PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of	)	Case No.: **14-C-00022-WKM**
	)	
SCOTT BUNKER HAYWARD,	)	**DECISION**
	)	
Member No. 138582,	)	
	)	
A Member of the State Bar.	)	

Introduction[1]

On December 17, 2015, the Review Department of the State Bar Court referred this conviction matter to the hearing department for a hearing and decision recommending the discipline to be imposed if the hearing department finds that the facts and circumstances surrounding respondent Scott Bunker Hayward's misdemeanor violations of (1) Penal Code section 245, subdivision (a)(4) (assault with force likely to produce great bodily injury) and (2) Penal Code sections 236 and 237, subdivision (a) (false imprisonment), of which respondent was convicted, involved moral turpitude (§§ 6101, 6102) or other misconduct warranting discipline (e.g., *In re Kelley* (1990) 52 Cal.3d 487, 494).[2]

For the reasons set forth below, this court finds that the facts and circumstances surrounding respondent's convictions do not involve moral turpitude, but do involve other misconduct warranting discipline. In addition, the court finds that the appropriate level of

[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.

[2] These two misdemeanor convictions are final.

discipline is two years' stayed suspension and five years' probation on conditions, including psychiatric conditions.

Significant Procedural History

In response to the Review Department's December 17, 2015 referral order, the court filed and properly served on respondent a Notice of Hearing on Conviction (NOH) in case number 14-C-00022 on December 18, 2015. Respondent filed a response to the NOH on January 7, 2016.

At the initial status conference on January 20, 2016, the parties agreed to trial dates of April 11 and 12, 2016. At a status conference on March 29, 2016, the trial was continued to April 18 and 19, 2016, as respondent had obtained counsel. On April 4, 2016, the State Bar of California, Office of Chief Trial Counsel (OCTC), moved for a further continuance, due to the unavailability of an anticipated witness for the scheduled trial dates. At a status conference on April 11, 2016, the court denied OCTC's motion, but added a third trial date on June 10, 2016, to allow OCTC's witness to testify. On April 12, 2016, the parties requested a short continuance of the start of trial in order to continue settlement discussions. The court vacated the first two trial dates in April and replaced those two days of trial with one day of trial set on April 21, 2016; the June 10, 2016 trial date remained on calendar.

The parties filed a partial stipulation as to facts and admission of documents on April 20, 2016. A two-day trial occurred on April 21 and June 10, 2016. At the conclusion of the trial on June 10, 2016, the court ordered the parties to submit closing briefs on June 24, 2016, at which time the matter was submitted for decision.

OCTC was represented at trial by Deputy Trial Counsel Alex Hackert. Respondent was represented by Pamela G. Lacey, Esq.

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Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in the State of California on December 12, 1988. Since that time, respondent has been an attorney at law and a member of the State Bar of California.

Facts

In 1993, respondent was diagnosed with bipolar disorder. As a result of his diagnosis, he was placed on medication, which was successful and allowed him to continue to practice law.[3]

Sometime in the month of July 2013, respondent asked his then-physician, Dr. Allyn, to wean him off his psychiatric medications. Dr. Allyn agreed and began to lessen the amount of psychiatric medication that respondent was taking.

For the first few months, respondent was not exhibiting any bipolar symptoms. However, beginning in October 2013, respondent's mental status began to deteriorate and he began to go into a manic episode, experiencing grandiose thoughts and delusions. Over the next couple of months, respondent was hospitalized on three occasions due to the delusions that he was experiencing.[4] After his third hospitalization, he returned home only to discover that his wife had left him and took almost everything in the house with her.

Respondent was arrested in early December 2013 for disturbing the peace and was kept overnight in jail, observed in the jail's psychiatric facility, and then released. Shortly thereafter, on the night of December 6, 2013, respondent, while at the Tustin Metrolink Station, met Rosemary Losorelli (Losorelli).[5] Respondent offered to let Losorelli stay in a guest room at his

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[3] Respondent was inactive for a few years around the mid-2000s.

[4] These hospitalizations occurred after respondent was held for psychiatric observation on the grounds that he was a danger to himself or others under Welfare and Institutions Code section 5150. After he petitioned the court, respondent was released from one of these hospitalizations against doctor's orders.

