



PUBLIC MATTER

FILED

MAY 29 2019

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES**

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

In the Matter of)	Case No. 17-C-06914-YDR
)	
BARRET ADIN SLOME,)	DECISION
)	
State Bar No. 212564.)	
_____)	

Introduction¹

This disciplinary proceeding arises out of Respondent Barret Adin Slome's misdemeanor conviction of Los Angeles Municipal Code section 12.21, subdivision (A)(1)(a) (violation of zoning permit). Upon finality of the conviction, the Review Department of the State Bar Court (Review Department) issued an order referring this matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed if the facts and circumstances surrounding Respondent's conviction involve moral turpitude or other misconduct warranting discipline.

After having thoroughly reviewed the record, the court finds that while the facts and circumstances surrounding Respondent's conviction do not involve moral turpitude, Respondent is culpable of other misconduct warranting discipline. Based on the nature and circumstances surrounding Respondent's conviction, the minimal mitigation, and consideration of the goals 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.

attorney discipline, the court recommends, among other things, that Respondent be suspended from the practice of law for one year, stayed, and placed on probation for one year subject to conditions, including a 30-day actual suspension.

Significant Procedural History

On September 6, 2018, the Review Department issued an order referring the above-referenced misdemeanor conviction to the Hearing Department for a hearing and decision recommending the discipline to be imposed upon Respondent, if the hearing department finds that the facts and circumstances surrounding Respondent's misdemeanor conviction for violation of Los Angeles Municipal Code section 12.21, subdivision (A)(1)(a), involves moral turpitude or other misconduct warranting discipline.

On September 10, 2018, the State Bar Court issued and properly served a notice of hearing on conviction (NOH) on Respondent and on December 17, 2018, Respondent filed his response to the NOH.

A two-day trial was held on February 26, 2019, and March 1, 2019. The State Bar of California, Office of Chief Trial Counsel (OCTC) was represented by Deputy Trial Counsel Esther Fallas. Respondent was represented by Robert G. Berke, Berke Law Offices, Inc. The case was submitted for decision on March 1, 2019, and the parties filed their respective closing argument briefs on March 15, 2019.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on February 21, 2001. Respondent has been a licensed attorney of the State Bar of California at all times since his date of admission.

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Case No. 17-C-06914 – The Conviction Matter

Facts

The following facts are derived from the parties' stipulation, as well as the exhibits admitted into evidence.

On April 28, 2017, at approximately 3:00 p.m., detectives from the Los Angeles Police Department, Gangs and Narcotics Division, responded to a call regarding a home invasion robbery and shooting incident at Respondent's residence. Respondent's home was located in an upscale residential community in Los Angeles. Respondent was shot six times during the robbery and was hospitalized for approximately two months.

The Gangs and Narcotics Division detectives met with detectives from the Los Angeles Police Department, West Los Angeles Detectives Unit at Respondent's residence. The detectives inspected Respondent's kitchen, family room, and backyard. Inside the home, officers observed a semi-automatic rifle, a broken sliding glass door, bullet holes in the walls and several rooms with blood-stained walls. They also observed a large quantity of marijuana, and an undetermined amount of U.S. currency. The detectives placed the currency into seizure bags that they subsequently sealed, and two of the detectives transported the bags to the Gang and Narcotics Division where they secured them in a safe. On May 3, 2017, the Gangs and Narcotics Division detectives transported the seizure bags to the bank for a currency count. The bags contained \$19,429.

In addition to the currency, detectives seized approximately 350 pounds of marijuana from Respondent's residence.

On October 27, 2017, the Los Angeles City Attorney's Office filed a misdemeanor complaint against Respondent in the Superior Court of California, County of Los Angeles, case number 7AR01935. The City Attorney's Office charged Respondent with violating California

Health and Safety Code sections 11359, subdivision (b) [unlawful possession of cannabis for the purpose of sale], a misdemeanor; and 11360, subdivision (a)(2) [willfully and unlawfully importing into this state, to sell, furnish, administer, or give away, or to attempt to import into this state or transport any marijuana], a misdemeanor.

During a May 18, 2018, pretrial hearing, the City Attorney's Office moved, and the court ordered, the criminal complaint amended by interlineation to add a third count, a violation of Los Angeles Municipal Code section 12.21, subdivision (A)(1)(a) (violation of zoning permit), a misdemeanor.

On May 18, 2018, Respondent pled nolo contendere to a violation of Los Angeles Municipal Code, section 12.21(A)(1)(A). The court then dismissed the California Health and Safety Code, sections 11359, subdivision (b), and 11360, subdivision (a)(2) charges. The court ordered the imposition of sentence suspended and placed Respondent on a 36-month summary probation. Respondent was ordered to pay a total of \$4,349.00 in fees and fines. Additionally, the court ordered Respondent not to engage in unlicensed commercial cannabis activity and to obey all laws and orders of the court.

Conclusions

Respondent's misdemeanor conviction of Los Angeles Municipal Code section 12.21, subdivision (A)(1)(a), is final. In attorney disciplinary proceedings, Respondent's culpability is conclusively established by the record of his conviction. (Bus. & Prof. Code, § 6101, subd. (a); *In re Crooks* (1990) 51 Cal.3d 1090, 1097.) Respondent is presumed to have committed all of the elements of the crime of which he was convicted. (*In re Duggan* (1976) 17 Cal.3d 416, 423; *In the Matter of Respondent O* (Review Dept. 1933) 2 Cal. State Bar Ct. Rptr. 581, 588.) However, "[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.”

