to walk in the

roadway in Respondent's direction. This decision took Moree well outside of the pedestrian crosswalk and had him walking in traffic lanes as Respondent was starting to drive forward. At trial, Moree testified, and this court finds, that Respondent drove straight forward in Lane #3 and that Moree remained quite close to the line dividing Lanes #2 and #3 as he walked in the roadway toward Respondent. Respondent agrees with that recollection.

When Moree shined his flashlight into Respondent's eyes, Respondent did not realize that Moree was a law enforcement officer. Instead, he thought that Moree was merely a person who might have been walking from the airport parking structure and was now annoying people. For both Respondent and his son, the light in their eyes from the flashlight was temporarily blinding. For Respondent, who is 67-years-old and suffers from cataracts, the light also was painful and caused a lingering image in his vision. As will be discussed below, it also had a lingering effect on his emotions.

Officer Moree was obviously expecting that Respondent would accede to Moree's authority and directions. He had planned on Respondent pulling over to the far side of the road, walking across Lane #3 himself to where Respondent would be stopping (even though he (Moree) was not then in a cross walk), and having Respondent either get out of the car or, at least roll down the window, while Moree warned him not to obstruct traffic in the future. However, to Officer Moree's great surprise, that was not what Respondent had in mind. Respondent, thinking that he was dealing with someone who was messing around, was annoyed by that person's use of the flashlight. Rather than slowing down to get instructions from Moree, Respondent slowed down and came to a stop in Lane #3 next to Moree – but only for the purpose of giving Moree

“the finger” and to say “Fuck you” through a closed window before driving off. And that is precisely what he did.²

But now it was Respondent’s turn to be surprised. Officer Moree, angered by Respondent’s actions and inactions, immediately responded by using his flashlight to hit the rear window on the driver’s side of Respondent’s vehicle before he could drive away. Moree testified that he was trying to break the window. The blow was delivered hard enough that it rocked the SUV and left a permanent chip in the glass. Respondent had not expected to receive such a violent, and seemingly inappropriate, response. He then “hit the gas” to get away from the person as quickly as he could. As Respondent and his son independently described his conduct to the sheriff’s investigator later that night, after Moree hit the car with his flashlight Respondent “took off” and “got the hell out of there.” When Respondent hit the gas to get away from Moree, Moree jumped back slightly from the car as it suddenly drove away. An independent witness, who described Moree as standing by the side of Respondent’s car when it was stopped, said that Moree jumped back “about one foot” after Respondent’s car accelerated. (Exh. 7.) After jumping back, Moree recalls that he was standing slightly inside Lane #2. He then began to run after Respondent’s car as it started to accelerate. As Moree described his actions to a police investigator that night, he was “trying to catch up to the vehicle.” (Exh. 8, p. 2.)

The location where the “passing” portion of this encounter occurred was to the north of a crosswalk regulated by a traffic signal. As Respondent began to drive away from Moree, the light controlling the flow of cars through this crosswalk was green. When Respondent saw that

² During the course of accomplishing those tasks, Moree and Respondent had full eye contact at a very close distance, later enabling Moree to provide an accurate description of Respondent and to pick out a photo of him from a photo line-up because, “The eyes stand out.” (Exhs. 8, p. 2, and 10, p. 1.)

Moree was running after his vehicle, he continued to accelerate to get away from any additional problems. Seeing a police vehicle with its lights on parked in the emergency vehicle parking area on the east side of the roadway past the crosswalk, Respondent decided to seek police assistance. Unfortunately, the traffic light for the crosswalk had switched from green to yellow and was now turning red. Respondent initially started to slow down to stop for the red light but, concerned about the person who was chasing him, then elected to run the red light in order to get to the police vehicle as quickly as possible.³ When Respondent then got closer to the patrol car he discovered that it was unoccupied, even though the patrol car's lights were on.⁴ At that point, Respondent decided just to drive away from the airport and to take his son home. Although the police reports all described Respondent as driving at "a high rate of speed" and at an "unsafe speed," at trial no one estimated Respondent's speed as ever being over 25 mph, which was the posted speed limit at the terminal. At trial Moree estimated that Respondent's speed was in the range of 20-25 mph as Respondent was leaving the airport.

Officer Moree's anger was not resolved by chasing Respondent out of the terminal. Instead, Moree noted Respondent's vehicle license number while he was running after the car, and he went on his police radio to report the number. In doing so, however, he called out, "It was an attempted 245. He tried to run me over." (Exhs. 9 and 1019.) The reference to a "245" was to Penal Code section 245 ["Assault with Deadly Weapon or Force Likely to Produce Great Bodily Harm"]. That section provides: "Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm shall be punished by imprisonment in the state prison for two, three or four years, or in a county jail for not exceeding

³ All witnesses agree that there were no pedestrians in the crosswalk when Respondent ran the red light.

⁴ The practice of some officers leaving their patrol vehicle parked at the terminal with the lights still on, in the manner described by Respondent, was confirmed by the trial testimony of Special Sheriff Officer Olivia Sanchez, Moree's traffic control partner that night.

one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine and imprisonment.” An “assault” is defined in section 240 of the Penal Code as “an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.” Officer Moree ended his radio call by stating that Respondent was in a green Explorer and was headed onto Campus Drive. (Exhs. 9 and 1019.)

The dispatch official receiving this radio report predictably took the accusation of an assault with a deadly weapon on a police officer as being a very serious situation. She immediately directed other members of the sheriff’s department to go to the scene, including Deputy Sheriff James Porras. Later, the department put out a call to all of the other law enforcement agencies in the county for assistance in locating Respondent and his vehicle.