[5] Losorelli's name is misspelled as "Lusorell" in the police reports that are in evidence.

house in Lake Forest, California, where he lived, as Losorelli had told him that she had no place to stay.

While the first night at respondent's home passed without incident, the following day, Losorelli observed respondent becoming agitated and acting strange. Later that evening, respondent drove both of them to the Newport Beach Yacht Club, but Losorelli did not go with him into the club. Later in the evening, Losorelli observed respondent being ejected from the club, as respondent apparently got into a verbal altercation with another patron.

Respondent and Losorelli left the club in respondent's car. While he was driving, Losorelli protested that respondent was driving recklessly, and she asked him to take her back to his house so she could collect her belongings and leave. Respondent did not comply with her request, but, instead, drove his car towards Corona Del Mar. When Losorelli told respondent that she was scared of his behavior and his reckless driving, respondent slammed Losorelli's head against the passenger-side window multiple times, and told her that he would not let her out of his car unless he pushed her out onto the freeway. Losorelli was intimidated and felt in fear of her life.

Respondent eventually drove back to his home in Lake Forest. Once there, Losorelli ran inside the house to the guest bedroom where she was staying in order to retrieve her belongings. Once inside the guest bedroom, Losorelli locked the door. Outside the guest bedroom, respondent was yelling in anger, and then he kicked the guest bedroom door open. While in the guest bedroom, he struck Losorelli in the head with a coffee mug, threw a shoe and a pair of binoculars at her, and then pinned her down on the bed and yelled at her. Respondent then left the guest bedroom, and Losorelli dialed 911. She told the operator what had happened and that she was afraid that respondent was going to kill her.

Orange County sheriff deputies arrived at respondent's home in the early morning hours of December 8, 2013. The deputies located respondent and detained him. After the deputies interviewed both Losorelli and respondent, they arrested respondent for violating Penal Code section 245 (assault with a deadly weapon), section 207 (kidnapping), section 240 (assault), and section 242 (battery).

On December 9, 2013, the Orange County District Attorney filed a criminal complaint in Orange County Superior Court (case no. 13HF3623), charging respondent with one count of violating Penal Code section 245, subdivision (a)(4) (assault with force likely to produce great bodily injury), a felony; one count of violating Penal Code sections 236 and 237, subdivision (b) (false imprisonment by violence), a felony; one count of violating Penal Code section 240 (assault), a misdemeanor; and one count of violating Penal Code section 242 (battery), a misdemeanor. After his arrest, respondent was kept in the psychiatric ward of the Orange County jail for two months in order to receive medical treatment and to re-establish his therapeutic levels of medication to end his manic state.

On February 13, 2014, the superior court granted the prosecution's motions to amend the count of violating Penal Code sections 236 and 237, subdivision (b), to a count of violating Penal Code sections 236 and 237, subdivision (a) (false imprisonment), and to reduce the counts under Penal Code section 245, subdivision (a)(4) and sections 236 and 237, subdivision (a) from felonies to misdemeanors pursuant to Penal Code section 17, subdivision (b). At the same court hearing, the superior court entered respondent's guilty plea to one count of violating Penal Code section 245, subdivision (a)(4), a misdemeanor, and one count of violating Penal Code sections 236 and 237, subdivision (a), a misdemeanor. The court then granted the prosecution's motion to dismiss the remaining counts under Penal Code sections 240 and 242. As a basis for his plea,

respondent acknowledged that he knowingly and unlawfully committed an assault on Losorelli with force likely to produce great bodily injury, and he violated her personal liberty by violence.

The superior court suspended the imposition of sentencing and placed respondent on formal probation for a period of three years. As part of respondent's probation terms, he was to serve 136 days in jail, with credit for 68 days of time served and 68 days of credit for good behavior, have no contact with Losorelli, and complete a minimum of 30 days of inpatient mental health treatment at Aurora Las Encinas Hospital. Respondent was also ordered, after his inpatient treatment, "to stay in treatment with a licensed psychiatrist or through Health Care Agency at the . . . direction of [his] Probation Officer."[6] Respondent was also "ordered to take all prescribed medications."[7] In March 2014, respondent completed his inpatient treatment.

