PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of **DUANE D'ROY DADE,** **Member No. 140379** A Member of the State Bar.	)	Case Nos.: **13-O-14034-YDR** **DECISION INCLUDING DISBARMENT RECOMMENDATION AND INVOLUNTARY INACTIVE ENROLLMENT ORDER**

Introduction[1]

In this matter, Duane D'Roy Dade ("Respondent") is charged with seven counts of violating section 6106 (Moral Turpitude-Misrepresentation). The Office of the Chief Trial Counsel of the State Bar of California ("State Bar") had the burden of proving these charges by clear and convincing evidence. After consideration of the evidence, this court finds Respondent culpable of wilfully violating Business and Professions Code section 6106 on all seven counts as charged.

Based on the nature and extent of culpability, as well as the applicable aggravating circumstances and the absence of any mitigating circumstances, the court recommends to the Supreme Court that Respondent be disbarred from the practice of law.

[1] Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

Significant Procedural History

The State Bar initiated this proceeding by filing a Notice of Disciplinary Charges ("NDC") in case number 13-O-14034 on June 27, 2014. Respondent filed a response to the NDC on July 22, 2014. Trial took place May 4-6, 2015. The State Bar was represented by Deputy Trial Counsel Charles T. Calix. Respondent represented himself. The parties submitted their respective closing argument briefs May 20, 2015, and matter was submitted the same day.

Findings of Fact and Conclusions of Law

The following findings of fact are based on Respondent's response and the documentary and testimonial evidence admitted at trial.

Jurisdiction

Respondent was admitted to the practice of law in California on June 6, 1989, and has been a member of the State Bar of California at all times since that date.

Prior Discipline[2]

Case No. 95-O-18057

On August 5, 1999, Respondent stipulated to culpability for two instances of failing to properly maintain his client trust account, in violation of rule 4-100(B)(4) of the Rules of Professional Conduct. He wrote one check against insufficient funds and he allowed the balance to fall below the required amount. As a result, the Supreme Court issued an order, effective December 19, 1999, suspending Respondent for two years, stayed, and placing him on probation with an actual 60-day suspension.

[2] This court adopts and repeats here, the accurate summary of Respondent's four discipline records as previously set forth by this court.

Supreme Court Order No. S180413 - Case Nos. 05-O-02787 and 07-O-10783 (cons.)

On April 29, 2010, the California Supreme Court filed an order addressing Respondent's culpability in State Bar Court case numbers 05-O-02787 and 07-O-10783. By Supreme Court Order No. S180413, Respondent was suspended for three years, stayed, and placed on three years of probation. His conditions of probation included actual suspension for a minimum period of two years and until Respondent presented proof to this court of his rehabilitation, fitness to practice, and learning and ability in the general law pursuant to standard 1.4(c)(ii). The order took effect May 29, 2010.

The Supreme Court's order resulted from a decision of the Hearing Department of the State Bar Court. The State Bar Court found that Respondent had committed 12 acts of misconduct, including six counts of moral turpitude, in two client matters. In the first client matter, Respondent committed four acts of moral turpitude in violation of section 6106 of the Business and Professions Code:[3] (1) he settled his client's claim, signed a release of claims and filed a request for dismissal without the client's knowledge and then provided a claims release to the insurance company that he falsely represented had been signed by the client; (2) he misappropriated almost $6,000 from the client; (3) he made repeated misrepresentations to the client about the case; and (4) he made misrepresentations to a State Bar investigator. He also did not notify his client that he had received settlement funds or disbursed those funds, in violation of rule 4-100(B)(1) and 4-100(B)(4); nor did he respond to the client's numerous requests for a status report about his matter, in violation of section 6068, subdivision (m).

In the second client matter, Respondent represented a client in a criminal matter both before and during the time that Respondent was enrolled inactive pursuant to section 6233 as a result of his participation in the State Bar's Alternative Discipline Program. Although

Respondent knew the dates that he was going to be ineligible to practice law, he allowed the criminal court to schedule hearings during that time without disclosing to the court that he would not be eligible to practice at that time. Then, when one of the hearings was scheduled, Respondent appeared on behalf of the client. The court found that Respondent was culpable of the unauthorized practice of law, in violation of sections 6068, subdivision (a), 6125, and 6126; acts of moral turpitude, in violation of section 6106; and seeking to mislead a judge, in violation of section 6068, subdivision (d).

