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MAR 22 2017 *JG*

STATE BAR COURT OF CALIFORNIA

STATE BAR COURT
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LOS ANGELES

REVIEW DEPARTMENT

IN BANK

In the Matter of)	Case No. 15-C-15264
)	
ANN ELIZABETH HERRING,)	RECOMMENDATION OF SUMMARY
)	DISBARMENT
A Member of the State Bar, No. 144688.)	
_____)	

On January 26, 2017, the Office of the Chief Trial Counsel of the State Bar (OCTC) filed a motion for summary disbarment based on Ann Elizabeth Herring's criminal conviction. On February 7, 2017, Herring filed an opposition to the motion. We grant the motion and recommend that Herring be summarily disbarred.

I. PROCEDURAL HISTORY

On January 15, 2016, Herring pled guilty to a felony violation of Penal Code section 368, subdivision (e)(1) (embezzlement or fraud of an elder dependent adult by a caretaker). On February 26, 2016, we ordered respondent suspended from the practice of law effective March 21, 2016, because she had been convicted of violating a felony involving moral turpitude. (Bus. & Prof. Code, § 6102, subd. (a).)¹

On March 10, 2016, Herring filed a request to stay her suspension. She argued, inter alia, that her felony conviction was reduced to a misdemeanor on February 9, 2016; she had paid restitution in the underlying criminal matter; and her sentencing in the underlying criminal

¹ All further references to sections are to this source unless noted.



matter has been continued to April 26, 2016. OCTC opposed her request. We denied the request because the criminal records showed that on January 15, 2016, the superior court accepted Herring's guilty plea to a felony violation of Penal Code section 368, subdivision (e)(1). This accepted plea "results in conviction under the summary disbarment statute." (*In re Paguirigan* (2001) 25 Cal.4th 1, 4 [citing to Bus. & Prof. Code, § 6101, subd. (e)].) Based on postconviction proceedings—the payment of restitution—the superior court ordered the crime reduced to a misdemeanor under Penal Code section 17, subdivision (b) on February 9, 2016. But section 6102, subdivision (b) provides that Penal Code section 17, subdivision (b) postconviction proceedings do not change that the crime is a felony for the purposes of attorney discipline.

Effective March 21, 2016, Herring was suspended from the practice of law.

II. SUMMARY DISBARMENT MOTION

With its motion for summary disbarment, OCTC submitted evidence that the conviction had become final. After the judgment of conviction becomes final, "the Supreme Court shall summarily disbar the attorney if the offense is a felony . . . and an element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement, or involved moral turpitude." (§ 6102, subd. (c).)

In her opposition, Herring renews her argument that she has not been convicted of a felony. In support, she submitted the reporter's transcript of the January 15, 2016 plea. The transcript reflects that Herring's criminal counsel and the superior court were cognizant at the time of the plea that Herring was facing professional discipline for her criminal conviction. Their discussion suggests that her attorney may have sought to mitigate the severity of the discipline. For example, the superior court asked: "And do you want me to hold off entering the conviction until the date of sentencing?" Herring's counsel responded: "Absolutely, your Honor." The superior court responded: "Ok."

Based on the transcript, Herring argues that “the charge was reduced to a misdemeanor pursuant to Penal Code section 17(b)(3), *before* a conviction was entered.” She acknowledges that section 6101(e) “suggests that the mere entry of a plea of guilty constitutes a conviction of a felony for the purposes of discipline by the State Bar.” But maintains that the definition is inconsistent with section 6102 which provides for summary disbarment “after the judgment of a conviction of an offense specified in subdivision (a) has become final.” She contends that the intent of the statutes is to limit summary disbarment to circumstances where a felony conviction becomes final.

As we ruled in denying her request to stay her interim suspension, her accepted felony plea resulted in a felony conviction for discipline purposes even though it is considered by the criminal court to be a misdemeanor due to postconviction proceedings. (*In re Paguirigan, supra*, 25 Cal.4th at p. 4; §§ 6101, subd. (e), 6102[.]) And, notwithstanding her intentions at the time of her plea, the records of conviction—the register of actions and felony plea form—show that the superior court accepted the felony guilty plea and registered the status as of the date of the plea as a felony conviction. We are constrained by these events and the law to find that Herring was convicted of a felony for purposes of this proceeding. Herring’s redress is to return to the superior court.

In addition to being a felony, Herring’s conviction necessarily involves the specific intent to defraud. (Pen. Code, § 368, subd. (e)(1).) Crimes involving the intent to defraud involve moral turpitude per se. (*In re Kelley* (1990) 52 Cal.3d 487, 494[.]) Accordingly, Herring’s conviction qualifies her for summary disbarment.

When an attorney’s conviction meets the requirements of section 6102, subdivision (c), “the attorney is not entitled to a State Bar Court hearing to determine whether lesser discipline is called for.” (*In re Paguirigan, supra*, 25 Cal.4th at p.7.) Disbarment is mandatory. (*Id.* at p. 9.)

We therefore recommend that Ann Elizabeth Herring, State Bar number 144688, be disbarred from the practice of law in this state. We also recommend that she be ordered 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 days, respectively, after the effective date of the Supreme Court's order. Finally, we recommend that costs be awarded to the State Bar in accordance with section 6086.10, and that such costs be enforceable both as provided in section 6140.7 and as a money judgment.

PURCELL

Presiding Judge

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. 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 March 22, 2017, I deposited a true copy of the following document(s):

**RECOMMENDATION OF SUMMARY DISBARMENT
FILED MARCH 22, 2017**

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

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

**ANN E. HERRING
PO BOX 2322
REDLANDS, CA 92373**

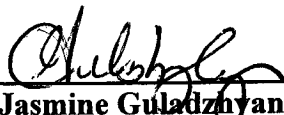
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SACRAMENTO, CA 95825**

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

CHARLES A. MURRAY, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 22, 2017.



Jasmine Guladzhyan
Case Administrator
State Bar Court