When Deputy Porras arrived at the scene within a few minutes after the report of an attempted assault on a police officer, he immediately got a report from Officer Moree about what had happened. Officer Moree, now having to deal with the consequence of his ill-considered accusation that Respondent had tried to run over him with a car, did not tell Deputy Porras what had actually happened. He did not disclose to Deputy Porras that he had been standing on the edge of Lane #3 as Respondent approached him; he did not reveal that Respondent’s vehicle had come to a stop as it rolled up to him; and he did not disclose that Respondent had only accelerated after Moree had hit the side of the vehicle with his flashlight. Instead, Moree invented facts to support his prior claim that he was a near victim of a deadly assault. As reported by Deputy Porras, Moree gave that night the following description of what had happened, a description far different than the description that Officer Moree gave while testifying in this trial:

Moree was working his assigned position on the north lower roadway as a traffic control officer. His job description required him to alleviate traffic congestion and prevent vehicles from parking curbside. He was standing in lane number

three when he saw a dark colored SUV, later identified as a 1998 Ford Explorer #AWN409, completely stopped in lane number three, just north of his position. The Ford was impeding the movement of two other vehicles in the same lane. The male driver, S-1 [Respondent] was out of the driver seat standing next to the Ford loading luggage.⁵

Moree was still standing in lane number three when he saw S-1 get back into the driver seat. Moree was standing about 10-15 feet in front of the Ford. Moree made eye contact with S-1 and motioned with his hands to pull curbside.⁶ S-1 looked right at Moree and hesitated for a moment. S-1 then drove the Ford directly at Moree at a high rate of speed. Moree was still standing in the middle of lane number three, and could hear the roar of the Ford's engine as it accelerated toward him.

Moree had to quickly side step the Ford to avoid being hit. He stepped into lane number two as the Ford quickly approached him. Moree hit the Ford's driver side passenger window with his hand as it moved quickly passed [sic] him. The Ford slowed down a bit for a steady red traffic signal, but it proceeded through the red traffic signal, accelerated at a high rate of speed southbound on the lower roadway.

... Moree felt a sense of fear when the Ford accelerated toward him. Moree believed S-1's intentions were to hurt him.

(Exh. 5, p. 2 [emphasis added].)

Officer Moree was interviewed later that night by Investigator Trung Nguyen, another of the law enforcement officers dispatched to the airport because of Officer Moree's radio broadcast. During this interview by Investigator Nguyen, which took place around midnight, Moree provided the following slightly different and an even more vivid account of how he had been assaulted:

At about 2120 hours, Moree was working the lower level traffic area, near Terminal A baggage claim area. Traffic was heavy at the time in the lower traffic terminal due to flights that just arrived and passengers being picked up. Moree was standing at the cross walk and observed traffic flowing smoothly in the #1 and #2 lanes. Traffic in the #3 lane was not moving. This was odd because

⁵ Both Respondent and his son stated that Respondent never left the vehicle and that the car was stopped for only a few seconds as James got into it.

⁶ There was no mention by Moree to Deputy Porras regarding his use of his flashlight to get Respondent's attention by shining it in his eyes. As noted in the highlighted text, he also told Deputy Porras that he had hit the vehicle with his hand.

traffic in that lane was usually the busiest since there is a constant stream of vehicles arriving to pick up passengers. Next to lane #3 is a lane designated for dropping off and picking up passengers. This is where vehicles are supposed to pull over and wait to load and unload passengers on a short term basis.

As Moree was at the cross walk, he observed a vehicle stopped in the #3 lane (suspect vehicle) for approximately 1 minute. Moree was unable to see the occupants due to the fact the headlights from the vehicle were shining in his direction. Moree said because the suspect vehicle was stopped in the #3 lane instead of along the designated curb line, it was impeding traffic. Moree was able to see 3-4 vehicles stopped behind the suspect vehicle. Moree was now in the middle of the #3 lane and walking towards the suspect vehicle. Moree was about 30 feet away and was able to observe a person enter the right front seat of the suspect vehicle, as well as a person entering the left front driver's seat of the vehicle. After the subjects entered the vehicle, the vehicle proceeded to pull forward. Moree stepped out directly into the middle of the #3 lane and motioned the suspect vehicle to pull over to the curb. Moree did this by using his hands and waving at the suspect and pointing towards the curb. Moree had a flashlight in his hand and was also using it to attract the driver's attention to pull the vehicle over to the curb. Moree said his intent was to talk to the driver and warn him about stopping in the #3 lane and impeding traffic. When Moree and the suspect vehicle were about 15-20 feet away from one another, Moree was able to make eye contact with the driver of the vehicle.⁷ At that moment, the driver of the suspect vehicle stepped on the gas and revved its engine and drove straight towards Moree at approximately 25 mph. There were no vehicles in the #2 lane at this time and there were no vehicles parked along the curb at this time. The suspect vehicle could have very easily driven around Moree in either of these directions but instead it drove directly at Moree. Moree said he had to jump out of the way into the #2 lane to avoid getting struck by the suspect vehicle. The vehicle was about one arm's length away from Moree as it drove by. As the vehicle drove by, Moree used the flashlight in his hand and struck the left rear passenger window of the vehicle. Moree said he was close enough that he was able to look into the driver's eyes as the vehicle drove by him. After the vehicle drove past Moree, it slowed down at the red traffic signal and then drove through a solid red light.