In addition to the above, as a result of Respondent's participation in the Alternative Discipline Program, he was ordered to comply with rule 9.20 of the California Rules of Court, as modified by the State Bar Court. Respondent then submitted a late affidavit with the State Bar Court, stating that he returned all files to his clients and that he had no open cases and therefore was not required to notify anyone of his suspension. Both statements were false. The court found that his conduct was both a violation of a court order, in violation of section 6103, and another act of moral turpitude.

In mitigation, the State Bar Court concluded that Respondent was suffering from the effects of depression and alcoholism at the time of the misconduct. In addition, Respondent presented evidence of his good character.

Supreme Court Order No. S184688 - Case Nos. 07-O-12622 and 08-O-11058

On September 28, 2010, the Supreme Court issued another order suspending Respondent for three years, stayed, and placing him on three years of probation with a minimum actual two-year suspension. The actual suspension was to continue until Respondent presented proof to this court of his rehabilitation, fitness to practice, and learning and ability in the general law pursuant

to standard 1.4(c)(ii). The actual suspension also was to continue until Respondent made restitution to two former clients. The order took effect October 28, 2010.

The discipline resulted from a stipulation entered into by Respondent on May 25, 2010, while the discipline recommended in case Nos. 05-O-02787 and 07-O-10783 was still being finalized. The stipulated culpability involved misconduct in two separate client matters.

In the first client matter ("Lemle"), Respondent (1) misappropriated at least $1,705 of his client's funds from a settlement, an act of moral turpitude in violation of section 6106; (2) failed to maintain client funds in his client trust account, in violation of rule 4-100(A); (3) failed to promptly pay client funds as requested by the client, in violation of rule 4-100(B)(4); and (4) failed to provide legal services with competence, in violation of rule 3-110(A).

In the second client matter ("Bryant"), Respondent agreed to hold disputed funds in his client trust account. He then improperly disbursed those funds to himself in violation of section 6106; and he improperly disbursed funds to his client without the knowledge or consent of the other party claiming the funds, in violation of rule 3-110(A).

Respondent was again given mitigation credit for his good character and his prior problems with substance abuse and depression. In addition, because the misconduct occurred during the same time period as that giving rise to the discipline in a matter then pending with the Supreme Court, the appropriate discipline in that matter was evaluated pursuant to *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619.

Supreme Court Order No.S193620- Case No. 09-O-16004

On August 15, 2011, the Supreme Court issued another order suspending Respondent for three years, stayed, and placing him on three years of probation. Conditions of probation again included actual suspension for a minimum period of two years and until Respondent presented proof to this court of his rehabilitation, fitness to practice, and learning and ability in the general

law pursuant to standard 1.4(c)(ii). The order took effect on September 14, 2011. This order also resulted from a stipulation by Respondent to culpability and discipline and involved misconduct in one client matter in 2007. Because this misconduct occurred several years prior to Respondent's last two disciplines, discussed above, the formulation of the appropriate discipline was again subject to the analysis set forth in *In the Matter of Sklar*, *supra.*

The misconduct in this client matter also resulted from Respondent being enrolled inactive while he was in the Alternative Discipline Program. During the time that Respondent was ineligible to practice law, he filed a document with the court, an act of unauthorized practice of the law. In addition, Respondent failed to notify his client or the opposing counsel in the client's matter of his ineligible status. Instead, he closed his office and disconnected his phone without notice to the client, even though he was continuing to receive documents from the opposing counsel in the client's case. By ceasing his representation of the client without notice and failing to take reasonable steps to avoid foreseeable harm to the client, Respondent violated rule 3-700(A)(2).

Case No. 13-O-14034 -- Facts

Respondent was deposed by the State Bar on March 6, 2014, regarding various matters including his purchase, sale and possession of several motorcycles[4], a 2003 Porsche Cayenne and a 2006 Forest River, All American 385 RLTS ("RV"). Respondent took an oath to "tell the truth under penalty of perjury" and understood the meaning of that oath.

Several weeks after he was deposed, on April 15, 2014, Respondent executed his deposition transcript, certifying under penalty of perjury that he had reviewed the deposition

[4] Respondent was deposed regarding the purchase and sale of a 2005 Road King motorcycle ("the Road King"), a 2008 Road Glide motorcycle ("the Road Glide"), and two 2007 Harley Davidson motorcycles.

transcript and understood he could make changes that corrected the transcript. However, Respondent made no material changes to his deposition transcript.

