

**FILED****DEC -8 2015**STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELESMcKINLEY DIRK EASTMOND  
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STATE BAR COURT OF CALIFORNIA

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HEARING DEPARTMENT

<p>In the Matter of:</p> <p>McKINLEY EASTMOND,</p> <p>A Member of the California State Bar, Member No.: 89470</p>	<p><b>RESPONSE</b></p> <p>Case Number: Case No: 15-C-12992-DFM</p> <p>Judge: THE HONORABLE DONALD F. MILES</p>
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Respondent, McKinley Dirk Eastmond, responds to the California State Bar's disciplinary action as follows:

The Bar's present action should be dismissed because the crime of stalking is not necessarily a violent crime. Because it is possible to violate the stalking statute without reflecting negatively on the one's honesty, trustworthiness or fitness as a lawyer it is not a crime of moral turpitude. "[A] person is guilty of stalking who intentionally or knowingly engages in a course of conduct directed at a specific person or should know that the course of conduct would cause a reasonable person: (a) to fear for the person's own safety or the safety of a third person; or (b) to suffer other emotional distress. U.C.A. 1953 § 76-5-106.5(2) (2012). Additionally, "course of conduct" is defined as "two or more acts directed at or toward a specific person, including: acts in which the actor follows, monitors, observes, photographs, surveils, threatens,

or communicates to or about a person, or interferes with a person's property." *Id.* § 76-5-106.5(1)(b)(i). Considering the multiple ways in which a person can commit the crime of stalking, it must be noted that it is possible for a person to fulfill the elements of the statute without committing a violent crime. For example, if a person were to merely observe, photograph, or communicate with an individual, that person has fulfilled the elements of stalking; however, they have failed to act violently.

Many crimes have been noted as being violent ones. *See Oklahoma Bar Ass'n v. Hayes*, 2011 OK 71, ¶ 0, 257 P.3d 1000 (attorney entered a plea to misdemeanor assault and battery after a physical altercation with a non-lawyer in a parking lot); *People v. Knight*, 883 P.2d 1055 (Colo. 1994) (attorney plead guilty to third-degree assault for beating his wife); *People v. Groland*, 908 P.2d 75, 76 (Colo. 1995) (attorney plead guilty to harassment and violation of bail when he violated a restraining order by contacting his wife at home and at her work and threatened to kill her and other persons and repeated the same illegal act again after he was released on bond).

In the present case, the Respondent plead guilty to Attempted Stalking when he admittedly communicated with his wife, from whom he was separated at the time. Specifically, he sent numerous text and email messages to her in which stated that he wished she were dead. *Statement of Defendant*, Case No. 081909586, May 7, 2012. Although the Respondent fulfilled the elements of stalking, he did not to commit a violent crime because merely communicating with a person lacks violence.

It should be further noted that the Respondent did not personally threaten that he would injure his estranged wife, and the Respondent's communications to his then estranged

wife were not in the nature of True Threats, and should not have been criminally actionable.

*Elonis v. United States*, 575 U. S. \_\_\_\_ (2015), 13-983.

In conclusion, the Bar's action should be dismissed because when the Respondent sent text and email messages to his wife under the statute in force at that time he committed the crime of stalking in a nonviolent way. Because the acts were not a violent crime, it does not reflect negatively on the Respondent's honesty, trustworthiness or fitness as a lawyer or an act of moral turpitude. Further, after the *Elonis* decision it is highly debatable whether Respondent's messages were even in the nature of any criminal wrong doing.

DATED: December 3, 2015

  
M. DIRK EASTMOND, Respondent

#### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this the foregoing were mailed by US Mail, postage paid in the correct amount to:

THE STATE BAR OF CALIFORNIA  
ALEX HACKERT, DEPUTY TRIAL COUNSEL  
845 South Figueroa Street  
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DATED: December 3, 2015

  
DON SCOTT LITTLE, ESQ.