Conclusion

Respondent seeks dismissal of this proceeding, contending that the State Bar is violating his privacy rights and his civil rights, and is subjecting him to harassment and discrimination as a result of his mental illness. Specifically, respondent contends that his prosecution in this matter violates the Americans with Disabilities Act. The court does not agree with these contentions.

In attorney disciplinary proceedings, "the record of [an attorney's] conviction [is] conclusive evidence of guilt of the crime of which he or she has been convicted." (§ 6101, subd. (a); *In re Gross* (1983) 33 Cal.3d 561, 567.) Stated differently, an attorney's conviction is conclusive proof that the attorney committed all of the acts necessary to constitute the crime of which he or she was convicted. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 110.) In fact, a "hearing judge may not reach conclusions, even if based on evidence found to be credible, that

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[6] State Bar Exhibit 5, page 005-24, February 13, 2014 Minutes, Orange County Superior Court.

[7] State Bar Exhibit 5, page 005-24, February 13, 2014 Minutes, Orange County Superior Court.

are inconsistent with the conclusive effect of respondent's conviction." (*In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581, 588.) Thus, respondent cannot attempt to undermine his criminal conviction by claiming he had no intent to commit the criminal acts because they were the result of his mental illness.

At least with respect to crimes that do not inherently involve moral turpitude, such as respondent's two misdemeanor convictions in the present proceeding, "[w]hether those acts amount to professional misconduct . . . is a conclusion that can only be reached by an examination of the facts and circumstances surrounding the conviction." (*In the Matter of Respondent O*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 589, fn. 6.) Therefore, if discipline is warranted, the basis of the discipline is the attorney's misconduct, not the conviction. (*In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 935, citing *In re Gross, supra*, 33 Cal.3d at p. 568.)

Respondent's criminal conduct was not committed in the practice of law and was not carried out against a client. The California Supreme Court has explained that "[c]riminal conduct not committed in the practice of law or against a client reveals moral turpitude if it shows a deficiency in any character trait necessary for the practice of law (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) or if it involves such a serious breach of a duty owed to another or to society, or such a flagrant disrespect for the law or for societal norms, that knowledge of the attorney's conduct would be likely to undermine public confidence in and respect for the legal profession." (*In re Lesansky* (2001) 25 Cal.4th 11, 16.) OCTC does not contend that the facts and circumstances surrounding respondent's conviction involved moral turpitude. As respondent's criminal conduct resulted from his mental illness and his medically supervised reduction in psychiatric medication, this court agrees that the facts and circumstances surrounding respondent's conviction do not involve moral turpitude.

However, respondent contends that OCTC has not shown by clear and convincing evidence that respondent has "committed 'other misconduct warranting discipline.'"[8] The court does not agree. "[P]sychological disability, while it may ameliorate the moral culpability of an attorney's misconduct, does not immunize him from the disciplinary measures necessary to protect the public." (*Palomo v. State Bar* (1984) 36 Cal.3d 785, 797.)

In determining whether an attorney's conduct warrants discipline, the court is concerned with protecting the public, the courts, and the integrity of the legal profession. (*In re Kelley*, *supra*, 52 Cal.3d at p. 493.) "The 'other misconduct warranting discipline" standard permits discipline of attorneys for misconduct not amounting to moral turpitude as an exercise of [the Supreme Court's] inherent power to control the practice of law to protect the profession and the public." (*Ibid.*)

The court notes that some disagreement has existed within the Supreme Court as to whether there must be a nexus between an attorney's misconduct and the practice of law for there to be a finding of "'other misconduct warranting discipline.'" (*In re Kelley*, *supra*, 52 Cal.3d at p. 494.) Nevertheless, the court finds a nexus in this matter, as respondent's conviction and the facts and circumstances surrounding the conviction reveal that respondent has a mental health problem that left untreated, or if not properly treated, will, and has in fact, affected his private life and could affect his practice of law. (Cf. *In re Kelley*, *supra*, 52 Cal.3d at pp. 495-496.)