(Exh. 8, pp. 1-2 [emphasis added].)

Officer Moree was not the only Special Sheriff Officer working that night. As Respondent was driving away from Moree, he was driving in the direction of Special Sheriff Officer Olivia Sanchez, who had responsibility for traffic control by Terminal B, which is

⁷ Why the lights of the car would no longer have been blinding to Moree, when Moree was then claiming that he was standing directly in front of the car, went unexplained.

slightly to the south of Crosswalk #3, the crosswalk where this incident occurred. At the trial of this matter, she testified that she, unlike Moree, was not standing in the roadway, but instead was in the loading zone next to the edge of Lane #3; that she turned to look to the north and saw her “traffic partner” Officer Moree “off balance” in Lane #2 and facing the terminal. She said that it was “really weird” that he would be in that lane, because it was not normal for traffic control officers to be in the traffic lanes. *She then heard the noise of Respondent’s engine “rev.”* Officer Sanchez continued to watch Moree as he took two steps behind the vehicle, saw him reach for his portable radio microphone and then heard him “put out a [license] plate,” stating on the radio that there had been an attempted “245” on a police officer.

It is significant that Officer Sanchez did not begin to observe Moree until after he had hit Respondent’s car with a flashlight. The fact that she heard Respondent’s car begin to accelerate after she was watching Moree—and therefore after Moree had hit the car with his flashlight-- is strong corroboration of the testimony of Respondent and his son that Respondent “took off” only after (and because) Moree had hit the side of the car. Her testimony completely impeaches Officer Moree’s prior statements to police that night that Respondent started to accelerate when Moree was standing in the middle of Lane #3 and when Moree was still 15-20 feet or more in front of the vehicle.

At all times since this incident occurred, all witnesses (including Officer Moree) have agreed, and this court finds, that Respondent never veered his car to aim it at Moree. Instead, all witnesses have indicated that Respondent drove in a generally straight direction within Lane #3 as he approached Moree. Because Investigator Nguyen apparently recognized the importance of knowing where Moree’s was standing in Lane #3 in determining whether Respondent’s conduct in driving down that lane reflected any sort of unlawful intent, Nguyen specifically asked Moree that night to state where he was standing in Lane #3 as Respondent’s car approached him. In

contrast to Officer Moree's testimony during the trial of this matter, in which he stated that he was on the line between Lane #3 and Lane #2,⁸ Moree gave a far different account to the authorities at the time that the county-wide manhunt to find Respondent was still underway.

Investigator Nguyen's report recorded Moree's response as follows:

I asked Moree where he was standing in the #3 lane. Moree said he was standing directly in the middle of the #3 lane, directly in the path of the suspect vehicle. Moree told me if he did not jump out of the way of the suspect vehicle, there was no doubt it would have hit him. Moree said he feared for his safety and thought he was going to get run over. Moree did not lose his balance and did not fall down. Moree was not injured. Moree told me, "There was no doubt the driver was aiming for me."

(Exh. 8, p. 2 [emphasis added].)

After hearing Officer Moree's claims about what Respondent had purportedly intentionally done, the pursuit of Respondent continued despite the lateness of the night. Having determined from the license plate number that Respondent was the owner of the vehicle, Respondent's driver's license picture was obtained by Investigator Nguyen and a photographic line-up was conducted, resulting in Officer Moree being able to identify Respondent as the driver of the car. Investigator Nguyen, together with at least two other police officers,⁹ then went to Respondent's home at approximately 2:00 a.m., where they woke Respondent up and questioned him about what had happened at the airport.¹⁰ In conducting this interview, they did not disclose to Respondent until after they had taken his statement that the person who had hit his car with the flashlight that night was an employee of the sheriff's department and was now accusing Respondent of assault with a deadly weapon. The officers then had Respondent's son awakened and interrogated him in his bedroom as the son remained in his bed.

⁸ A location verified by all of the other witnesses.

⁹ Respondent and his son said there were four officers in their home that night. The report identifies only three.

¹⁰ A photo of Respondent, taken by the police that night, shows him to be wearing a bathrobe during the officers' questioning.

Both Respondent and his son, James, are described in Investigator Nguyen's report as having been cooperative in answering questions that night, a fact confirmed by Investigator Nguyen during his testimony at trial. Both Respondent and his son provided the police that night with the same general description of what had happened: that Respondent had stopped the car for less than 10 seconds to pick up his son; that the car had been stopped just long enough for James to throw his luggage in the car and get in the front seat; that Respondent had never gotten out of the car; that an unidentified person had shined a light from the left side of the vehicle into their eyes; that this unidentified person was in the traffic lanes and was never in front of Respondent's car; that Respondent had not driven the car in a manner threatening to the person; and that Respondent had only "taken off" after the person had attacked the side of their car. Respondent also volunteered that he had slowed down for, but ultimately had run, a red light as he was driving toward what proved to be an unoccupied police car. (Exh. 8, pp. 3-4.)

After Investigator Nguyen revealed to Respondent that he was being accused by Officer Moree of assault with a deadly weapon, Investigator Nguyen's report makes clear that Respondent "was adamant the officer was standing in the other lane" and that Respondent kept saying that, because there were no many security surveillance cameras at the airport, there should be a video of the incident that would show his innocence:

I told Stark the subject flashing his light at him was a Sheriff's employee that was working and trying to get his attention to pull over because he had stopped in the #3 lane. Stark said he had looped through the airport about 4 times when he looked over and saw his son. Stark said he stopped because the car in front of him had stopped. Stark said there should be video of this incident. Stark said the officer was standing in traffic. Stark had no idea what was going on. Stark said he was stopped 5 seconds. The car in front (possibly white) then drove away. Stark denied the officer was in front of his car. Stark said there should be video. Stark said the officer was over to the left in the other traffic lane (lane #2). Stark

said the subject was never in front of him. Stark said all he saw was a very bright flashlight in his eye. Starks [sic] became upset and again said “this should all be on video.”