Initially, during his deposition, Respondent testified he paid $20,000 for the 2003 Porsche Cayenne. Later during same deposition, after he reviewed his Department of Motor Vehicle Application For Title or Registration, which Respondent signed under penalty of perjury, Respondent testified he didn't recall why he stated in the title application that he purchased the Porsche Cayenne for only $12,500.

At trial, Respondent stated the disparity was a "mistake", even though during the March 6, 2014, deposition, Respondent had an opportunity to review both documents before testifying.

During May 2010, with $8,000 he received from the sale of a 2006 Harley Davidson Street Glide, Respondent bought a 2008 Electra Glide motorcycle for $5,000 and refurbished it with $3,000. On June 16, 2010, Respondent executed an Application For Title or Registration under penalty of perjury which stated he purchased the 2008 Electra Glide motorcycle for $2,500.

On October 4, 2010, Respondent executed a Chapter 7 Voluntary Bankruptcy Petition ("the Petition") under penalty of perjury. Respondent caused the Petition to be filed in the United States Bankruptcy Court, Central District of California. Respondent's Petition did not disclose his sale of the 2003 Porsche Cayenne which he sold for approximately $10,000, five months before Respondent executed the Petition. Respondent's Petition did not disclose his sale of a 2005 Harley Davidson Road King motorcycle for approximately $9,000 in May or June of 2010. Nor did Respondent's Petition state Respondent had sold the 2008 Electra Glide for approximately $13,500 or had possession of the RV during the relevant time frame.

During his March 11, 2011 bankruptcy 341(a) meeting with Trustee Robert S. Whitmore, Respondent testified under penalty of perjury that he had not "sold, given away or transferred anything within the past two years."

Respondent applied for a position with Hemborg Ford on or about May 14, 2012. On his employment application, Respondent certified the information provided in his application was complete, true and correct. Respondent failed to disclose that he attended and graduated from law school. Nor did Respondent disclose that he had ever practiced law.

In connection with Respondent's verified petition for relief from actual suspension, on May 9, 2013, Respondent testified under penalty of perjury, during a State Bar deposition, that he had not owned a motorcycle between 2009 and October 2012. Respondent further testified that he own the 2005 Road King motorcycle, the 2008 Electra Glide motorcycle or the 2006 Street Glide motorcycle during that time frame.

Respondent declared, under penalty of perjury, on five Office of Probation quarterly reports between July 10, 2010 and July 10, 2013, that he had complied with all provisions of the State Bar Act and Rules of Professional Conduct, when he knew he had made material misrepresentations under penalty of perjury during the relevant time frame.

Conclusions of Law

Count One – § 6106 [Moral Turpitude-Misrepresentation]

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment.

In Count One, the State Bar charges that on or about March 23, 2009, Respondent stated "in writing under penalty of perjury in an 'Application for Title or Registration' to the California Department of Motor Vehicles that he [Respondent] purchased a 2003 Porsche Cayenne for

$12,500, when Respondent knew or was grossly negligent in not knowing the statement was false, and thereby committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code section 6106."

Count Two – § 6106 [Moral Turpitude- Misrepresentation]

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. In Count Two, the State Bar charges that by stating under penalty of perjury that the purchase price for a 2008 Harley Davidson Electra Glide that he bought was purchased for $2,500 in an Application for Title or Registration he submitted to the California Department of Motor Vehicles , Respondent knew or was grossly negligent in not knowing the statement was false committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code section 6106.

Count Three – § 6106 [Moral Turpitude]

In Count Three, the State Bar charges that by stating under penalty of perjury on or about October 4, 2010, in a Voluntary Petition he caused to be filed with the United States Bankruptcy Court[5], that he had not sold a 2003 Porsche Cayenne and two motorcycles[6] between February 2010 and July 2010 and, by further stating he did not have possession of, or an ownership interest in, a Forest River trailer, Respondent knew or was grossly negligent in not knowing those statements were false and acted in willful violation of Business and Professions Code section 6106.

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[5] Case number 6:10-bk-42238-DS.

[6] The two motorcycles which the State Bar alleges that Respondent failed to identify in his bankruptcy petition were a 2005 Harley Davidson Road King and a 2008 Harley Davidson Electra Glide.

Count Four – § 6106 [Moral Turpitude-Misrepresentation]

In Count Four, the State Bar charges that by stating under penalty of perjury on or about March 11, 2011, during a 341(a) hearing in his bankruptcy case, that he "had not sold, given away, or transferred anything in the past two years", Respondent knew or was grossly negligent in not knowing that his statement was false and Respondent willfully violated section 6106 by committing an act involving moral turpitude, dishonesty or corruption.