While no clients were harmed by respondent's conduct, this does not shield respondent from discipline, which is aimed at ensuring that such misconduct does not recur. "Lack of past or present adverse impact on an attorney's practice or clients is an appropriate consideration in assessing the amount of discipline warranted in a given case, but it does not preclude imposition

[8] Respondent's closing brief filed in this matter on June 24, 2016.

of discipline as a threshold matter. ([Citation].)" (*In re Kelley, supra*, 52 Cal.3d at p. 496.) Clearly, if respondent fails to take his psychiatric medications, a manic episode is likely to occur which could result in harm to clients or the public. As the Supreme Court stated in *In re Kelley*, "Our task in disciplinary cases is preventive, protective and remedial, not punitive." (*Ibid.*) Thus, to insure public protection and to reinforce upon respondent the necessity that he strictly adhere to his program of psychiatric medications and therapies, the court finds that the facts and circumstances surrounding respondent's violations involved other misconduct warranting discipline, and that discipline is appropriate in this matter.

Aggravation[9]

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Std. 1.5.) The court finds two aggravating circumstances.

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

Respondent has one prior record of discipline which is an aggravating circumstance. On December 21, 2010, the California Supreme Court issued an order suspending respondent from the practice of law for one year, staying execution of the suspension, and placing respondent on probation for two years subject to certain conditions. In this prior disciplinary matter, respondent stipulated to: (1) forming a partnership with a non-lawyer in which the activities of the partnership consisted of the practice of law in willful violation of rule 1-310; (2) willfully sharing legal fees with a non-lawyer in violation of rule 1-320(A); (3) willfully failing to promptly refund unearned fees in violation of rule 3-700(D)(2); (4) sending a communication in three matters which contained material that was deceptive and which tended to deceive, confuse, or mislead the public in willful violation of rule 1-400(D)(2); and (5) willfully violating section

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

6068, subdivision (a), in two matters, by willfully violating sections 14701, subdivision (a) and 14702. In aggravation, respondent's misconduct harmed a client. In mitigation, respondent (1) did not have a prior record of discipline; (2) displayed candor and cooperation with the State Bar during its investigation, thereby acknowledging and recognizing the wrongfulness of his conduct; (3) demonstrated remorse by taking affirmative steps to address his misconduct; (4) stipulated to refund his clients' entire legal fee, although he did not receive the entire fee, and had started making payments to his clients; and (5) acted in good faith, as he attempted to do his best for his clients.

Mitigation

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6.) The court finds four mitigating circumstances.

Extreme Emotional/Physical/Mental Disabilities (Std. 1.6(d).)

"[A] mental disorder is entitled to mitigating weight if it causally contributed to the misconduct and if the disorder has since been cured or so controlled that it is unlikely to again lead to misconduct." (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 595.)[10] Dr. Neel Doshi has been respondent's primary treating psychiatrist since April 2014. Respondent has a primary diagnosis of bipolar I disorder with a secondary diagnosis of attention deficit disorder. Unfortunately, Losorelli encountered respondent when he was undergoing a supervised reduction in medications and the resulting instability that came from this reduction. As a result, respondent had a classic manic break while Losorelli was with him, and his actions towards her were driven by his deteriorating mental health.

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[10] Similarly, standard 1.6(d) provides that a mental disability suffered at the time of the misconduct and established by expert testimony as directly responsible for the misconduct is a mitigating circumstance, if the disability was not the result of any illegal conduct of the attorney, such as illegal substance or drug abuse, and the attorney has established, by clear and convincing evidence, that the disability no longer poses a risk that the member will engage in misconduct.

Respondent's bipolar symptoms have been under control since he was released from Aurora Las Encinas Hospital. Respondent's bipolar disorder is now effectively managed through medications and therapies. He also regularly attends weekly meetings of the Depression Bipolar Support Alliance at St. Joseph's Hospital. Respondent has not had any similar behavior for over two years; thus, the incident involving Losorelli was aberrational. However, if respondent stopped taking his medications, he would likely have a manic episode after a few months. Therefore, as the testimony of respondent's psychiatrist reflects, respondent's criminal conduct occurred as a result of his bipolar disorder and his disorder is now effectively managed. The court therefore finds respondent's bipolar disorder to be a significant mitigating circumstance in this matter.[11]

Good Character (Std. 1.6(f).)

Extraordinary good character is a mitigating circumstance if it is attested to by a wide range of references in the general and legal communities, who are aware of the full extent of the attorney's misconduct. (Std. 1.6(f).) In this matter, two character witnesses testified on respondent's behalf at trial. These two witnesses, along with two other individuals, also submitted character letters on behalf of respondent.