(Exhibit 8, p. 4.)

Although Investigator Nguyen’s report is generally quite detailed in providing specific details of his other efforts to gather evidence regarding what happened that night at the terminal, the information in his report regarding his efforts to secure any videotape record of what happened is a one-sentence comment: “There was no video surveillance of this incident.” This comment in the report is located at the end of Investigator’s Nguyen’s description of his conversation with Officer Moree. At trial, Nguyen was questioned about the basis for this statement. He stated that the conclusion was based solely on what he had been told and that he had not made any effort to review personally the videotape recordings to determine if there was any videotape of the incident. When Investigator Nguyen was then asked who had told him that there was no videotape record, he testified that he could not recall but said that it might have been Officer Moree.¹¹

On the day following the September 21, 2011 incident, Respondent was arrested, put in jail, and charged with aggravated assault with a deadly weapon on a peace officer, a felony. The felony warrant described the complaining officer only as “Richard M.” Respondent’s bail was set at \$100,000, and he spent the night in jail before he could post the required security bond. He then hired a criminal defense attorney to represent him in the proceeding. At the arraignment, he pled “not guilty” to all counts.

At the scheduled Pretrial Conference on January 19, 2012, the prosecuting deputy district attorney approached Respondent’s attorney with an offer of a plea bargain. The State would

¹¹ Deputy Porras, the other officer preparing a report of the incident, testified that there were cameras in the area but that he had made no effort to get any photos taken by them of what happened.

dismiss the felony assault charge if Respondent would plead to a misdemeanor violation of Vehicle Code section 23103(a) [reckless driving].

Respondent did not immediately accept the offer. Instead the court continued the Pretrial Conference to February 2, 2012, to enable Respondent to evaluate whether to accept the offer. During that evaluation period, Respondent contacted the State Bar to determine what, if any, discipline would result from any agreement to enter a plea to such a charge.¹²

On February 2, 2012, Respondent agreed to enter a guilty plea to a violation of Vehicle Code section 23103(a). The State agreed to dismiss the charge that Respondent had assaulted a police officer with a deadly weapon. As part of this plea, Respondent acknowledged that “On 9-21-11 in Orange County [he] willfully and unlawfully drove a vehicle on the highway in a reckless manner endangering others.” (Exh. 3, p. 8.) He was ordered to pay mandatory fines and fees of approximately \$195; ordered to pay \$1,000 to the Victim Witness Emergency Fund; placed on probation for three years; required to perform 40 hours of community service; and ordered to attend and complete a 10-week anger management program. Since this sentence was imposed, Respondent has been in complete compliance with its requirements.

During the course of trying this case, the State Bar argued that this court should conclude that Respondent’s conduct included an attempted assault by Respondent on Officer Moree with a deadly weapon, despite the decision by the Orange County prosecutors to drop that charge. The State Bar bases that contention on what Moree told Deputy Porras and Investigator Nguyen on the night of the incident, rather than on Officer Moree’s testimony at the trial of this matter. It then asks that this court recommend discipline consisting of a stayed suspension.

¹² On a motion in limine filed by the State Bar, this court excluded evidence of what Respondent was told by the State Bar in response to his inquiry, concluding that the substance of that advice did not create an estoppel and was otherwise irrelevant to the issues of the case.

This court finds that the evidence supporting the State Bar's contention was neither clear and convincing nor credible. Most significantly, the testimony given by Officer Moree during the instant trial differed dramatically from what he had told the investigators on the night of the incident and corroborates much of what Respondent had always been saying. In addition to the many discrepancies and impeaching evidence noted above, there are numerous other reasons why this court finds Moree not to be a credible witness, either at the time he was being interviewed on the night of the incident or during the trial of this matter.

Moree's earliest version of the incident had Respondent accelerating in a 1998 Ford Explorer, with occupants and luggage in the vehicle, from a completely stopped position to 25 mph in the space of 15-20 feet. Moree said he was close enough to Respondent before Respondent accelerated to make eye contact with him. Then, as the car approached him, he jumped out of the way but then had the ability to turn back in the opposite direction and strike the car with a flashlight before it could get completely past him. One of the contentions made by Respondent's counsel regarding the credibility of this version by Moree of what happened was that it was not physically possible. The court agrees with that conclusion.

During the trial of this matter, Moree gave yet another version of his location relative to Respondent's location prior to the claimed assault. At trial, Moree testified that he was approximately 100 yards away from Respondent's vehicle when it was stopped in Lane #3, loading "passengers." He watched the car as it was stopped for 15-20 seconds. When everyone had gotten into the SUV, he said that Respondent then started to drive away, still in lane #3. It was only after Respondent was moving toward him that Moree decided to "make a traffic stop." He was standing on or "not more than a foot" from the line between Lane #3 and Lane #2 at the time. When Respondent's car was approximately 15 feet away, Moree says that he made eye contact with Respondent. Respondent then momentarily slowed down and then "accelerated

toward him.” On direct examination, he said that the car was “aimed” at him. On cross-examination, he agreed that the car never changed direction and only “went straight” in Lane #3. Moree then recalled at trial that he “stepped” into Lane #2 as the vehicle went past.¹³ He estimated that the car was going 20-25 mph when it went past him. He had previously told Investigator Nguyen that it was traveling approximately 25 mph. Notwithstanding the speed of the vehicle and his claimed need to take evasive measures to avoid being hit, Moree then hit the rear passenger window of the vehicle with his flashlight before the car could get by him.