Count Five – § 6106 [Moral Turpitude-Misrepresentation]

In Count Five, the State Bar charges that by stating in an application for employment with Hemborg Ford that Respondent had not graduated from law school and had not been employed as an attorney, Respondent committed acts of moral turpitude, dishonesty or corruption in violation of Business and Professions Code section 6106.

Count Six – § 6106 [Moral Turpitude-Misrepresentation]

Count Six contains charges that Respondent made false statements under penalty of perjury during a deposition taken by the State Bar as part of a proceeding to determine Respondent's rehabilitation, fitness to practice law, when Respondent testified he had not owned a motorcycle between 2009 and December 2012. The State Bar charges Respondent's false deposition statements made under penalty of perjury were willful violations of Business and Professions Code section 6106.

Count Seven – § 6106 [Moral Turpitude-Misrepresentation]

In Count Seven, Respondent is charged with submitting July 10, 2010, January 10, 2011, April 10, 2011, July 10, 2012 and July 10, 2013, quarterly reports to the Office of Probation of the State Bar which contained false statements made under penalty of perjury, to the effect that Respondent had complied with all provisions of the State Bar Act and Rules of Professional

Conduct when Respondent knew or was grossly negligent in not knowing such statements were false.

Counts One through Seven

It is undisputed that on multiple occasions, Respondent gave conflicting testimony and/or made conflicting statements under penalty of perjury. It is also undisputed that Respondent failed to disclose his full employment history on his Hemborg Ford application. For these various dishonest statements, Respondent has been charged with multiple counts of moral turpitude under Business and Professions Code section 6106.

While the term "moral turpitude" defies precise definition, it has been described as "an act of baseness, vileness or depravity in the private and social duties which man owes to his fellowmen, or society in general, contrary to the accepted and customary rule of right and duty between man and man.' (Citation)" (*In the Matter of Priamos* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824, 830.) In broad terms, acts of moral turpitude are those done contrary to honesty and good morals and are a cause for discipline whether or not they are committed in the practice of law. (*In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179, 186.) Although an evil intent is not necessary for a finding of moral turpitude, some level of guilty knowledge or at least gross negligence is required. (*In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Rptr. 363, 384.)

Gross negligence, however, requires clear and convincing proof of conduct outside the norm or which cannot be reasonably defined as simple negligence, i.e., a lack of due care. Gross negligence involves "serious and inexcusable lapses" in conduct, not mere negligent oversights or mistakes caused by a failure to exercise reasonable care. The latter is just negligence, and does not support a finding of moral turpitude. (*See Lipson v. State Bar* (1991) 53 Cal.3d 1010, 1020-1021; *Palomo v. State Bar* (1984) 36 Cal. 3d 785, 795.)

Respondent explained the many contradictions in his testimony as mistakes resulting from a poor memory, even when he testified with the assistance of documents which allegedly refreshed his recollection. The record unequivocally reflects Respondent's total lack of credibility and candor in connection with State Bar proceedings and on multiple other occasions when he was called upon to make statements under penalty of perjury.

Aggravation[7]

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, Standards for Atty. Sanctions for Prof. Misconduct, std. 1.5) The court finds the following with regard to aggravating factors.

Prior Record of Discipline (Std. 1.5(a).)

In aggravation, Respondent has a record of four prior disciplines, discussed above.

Multiple Acts of Misconduct (Std. 1.5(b).)

As set forth above, Respondent has been found culpable on seven counts of misconduct in the instant proceeding. The existence of multiple acts of misconduct is an aggravating circumstance.

Mitigation

It is Respondent's burden to prove mitigating circumstances by clear and convincing evidence. (Std. 1.6). For the reasons stated below, the court finds Respondent has not met his burden with regard any of the factors for which Respondent proffered mitigation evidence.

Good Moral Character

Other than his own testimony, Respondent offered character testimony of only one other witness: Afra Jones. Ms. Jones' testimony has been accorded no weight by this court because

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

even though she was aware that Respondent has "made mistakes", she did not seem to be aware of the nature of the current charges against Respondent or, the extent of his prior disciplinary record.

Nor did this court accord any weight to Respondent's testimony regarding his alleged work with his church and community as Respondent's testimony was unsupported and self-serving. All in all, Respondent has not established "extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the [Respondent's] misconduct". (See Std. 1.6 (f).)