Wisconsin attorney Todd Hunter (Hunter), who has known respondent since 1977 when they were both freshmen in college, noted that respondent is gentle, ethical, honest, compassionate, kind, quiet, placid, non-violent, and has a good sense of humor. He further noted that respondent is doing well today and functions normally.

Callen M. Lockett (Lockett), who is the former chief lobbyist for Bank of America and WellPoint Blue Cross Blue Shield and currently runs a nonprofit organization, has known

[11] Nevertheless, as respondent would likely have a manic episode if he stopped taking his medications, the court will consider this factor in recommending the discipline in this matter.

respondent for 24 years and has never seen him disrespectful, loud, or threatening. Lockett noted that respondent "has exceptional character with the highest standard of ethical behavior."[12] He also described respondent as selfless, fair, kind, compassionate, gracious, and as a gentle person.

Reverend Monsignor James C. Kidder (Monsignor Kidder), who has known respondent since April 1992, described respondent as "a man of solid character and high ethics." In addition, Monsignor Kidder noted, "[Respondent's] usual demeanor is that of quiet, calm respect in dealing with others, even in times when his change of moods challenge him. That he had demonstrated aggressive behavior would seem incongruous to those who know him, even those who know him well."[13]

Deacon Tony Patronite of St. Thomas More Parish has known respondent less than a year. Nonetheless, he described respondent as kind and a considerate gentleman.

Hunter, Lockett, and Monsignor Kidder were aware of respondent's bipolar disorder, and Hunter and Lockett were aware of the incident involving respondent.[14] However, it is unclear from the letter of Deacon Tony Patronite whether he was aware of either respondent's bipolar disorder or the incident leading to respondent's criminal conviction. The court affords respondent modest weight in mitigation for this evidence of good character, as four character witnesses do not constitute a wide range of references. (*In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 359.) Furthermore, the evidence does not clearly reveal whether all the witnesses were aware of respondent's conduct which led to his conviction. This undermines the value of the character evidence. (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 513.)

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[12] Respondent's Exhibit 1004, letter from Callen Lockett.

[13] Respondent's Exhibit 1002, letter from Monsignor James C. Kidder.

[14] However, Monsignor Kidder's letter only makes reference to respondent's "aggressive behavior." (Respondent's Exhibit 1002.)

Community Service

Community service is also a mitigating factor. (*Schneider v. State Bar* (1987) 43 Cal.3d 784, 799.) Respondent has been active in his church. He (1) prepared a spiritual renewal event; (2) was a member of the land committee which was responsible for identifying property for a parish school and church and represented the parish in the acquisition of the property; and (3) was a godfather and sponsor for several church members. The court finds that respondent's community service should be afforded moderate weight in mitigation.

Candor/Cooperation to Victims/State Bar (Std. 1.6(e).)

Respondent is entitled to limited weight in mitigation for entering into a stipulation as to certain facts and the admission of all of the State Bar's exhibits. Although these stipulated facts were easily provable, the stipulation did assist in OCTC's prosecution of this matter and was relevant and extensive. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50.) However, as respondent did not stipulate to culpability, only limited weight in mitigation is given to respondent's cooperation with the State Bar. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive mitigation given to those who willingly admit culpability in addition to facts].)

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but is instead (1) to protect the public, the courts, and the legal profession; (2) to maintain the highest possible professional standards for attorneys; and (3) to preserve public confidence in the legal profession. (Std. 1.1; *Chadwick v. State Bar*, *supra*, 49 Cal.3d at p. 111.) The need to protect the public is the same whether or not an attorney is mentally impaired. The focus must therefore be on assuring "high professional standards, whatever the unfortunate causes, emotional or

otherwise, of an attorney's failure to meet those standards." (*Slaten v. State Bar* (1988) 46 Cal.3d 48, 63.)

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.)

The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) As the Review Department noted more than two decades ago in *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 419, even though the standards are not to be applied in a talismanic fashion, they are to be followed unless there is a compelling reason that justifies not doing so. (Accord, *In re Silverton*, *supra*, 36 Cal.4th at p. 91; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.) 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; *Gary v. State Bar* (1988) 44 Cal.3d 820, 828; *In the Matter of Oheb*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 940.)