Once again, Respondent’s counsel attacks Moree’s new version of the facts as being physically impossible, pointing out that a car at 25 mph would travel the 15 feet in Moree’s story in well less than one-half of a second.¹⁴ He argued that it was not credible that Moree could have observed and done all of the things that he now claims in that very brief span of time. The court agrees with that conclusion.

Moree’s statements regarding his hitting the side of the car have also differed over time. When he was first asked about the incident by Deputy Porras, Moree did not say that he had hit the vehicle with his flashlight, but instead stated that he had hit it with his hand. Later, when he told Investigator Nguyen about hitting the car with his flashlight, he said that he had done so because he was upset. At trial, however, Moree denied becoming angry because of Respondent’s actions, saying that he was only scared. When Moree was then asked at trial why he had hit the car with his flashlight, Moree said that he had done so in order to mark the vehicle so that it would be easier for other police officers to be able to identify the car as they were trying to identify who had been driving it. There was no evidence that this was an accepted or known police technique and there was ample evidence that it was not. Moreover, when one adds

¹³ At another point in his testimony, Moree said

¹⁴ At 25 mph, a car travels 18.33 feet in one-half of a second.

the time that it would have taken for Moree to have gone through this analysis before deciding to hit the window with his flashlight to the existing combined time that all of the other things that Moree said happened during the fraction of a second it would have taken the vehicle to have traveled 15 feet (as Moree described it), Moree's testimony about how fast the car was moving as it approached him becomes even less credible.

This court's conclusion regarding Moree's lack of reliability as a witness is buttressed by Moree's testimony during the trial that Respondent never slowed down as he approached the red light. That claimed observation is contrary to what everyone (including Officer Moree and Respondent) told police investigators at the time, and it is contrary to the testimony of all of the other witnesses testifying during the trial.¹⁵

A major disputed issue in the case was whether Respondent knew or should have known that Moree was a police officer at the time that Moree was signaling the car at the terminal. Moree testified at trial that he was wearing his police uniform, his badge, his Sam Browne belt (with duty weapon), and a reflective yellow traffic control vest. Respondent and his son testified that Moree was wearing a green coat, thereby impairing Respondent's ability to see any uniform, badge, vest, or the like. Respondent recalled that it was cold that night and points to the fact that he was wearing his cold weather night clothes in the photo taken of him by the police that night during the 2:00 a.m. questioning. He also testified that the officers coming to his home that night were wearing jackets.

¹⁵ Moree on two separate occasions on the night of the incident told investigating law enforcement officers that Respondent's car had initially slowed down as it was approaching the intersection before Respondent elected to go through the red light. (See Exh. 5, p. 2, and Exh. 8, p. 2.) The fact that Respondent slowed down before going through the red light was also confirmed at trial by the testimony of Officer Sanchez, by the trial testimony of Respondent and his son, and by the consistent prior statements of Respondent and his son to the police.

The burden of proof was on the State Bar to present clear and convincing evidence that Respondent knew or should have known that Moree was a law enforcement official. As stated recently by the Review Department in *In the Matter of Allen* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 198, 201: “This showing requires that the evidence must be ‘so clear as to leave no substantial doubt’ and ‘sufficiently strong to command the unhesitating assent of every reasonable mind.’ (*Sheehan v. Sullivan* (1899) 126 Cal. 189, 193.) Moreover, we resolve all reasonable doubts in [a respondent’s] favor, and when equally reasonable inferences may be drawn from the stipulated facts, we accept those inferences that lead to a conclusion of innocence. (*Young v. State Bar* (1990) 50 Cal.3d 1204, 1216.)” The State Bar has failed to meet that burden of proof.

In applying the above presumption, this court is mindful of the fact that the best evidence of whether Officer Moree was wearing a yellow vest and conspicuous uniform or a non-descript and concealing green coat would be the videotapes taken by the security surveillance cameras monitoring the area where Officer Moree had been working that night. Whether or not the cameras happened to record the brief encounter between Respondent and Moree, an encounter that lasted just a few seconds, it is far more probable that at least one of the cameras would have captured at least one momentary image of Officer Moree at work at some time during the evening. If he was wearing a green coat, it would have been clear for all to see.

From the very first moment that Respondent was informed of the accusation against him, he has repeatedly stated to the authorities, including the State Bar and this court, that those tapes would show his innocence. Throughout the pendency of this proceeding and before, Respondent sought to have access to the videotapes taken at the airport that evening. Based on a stipulation executed by both the State Bar and Respondent, this court issued an order authorizing Respondent to subpoena the videotapes taken of the relevant portion of the terminal roadway

during the period from 9:10 p.m. to 9:50 p.m. on September 21, 2011. However, when Respondent's counsel served such a subpoena on the sheriff's department, that department responded only with technical objections, rather than with any effort at assistance or compliance. In contrast to Respondent's efforts, there has been no indication of any effort by the State Bar to obtain the videotapes itself; and when the various police officers came to testify in this proceeding for the State Bar, none of them brought any of the requested videotapes; nor had any of them made any effort to see what those requested tapes showed.¹⁶