Extreme Emotional Difficulties

According to Respondent, he suffered through extreme emotional difficulties which have resulted in an "oppressed memory" syndrome. However, Respondent failed to establish by expert testimony that his emotional difficulties were suffered by him at the time of his misconduct and such emotional difficulties were directly responsible for the charged misconduct. (See Std. 1.6 (d).) As such, Respondent is accorded no mitigation credit for his alleged extreme emotional difficulties.

Candor/Cooperation to Victims/State Bar

Although the parties filed a stipulation as to facts and admission of documents on May 4, 2015, Respondent is not afforded credit for candor and cooperation with the State Bar since no agreement was reached as any facts and the parties stipulated to the admission of only a few of trial documents.

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest

possible professional standards for attorneys. *(Chadwick v. State Bar* (1989) 49 Cal.3d. 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d. 1016, 1025; Std. 1.1.)

In determining the level of discipline, the court looks first to the standards for guidance. *(Drociak v. State Bar* (1991) 52 Cal.3d. 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628). Second, the court looks to 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.)

Standard 1.8(b) provides that where a member has two or more prior records of discipline, disbarment is appropriate in certain circumstances, unless compelling mitigating circumstances predominate. Here, as mentioned above, Respondent has four prior records of discipline and an actual suspension was ordered in each. Analysis of Respondent's prior records reveals a pattern of misconduct involving culpability for moral turpitude and dishonesty. Moreover, Respondent seems unwilling or unable to conform to his ethical responsibility to make truthful statements. In sum, under these facts, standard 1.8(b) applies and disbarment is the appropriate discipline.

As to decisional law, such acts of moral turpitude are grounds for suspension or disbarment, even if no harm results. (*In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 221, 220). (*See Barmun v.State Bar* (1990) 52 Cal. 3d 104, 113) (disbarment appropriate where attorney had three priors and no compelling mitigation); (*Chang v. State Bar* (1989) 49 Cal. 3d 114, 128-129).

Moreover, it is well settled that "false testimony on a material issue is a serious breach of basic standards as well as a breach of the attorney's oath of office and his duties as an attorney"; particularly when knowingly false statements are made by a member to the State Bar. (*See Olguin v. State Bar* (1980) 28 Cal.3d 195, 200)

Therefore, in view of Respondent's misconduct, the case law, the standards, and the mitigating and aggravating factors, the court finds that Respondent's disbarment is the appropriate measure which will provide adequate protection for the courts, the public, and the legal profession.

Recommendation

This court recommends that Respondent Duane D'Roy Dade be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys admitted to practice in this state.

California Rules of Court, Rule 9.20

It is further recommended that the Supreme Court order Respondent Dade to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.[8]

Costs

This court also recommends that costs be awarded to the State Bar in accordance with section 6086.10 and that such costs be enforceable as provided in section 6140.7 and as a money judgment.

Order of Involuntary Inactive Enrollment

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that **Duane D'Roy Dade**, Member No. 140379, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after service of this decision

[8] Respondent is required to file a rule 9.20 (c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1998) 44 Cal.3d 337, 341.)

and order by mail. (Rules Proc. of State Bar, rule 5.111(D)(1).)[9] Respondent's inactive enrollment will terminate upon (1) the effective date of the Supreme Court's order imposing discipline; (2) as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure, or (3) as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: August 6, 2015

YVETTE D. ROLAND
Judge of the State Bar Court

[9] An inactive member of the State Bar of California cannot lawfully practice law in this state. (Bus. & Prof. Code, § 6126, subd. (b); see also Bus. & Prof. Code, § 6125.) It is a crime for an attorney who has been enrolled inactive (or disbarred) to practice law, to attempt to practice law, or to even hold himself or herself out as entitled to practice law. (*Ibid.*) Moreover, an attorney who has been enrolled inactive (or disbarred) may not lawfully represent others before any state agency or in any state administrative hearing even if laypersons are otherwise authorized to do so. (*Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 66-73.)

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 Los Angeles, on August 7, 2015, I deposited a true copy of the following document(s):

DECISION INCLUDING DISBARMENT RECOMMENDATION AND INVOLUNTARY INACTIVE ENROLLMENT ORDER

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 Los Angeles, California, addressed as follows:

DUANE D. DADE
PO BOX 1115
RANCHO CUCAMONGA, CA 91730

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

CHARLES CALIX, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 7, 2015.

Angela Carpenter
Case Administrator
State Bar Court