The standards applicable in this matter are standards 2.16(b) and 1.8(a). Standard 2.16(b) states, "Suspension or reproval is the presumed sanction for final conviction of a misdemeanor not involving moral turpitude but involving other misconduct warranting discipline." Standard 1.8(a) provides that, when an attorney has one prior record of discipline, "the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be

manifestly unjust." However, even when the standards have called for progressive discipline or even disbarment, the court has deviated from the standards in appropriate cases. (E.g., *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52, 61; *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527, 533-535; *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208, 217-218; *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 704.)

In a conviction referral proceeding, "discipline is imposed according to the gravity of the crime and the circumstances of the case. [Citation.] In examining such circumstances, the court may look beyond the specific elements of a crime to the whole course of an attorney's conduct as it reflects upon the attorney's fitness to practice law." (*In the Matter of Katz, supra*, 1 Cal. State Bar Ct. Rptr. at p. 510.) All relevant factors must be considered in determining the appropriate discipline. (*Grim v. State* Bar (1991) 53 Cal.3d 21, 35.) The court's responsibility is to impose a discipline that will protect the public from potential harm from respondent. (*In re Kelley, supra*, 52 Cal.3d at p. 496.)

Due to respondent's prior record of discipline, standard 1.8(a) calls for greater discipline than the one-year stayed suspension and two years' probation imposed on respondent in his prior disciplinary matter. However, as noted above, the standards are not to be applied in a talismanic fashion, especially where there is no common thread or course of conduct through the past and current misconduct to justify greater discipline. (*In the Matter of Friedman, supra*, 2 Cal. State Bar Ct. Rptr. at p. 534.)

OCTC recommends that respondent be suspended for two years; that execution of the suspension be stayed; and that respondent be placed on probation for three years, including a 60-day period of actual suspension and medical monitoring conditions. Respondent was convicted of misdemeanor violations of assault with force likely to produce great bodily injury and false

imprisonment. Although cases involving assaultive behavior have often resulted in various periods of actual suspension,[15] this has not always been the case. (See *In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406 [two years' stayed suspension and two years' probation for felony conviction of assault with a firearm, with enhancement for discharging a firearm at an occupied motor vehicle, causing great bodily injury to another].)

Due to the serious nature of the misconduct, the court will apply standard 1.8(a) and recommend greater discipline in this matter than that imposed in respondent's prior disciplinary matter. However, the court does not believe it appropriate to impose a period of actual suspension in this matter. Respondent's prior misconduct is completely unrelated to his misconduct in this matter, and his present misconduct did not involve the practice of law or any client. As the Supreme Court noted in *Sternlieb v. State Bar* (1990) 52 Cal.3d 317, "'[T]he circumstances in which the misconduct occurred or subsequent efforts by the attorney to correct the condition that precipitated the misconduct may demonstrate that the misconduct will not likely recur' (*Baker v. State* Bar, [(1989)], 49 Cal.3d 804, 822, fn. 7) and thus are relevant to the disciplinary sanctions, if any, to be imposed." (*Sternlieb v. State Bar*, *supra*, 52 Cal.3d at p. 331.) Respondent's criminal conduct occurred as a result of his bipolar disorder, which, after a supervised reduction in psychiatric medications, led to a manic episode. Respondent now understands the severity of his bipolar condition and the likelihood that he will need to be

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[15] See, e.g., *In re Larkin* (1989) 48 Cal.3d 236 (attorney's misdemeanor convictions of assault with a deadly weapon and conspiracy to commit such a crime resulted in one-year actual suspension); *In re Otto* (1989) 48 Cal.3d 970 (attorney convicted of felony violations of assault by means likely to produce great bodily injury and infliction of corporal punishment on a cohabitant of the opposite sex resulting in a traumatic condition resulted in six-month actual suspension); *In re Hickey* (1990) 50 Cal.3d 571 (attorney culpable of improper withdrawal and convicted of carrying a concealed weapon in which facts and circumstances surrounding violation revealed assaultive behavior received 30-day actual suspension); *In the Matter of Stewart*, *supra*, 3 Cal. State Bar Ct. Rptr. 52 (attorney convicted of misdemeanor battery on a police officer received 60-day actual suspension).

compliant with his psychiatric treatment and take medications for the rest of his life. In assessing the appropriate discipline, the Supreme Court has recognized the extent to which an attorney has achieved appropriate insight into his wrongful conduct. (*In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266, 285.)