As a further basis for this court's conclusion, it finds that, even if Officer Moree was not wearing a coat that night – but instead was wearing his yellow reflective vest over his uniform - his clothing and appearance from the front were not sufficiently conspicuous to make clear in nighttime conditions, especially when lights were being shined on the vest, that he was a law enforcement officer. The basis of this conclusion is primarily a photo taken of Officer Moree by Deputy Porras on the night of the incident. This photo was referenced in Deputy Porras's report but was not provided to the State Bar by the Orange County authorities at the time that all of the department's reports and other photos regarding this matter were provided by them to the State Bar. The photo showing how Officer Moree was dressed that night was only made available by the Orange County Sheriff's Department during the middle of this trial and only after Respondent's counsel argued that the State Bar was shielding the photo. When the State Bar called Investigator Nguyen as a witness on the second day of trial, he arrived with the photo.

Although Officer Moree may have been wearing a uniform shirt with patches and a badge that night, the photo shows that they were all completely covered by the reflective yellow vest. Further, the vest itself is essentially identical to those worn by CalTrans workers, sanitation

¹⁶ Nor was there any evidence of any independent effort made by the State Bar to obtain access to the tapes. The State Bar, of course, had the burden of proof in this proceeding.

workers, and many others. There are no words or symbols on the front of the vest to make clear that the wearer is a police officer. Instead, the only possible identifying information visible from the front are the letters “OCSD” in relatively small and non-reflective ink or paint on one shoulder of the vest. Because of the brightness of the reflective portion of the vest right next to these letters, it would be extremely difficult to see, let alone read, those letters on a quick view under nighttime conditions. The same is true with respect to Officer Moree’s pistol belt. Even looking at the photograph under optimal conditions, one has to look long and hard to see that he is wearing a duty belt.

Significantly, the photograph also reveals that Officer Moree was not wearing a duty hat that night, i.e. a police officer’s hat with an identifying badge on the front. It is just such a hat and badge that most conspicuously identifies a uniformed law enforcement officer, especially when that officer is wearing rain gear or a reflective vest. Whether Officer Moree was not required to wear such a hat while on duty, or just failed to do so, was not explained during the trial.

As the last, but certainly not least, reason why this court declines to conclude that Respondent intended to run over Officer Moree is the lack of any apparent motivation why Respondent would have decided to do such a thing and the existence of so many reasons why he would not. There was no evidence at trial that Respondent is a violent person, a psychopath, or someone with a lingering grudge or vendetta against the police. Instead, he is a 67-year-old attorney, a military veteran, and a person with no history of problems with the police or the State Bar. He wasn’t out cruising that night, looking for trouble. Instead, he had just picked up his son at the airport, a son who had returned from many months of hazardous duty in Iraq. Respondent was taking his son home to be greeted by his mother and then to get some sleep. In the next few days, they would be participating in the celebration of Respondent’s other child’s

wedding. No motive has been advanced by the State Bar to explain why Respondent, under such circumstances, would intentionally decide to run over someone on his way home -- let alone decide to run over a police officer -- and none is apparent to this court.¹⁷

The fact that this court does not conclude that Respondent attempted to assault Officer Moree with a deadly weapon does not negate the validity or significance of Respondent's conviction for reckless driving. Nor does it excuse Respondent's conduct that night. A criminal conviction, including a plea of guilty or nolo contendere, is conclusive proof that the attorney committed all acts necessary to constitute the offense. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 110; *In re Ford* (1988) 44 Cal.3d 810, 815; *In the Matter of Miller* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 110, 114; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 935 [nolo contendere].)

Vehicle Code section 23103 provides, "Any person who drives any vehicle upon a highway in willful or wanton disregard for the safety of persons or property is guilty of reckless driving." Respondent's conduct in driving his car at the airport terminal, including his lapse of good judgment prompted by road rage, his failure to make any effort to determine whether the person pointing a flashlight at him at the terminal was an authorized law enforcement officer seeking to control traffic and promote the safety of others, his decision to drive his SUV out of the busy terminal at speeds that all have described as unsafe (even though they were within the posted limit), and his decision not to stop for the traffic signal governing the flow of traffic through a pedestrian crosswalk at the busy terminal, constitutes misconduct behind the wheel of a car falling well within the prohibition of Vehicle Code section 23103. Because of the risk of

¹⁷ Respondent has credibly indicated to the court that he would not have even acted as he did toward Moree (i.e., to cuss at him and give him "the bird"), had Respondent known at the time that he was a police officer.

serious harm to others that this misconduct created, such conduct, while not constituting an act of moral turpitude, is other misconduct warranting discipline.

Aggravating Circumstances

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b).)¹⁸ The court finds the following with regard to aggravating factors.

Significant Harm

The State Bar contends that Respondent's conduct caused significant harm because it caused Officer Moree to fear for his life. As explained above, the evidence offered in support of that contention falls far short of being clear, convincing, or persuasive. In many instances, it was also neither credible nor candid. The court declines to find that Respondent's misconduct caused any such harm.

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).) In addition to the comments immediately above, the court finds the following with regard to mitigating factors.

No Prior Discipline

Respondent had practiced law in California for more than 35 years prior to the instant misconduct. During that span, Respondent had no prior record of discipline. Respondent's lengthy tenure of discipline-free practice is an "important mitigating circumstance" and is entitled to "considerable weight in mitigation." (Std. 1.2(e)(i);¹⁹ *In the Matter of Jeffers* (Review

¹⁸ All further references to standard(s) or std. are to this source.