Therefore, after considering (1) the nature of respondent's misconduct; (2) the facts and circumstances surrounding such conduct; (3) the mitigating and aggravating circumstances found by the court; (4) the standards; and (5) the case law, the court finds that a lengthy period of stayed suspension and a significant period of probation, during which respondent must comply with certain conditions, including extensive psychiatric conditions, is "sufficient to protect the public from the threat of future professional misconduct" (*In re Kelley*, *supra*, 52 Cal.3d at p. 498) and to impress upon respondent the necessity of his strict adherence to his psychiatric medications and therapies. However, the court will not recommend a period of actual suspension, as the court finds, given the record in this matter, that doing so would be punitive or "manifestly unjust,"[16] as respondent's misconduct was directly due to his mental health disorder and the medically supervised weaning of his psychiatric medications.

Recommendations

This court recommends that respondent Scott Bunker Hayward, State Bar number 138582, be suspended from the practice of law in the State of California for two years, that execution of the two-year period of suspension be stayed, and that respondent be placed on probation[17] for a period of five years subject to the following conditions:

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[16] Std. 1.8(a).

[17] The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.) Respondent is cautioned that failing to strictly comply with the terms and conditions of his probation could result in involuntary inactive enrollment (Rules Proc. of State Bar, rule 5.315; Bus. & Prof. Code, § 6007, subdivision (d)) and further discipline, including a lengthy suspension which would continue

1. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation.

2. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.

3. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request.

4. During the probation period, respondent must report in writing quarterly to the Office of Probation. The reports must be postmarked no later than each January 10, April 10, July 10, and October 10 of the probation period. Under penalty of perjury, respondent must state in each report whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of respondent's probation conditions during the preceding calendar quarter or applicable reporting period. If the first report would cover less than 30 days, no report is required at that time; however, the following report must cover the period of time from the commencement of probation to the end of that next quarter. In addition to all quarterly reports, a final report must be postmarked no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.

5. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with respondent's probation conditions.

6. Within one year after the effective date of the discipline herein, respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

7. Respondent must comply with all conditions of his criminal probation and must so declare under penalty of perjury in any quarterly report required to be filed with the

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until he demonstrates his rehabilitation, fitness to practice and present learning and ability in the general law, or could result in his disbarment. (See Std. 1.2(c)(1); Rules Proc. of State Bar, rules 5.310, 5.312.)

Office of Probation. If respondent has completed his criminal probation, or completes it during the period of his disciplinary probation, respondent must provide to the Office of Probation satisfactory documentary evidence of the successful completion of the criminal probation in the quarterly report due after such completion. If such satisfactory evidence is provided, respondent will be deemed to have fully satisfied this probation condition.

8. Respondent must obtain psychiatric treatment from Neel Doshi, D.O., or a duly licensed psychiatrist approved by the State Bar's Office of Probation[18] at respondent's own expense.[19] The psychiatrist will determine the course of treatment, including how many times per month respondent is to obtain treatment. Respondent must comply with the treatment recommended by the psychiatrist and must furnish evidence to the State Bar's Office of Probation that respondent is so complying with each quarterly report. Treatment conditions, if any, will become part of respondent's probation requirements. Any violation of respondent's treatment conditions is a violation of respondent's probation requirements. Treatment should commence or continue as soon as possible but, in any event, no later than 30 days after the effective date of the order imposing discipline in this matter. Treatment must continue as required by the psychiatrist for the period of probation or until a motion to modify this condition is granted and that ruling becomes final.

   Within 30 days after the effective date of the order imposing discipline in this matter, respondent must provide a complete copy of this decision and the order imposing discipline to the psychiatrist and must report to the Office of Probation that he has done so in his first quarterly report.

   Within 30 days after the effective date of the order imposing discipline in this matter, respondent must execute all necessary waivers of confidentiality with the psychiatrist. Within 60 days of the effective date of the order imposing discipline in this matter, respondent must provide to the Office of Probation a copy of the executed waiver(s) provided to the psychiatrist. In his first quarterly report, respondent must report that he has provided the psychiatrist with the executed waiver(s).