¹⁹ Contrary to the express terms of standard 1.2(e)(i), case law permits long periods of practice without prior discipline to be treated as mitigation, notwithstanding the seriousness of the present misconduct. See, e.g., *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar

Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211, 225; *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735, 749)

Character Evidence

Respondent presented good character affidavits from eight individuals. These eight declarants represented a wide range of references and included two attorneys.²⁰ All of the declarants stated that they had read the State Bar's Pretrial Conference Statement and were aware of the accusations being made against Respondent. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50 [character witnesses may properly rely on stipulations to apprise themselves of an attorney's misconduct].) Nonetheless, all of these individuals attested to his good character. Respondent is entitled to mitigation for this good character evidence. (Std. 1.2(e)(vi).)

The declarations of these eight individuals were received in evidence over the objection of the State Bar and only after they had been adequately authenticated by testimony from the Respondent. In admitting the documents, this court noted that they would have been inadmissible under the evidentiary rules governing this court before January 1, 2011. (See, e.g., *In re Ford* (1988) 44 Cal.3d 810, 818; *In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406, 411.) However, on January 1, 2011, new rule 5.104 of the Rules of Procedure of the State Bar became effective. That rule provides in pertinent parts:

(C) The hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided. Any relevant evidence must be admitted if it is the sort of evidence on which responsible

Ct. Rptr. 774, 789; *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, fn. 13 [and Supreme Court cases cited therein].) That said, the misconduct here was not sufficiently serious to be disqualifying, even if the express terms of the standard were to be strictly applied.

²⁰ We give serious consideration to the testimony of these witnesses because judges and attorneys have a "strong interest in maintaining the honest administration of justice." (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319.)

persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions.

(D) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but over timely objection will not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

This new rule was modeled after nearly identical provisions contained in the Government Code and used in administrative adjudicative hearings. (See Gov. Code, § 11513, subds. (c) and (d).) A review of the cases addressing how those rules operate with regard to hearsay statements such as the subject letters of character reference makes clear that out-of-court statements, where they satisfy the reliability test now incorporated into rule 5.104, subdivision (C), may be received in evidence, notwithstanding the right provided to each party in such proceedings to cross-examine witnesses²¹ and their inability to cross-examine the maker of those out-of-court statements. (See, e.g., *Lake v. Reed* (1997) 16 Cal.4th 448, 460-461; *Berg v. Davi* (2005) 130 Cal.App.4th 223, 229-230; *Poland v. Dept. of Motor Vehicles* (1995) 34 Cal.App.4th 1128, 1138.) However, where the evidence would be inadmissible hearsay in a civil action, it will not be sufficient by itself to support a factual finding. That limitation is also set forth in the language of rule 5.104, quoted above.

In determining whether to admit the exhibits proffered by Respondent here, this court concluded that all of the exhibits were essentially letters of recommendation, albeit ones made under penalty of perjury.²² Applying the standard of rule 5.104, this court then concluded that

²¹ See Gov. Code § 11513, subd. (b).

²² Where one letter went beyond the realm of being a letter of recommendation and sought to comment on the conduct of Officer Moree, that letter was only admitted after the errant portion of it was redacted.

such letters of recommendation are clearly the “sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.”²³

In addition to the nature of the eight character reference letters, this court further noted that all of the letters were executed by the declarants under penalty of perjury and were addressed, mailed, and faxed to the Deputy Trial Counsel trying this matter before the trial of the case began. Each of the declarations also included the declarant’s contact information, including address and telephone number, so that the State Bar could, if it desired, both contact the declarant to inquire regarding any possible basis to challenge the witness’s statements and subpoena the declarant to be available for examination at trial. There was no evidence or indication in this proceeding that the State Bar made any attempt to contact any of the individuals or sought to subpoena any of the individuals to appear at trial, despite the early indications by both Respondent’s counsel and this court that the declarations might be received in evidence if properly authenticated, despite the lack of a stipulation to admissibility from the State Bar. Nor was any request made at trial that Respondent be required to make any of the declarants available for cross-examination if the declarations were admitted. Although this court has not adopted Government Code section 11514, which provides for the use of affidavits in lieu of testimony, the steps taken by Respondent, described above, would have substantially satisfied those procedures. If the procedures set out in section 11514 do not violate due process in the context of administrative adjudicative hearings, including disciplinary hearings involving other

²³ In that regard the court takes judicial notice of just a few of the many ways in which letters of recommendation are relied on in conjunction with activities of the State Bar and State Bar Court. By way of example, rule 9.11 of the California Rules of Court requires the Applicant Evaluation and Nomination Committee, in evaluating candidates for the State Bar Court, to both solicit written comment from the public regarding applicants and send all written comments received by the Committee to the Supreme Court together with the Committee’s nominations. Similarly, the State Bar’s website makes clear that letters of recommendation (up to a maximum of three) will be considered in deciding between applicants for the various State Bar Committees and states that they are “helpful.”

types of professionals, allowing the evidence to be used in this proceeding, when substantially the same procedures and safeguards have been followed, should also pass due process muster.

In assessing what weight to give to the letters, this court noted that the substance of the good character attestations was corroborated by other evidence at trial, including a written statement from the Respondent that was offered and received in evidence without objection.

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney but to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, this 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 court then looks to the decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

The State Bar contends that standards 3.4 and 2.6 mandate that any discipline for a criminal conviction not involving moral turpitude must result in disbarment or suspension. The State Bar, however, cites no case authority for any such proposition. Nor does it provide any explanation for the many cases from both this court and the Supreme Court reaching a contrary conclusion. (See, e.g., *In re Kelley* (1990) 52 Cal.3d 487 [public reproof for second DUI]; *In re Titus* (1989) 47 Cal.3d 1105 [public reproof for convictions of carrying a concealed weapon,

carrying a loaded firearm, and reckless driving]; *In the Matter of Buckley* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 201 [misdemeanor conviction for lewd conduct; Review Department reduced discipline from stayed suspension to public reproof].)

Looking to the case law, the only case in which a respondent was disciplined for a criminal conviction for reckless driving without the aggravating factor of driving while under the influence of alcohol is the California Supreme Court's decision in *In re Titus, supra*, 47 Cal.3d 1105, decided in 1989 (after the standards had been adopted). In that case, the Supreme Court approved on appeal discipline consisting of a public reproof for respondent's convictions of carrying a concealed weapon, carrying a loaded firearm, and reckless driving.

Respondent's misconduct here was significantly less serious than that justifying a public reproof in the *Titus* matter. In view of the nature of Respondent's misconduct here and the many mitigating factors, this court concludes that a private reproof, coupled with certain conditions of reproof, is both appropriate and adequate to protect the public, the profession, and the courts from any further misconduct by Respondent in the future.

DISCIPLINE

Private Reproof

Accordingly, it is ordered that respondent **Jerome D. Stark**, Member No. 67663, is hereby privately reproofed. Pursuant to the provisions of rule 5.127 of the Rules of Procedure of the State Bar, the reproof will be effective when this decision becomes final.

Conditions of Reproof

Further, pursuant to California Rules of Court, rule 9.19 and rule 5.128 of the Rules of Procedure of the State Bar, the court finds that the interests of Respondent and the protection of the public will be served by the conditions specified below being attached to the reproof imposed in this matter. Failure to comply with any of the conditions attached to this reproof

may constitute cause for a separate disciplinary proceeding for willful breach, *inter alia*, of rule 1-110 of the Rules of Professional Conduct.

Respondent is hereby ordered to comply with the following conditions attached to his private reproof for a period of one year following the effective date of the reproof imposed in this matter:

1. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all the conditions of this reproof.
2. Respondent must maintain, with the State Bar's Membership Records Office and the State Bar's Office of Probation, his current office address and telephone number or, if no office is maintained, an address to be used for State Bar purposes. (Bus. & Prof. Code, § 6002.1, subd. (a).) Respondent must also maintain, with the State Bar's Membership Records Office and the State Bar's Office of Probation, his current home address and telephone number. (See Bus. & Prof. Code, § 6002.1, subd. (a)(5).) Respondent's home address and telephone number will not be made available to the general public. (Bus. & Prof. Code, § 6002.1, subd. (d).) Respondent must notify the Membership Records Office and the Office of Probation of any change in any of this information no later than 10 days after the change.
3. Within thirty (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 reproof and must meet with the probation deputy either in-person or by telephone. During the period of reproof conditions, Respondent must promptly meet with the probation deputy as directed and upon request.
4. Respondent must report, in writing, to the State Bar's Office of Probation no later than January 10, April 10, July 10 and October 10 of each year or part thereof during

Respondent's reproof conditions period (reporting dates).²⁴ However, if Respondent's reproof conditions period begins less than 30 days before a reporting date, Respondent may submit the first report no later than the second reporting date after the beginning of his reproof conditions period. In each report, Respondent must state that it covers the preceding calendar quarter or applicable portion thereof and certify by affidavit or under penalty of perjury under the laws of the State of California as follows:

- (a) in the first report, whether Respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of reproof since the beginning of the reproof conditions period; and
- (b) in each subsequent report, whether Respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of reproof during that period.

During the last 20 days of this reproof conditions period, Respondent must submit a final report covering any period of the reproof conditions period remaining after and not covered by the last quarterly report required under this reproof condition. In this final report, Respondent must certify to the matters set forth in subparagraph (b) of this reproof condition by affidavit or under penalty of perjury under the laws of the State of California.

5. Respondent must comply with the terms of his criminal sentencing and probation and must state under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation whether he has done so during the reporting period.

²⁴ To comply with this requirement, the required report, duly completed, signed and dated, must be received by the Office of Probation on or before the reporting deadline.

6. Subject to the proper or good faith assertion of any applicable privilege, Respondent must fully, promptly, and truthfully answer any inquiries of the State Bar's Office of Probation that are directed to Respondent, whether orally or in writing, relating to whether Respondent is complying or has complied with the conditions of this reproof.
7. Within one year after the effective date of the Supreme Court order in this matter, Respondent must attend and satisfactorily complete the State Bar's Ethics School and provide satisfactory proof of such completion to the State Bar's Office of Probation. This condition of reproof is separate and apart from Respondent's California Minimum Continuing Legal Education (MCLE) requirements; accordingly, Respondent is ordered not to claim any MCLE credit for attending and completing this course. (Rules Proc. of State Bar, rule 3201.)²⁵
8. Respondent's period of reproof will commence on the effective date of this order imposing discipline in this matter.

Dated: November _____, 2012

DONALD F. MILES
Judge of the State Bar Court

²⁵ Respondent is not required to take and pass the Multistate Professional Responsibility Examination, this court concluding that such is not required to protect the public. (*In the Matter of Respondent G* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 175, 180.)