   Any medical records obtained by the Office of Probation or the State Bar Court are confidential documents and no information about them or their contents is to be given to anyone except members of the Office of the Chief Trial Counsel, the Office of Probation, the State Bar Court, and the Supreme Court who are directly involved with maintaining, enforcing, or adjudicating this probation condition.

   Within 30 days after the effective date of the order imposing discipline in this matter, respondent is to undergo an evaluation with the psychiatrist. This will be

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[18] All further reference to Office of Probation refers to the State Bar's Office of Probation.

[19] Hereafter, "psychiatrist" refers to Dr. Doshi or to the psychiatrist approved by the Office of Probation. Approval of a psychiatrist may not be unreasonably denied by the Office of Probation.

considered the first treatment date. The evaluation will be for the purposes of (a) determining respondent's current psychological diagnosis; (b) setting treatment conditions respondent is to undertake as a result of the evaluation, if any, and (c) obtaining a written report from the psychiatrist. Respondent must bear all cost of the evaluation, the resulting report, and any treatment conditions recommended by the psychiatrist. Respondent's treatment conditions may change if the psychiatrist deems it necessary. Respondent must provide the Office of Probation with any proof of treatment compliance or waiver requested by the Office of Probation.

Within 60 days after the effective date of the order imposing discipline in this matter, respondent must provide a copy of the psychiatrist's written report to the Office of Probation.

Within 30 days of any change in any treatment condition(s), respondent must provide written notice to the Office of Probation specifically setting forth the changes. With that written notice, respondent is to provide an original, signed declaration from the psychiatrist acknowledging receipt of the written notice and agreement with its accuracy.

Respondent must report to the Office of Probation whether he has been in compliance with the treatment conditions, under penalty of perjury, in each written quarterly report required pursuant to the term of the probation imposed in this matter.

Respondent understands that treatment conditions associated with other issues or entities, such as criminal probation, may not satisfy the treatment conditions required by this probation condition.

If there is any change in respondent's psychiatrist or if additional treatment providers are retained, respondent must notify the Office of Probation of the name, address, and telephone number of such new/additional psychiatrist/treatment provider(s) within 10 days of the commencement of treatment by any new/additional psychiatrist/treatment provider(s). Thereafter, within 30 days after the commencement of such treatment, respondent must provide a complete copy of this decision and the order imposing discipline to the new/additional psychiatrist/treatment provider(s) and must report that he has done so in his next quarterly report due after the commencement of treatment with such psychiatrist/treatment provider. Furthermore, within 30 days after the commencement of such treatment, respondent must execute all necessary waivers of confidentiality with the new/additional psychiatrist/treatment provider(s). Within 60 days of the commencement of such treatment, respondent must provide to the Office of Probation a copy of the executed waiver(s) provided to the new/additional psychiatrist/treatment provider(s). In his next quarterly report due after the commencement of such treatment, respondent must report that he has provided the new/additional psychiatrist/treatment provider(s) with the executed waiver(s).
If respondent's treating psychiatrist determines that there has been a substantial change in respondent's condition, respondent or the Office of Probation may file a motion for modification of this probation condition in accordance with Rules of

Procedure of the State Bar, rule 5.300, et seq. Any such motion must be supported by a written declaration executed by respondent's treating psychiatrist under penalty of perjury under the laws of the State of California.

9. At the expiration of the probation period, if respondent has complied with all conditions of probation, respondent will be relieved of the stayed suspension.

Multistate Professional Responsibility Examination

The court further recommends that Scott Bunker Hayward be required to take and pass the Multistate Professional Responsibility Examination within one year after the effective date of the Supreme Court order in this matter and to provide satisfactory proof of his passage to the State Bar's Office of Probation in Los Angeles within that same time period. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.)

Costs

Finally, the court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and such costs are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: September 22, 2016

W. KEARSE McGILL
Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on September 22, 2016, I deposited a true copy of the following document(s):

DECISION

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

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

PAMELA GRACE LACEY
PAMELA G. LACEY/LACEYLAW
507 E 1ST ST STE E
TUSTIN, CA 92780

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

Alex J. Hackert, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 22, 2016.

Julieta E. Gonzales
Case Administrator
State Bar Court