(*Id.* at p. 589, fn. 6.)

An attorney’s conviction of violating a zoning permit does not establish moral turpitude per se. (See *In re Fahey* (1973) 8 Cal.3d 842, 849 [conviction of some crimes establishes “moral turpitude” on its face; e.g., crimes that involve an intent to defraud or intentional dishonesty for personal gain (forgery, extortion, bribery, perjury) or crimes “extremely repugnant to accepted moral standards” such as murder or serious sexual offenses].) Since Respondent’s conviction does not involve moral turpitude per se, this court must first determine whether the facts and circumstances surrounding Respondent’s convictions involved moral turpitude or other misconduct warranting discipline.

The term moral turpitude is defined broadly. (*Baker v. State Bar* (1989) 49 Cal.3d 804, 49 Cal.3d 804, 815, fn. 3.) It has consistently been described as any “act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man. [Citation.]” (*In re Craig* (1938) 12 Cal.2d 93, 97.) “It is measured by the morals of the day [citation] and may vary according to the community or the times. [Citation.]” (*In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208, 214.)

As the Supreme Court stated in *In re Lesansky* (2001) 25 Cal.4th 11, 16:

[W]e can provide this guidance: Criminal 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.

Here, Respondent was convicted of violating a zoning permit. The zoning permit ordinance which Respondent violated provides:

- (a) Permits and Licenses. No building or structure shall be erected, reconstructed, structurally altered, enlarged, moved, or maintained, nor shall any building, structure or land be used or designed to be used for any use other than is permitted in the zone in which such building, structure or land is located and then only after applying for and securing all permits and licenses required by all laws and ordinances.

(Los Angeles Municipal Code section 12.21, subdivision (A)(1)(a).)

As Respondent notes, this ordinance broadly addresses various forms of unpermitted activities that range from structural building design to building and land use. The only specific evidence offered in this case about the manner in which Respondent violated this ordinance is based on the parties' stipulation, which provides, "[t]he court ordered the Respondent to not engage in unlicensed commercial cannabis activity." This stipulated fact, coupled with evidence of a large quantity of cannabis and over \$19,000 in cash found in Respondent's home, which was located in a residential area, leads this court to find that the zoning violation had nothing to do with housing chickens in a residential community as Respondent muses. Rather, Respondent's zoning permit violation involved Respondent's commercial cannabis activity conducted in his home.

Respondent argues that he should not be disciplined in this matter because the elements of the statute of conviction do not define conduct warranting discipline. Moreover, Respondent maintains that the conduct for which Respondent may be disciplined "was not shown to be unlawful or otherwise impermissible conduct." The court rejects Respondent's arguments because it is well settled that the court must examine the facts and circumstances surrounding Respondent's crime, and not merely look to the conviction, to decide if he has committed misconduct that is disciplinable. (See *In re Gross* (1983) 33 Cal.3d 561, 566 [misconduct, not conviction, warrants discipline]; *In the Matter of Respondent O, supra*, 2 Cal. State Bar Ct. Rptr. at p. 589, fn. 6 [whether acts underlying conviction amount to professional misconduct "is a

conclusion that can only be reached by an examination of the facts and circumstances surrounding the conviction”].)

OCTC, on the other hand, argues that the facts and circumstances surrounding Respondent’s conviction constitute other misconduct warranting discipline because Respondent’s possession of 350 pounds of marijuana and a substantial amount of cash in his home reflects not only disregard for his own safety, but a flagrant disregard for the safety of others in his neighborhood, whom he put at risk. Moreover, the course of Respondent’s conduct when viewed as a whole, undermines public confidence in the legal profession and constitutes other misconduct warranting discipline. This court agrees and finds that the facts and circumstances surrounding Respondent conviction do not involve moral turpitude but constitute other misconduct warranting discipline.

Aggravation and Mitigation²

Aggravation

OCTC bears the burden of proving aggravating circumstances by clear and convincing evidence. (Std. 1.5) The court finds no aggravating circumstances.

Mitigation

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6(e).)

No Mitigation Credit For Lack of A Prior Record of Discipline

Although Respondent has no prior record of discipline, and the lack of a prior record of discipline can be a mitigating factor (see std. 1.6(a)), the court notes that Respondent has had multiple and extended periods of ineligibility since being admitted to the practice of law in

² All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

February 2001.³ Respondent was not eligible to practice law in California during the following time periods: 1) September 18, 2006, to July 1, 2008, for failure to pay the State Bar annual fees (annual fees); 2) from July 1, 2008, to June 29, 2012, for MCLE noncompliance; 3) from July 1, 2014, to August 10, 2016, for MCLE noncompliance and failing to pay the annual fees; and 4) since September 1, 2017, Respondent has been ineligible to practice law for failure to pay the annual fees. Respondent has only been active from the date of his admission in February 2001 through September 17, 2006 and June 29, 2012 to July 1, 2014. Thus, although admitted to the State Bar in 2001, approximately sixteen years before the charged misconduct, Respondent has only been an active attorney for seven of those years.

Accordingly, Respondent is afforded no mitigating credit for a lack of discipline record because he has not been an active attorney of the State Bar for a sufficient period. (See *In the Matter of Loftus* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80 [weight of mitigation for lack of a prior record severely diminished when attorney failed to provide clear and convincing evidence of the scope or continuing nature of his practice of law in Nebraska; see also *In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170 [mitigating weight for lack of a prior record depreciated because 13-year licensed attorney did not practice law for five years and misconduct began a year after his return to practice of law].)

Cooperation (Std. 1.6(e))

Respondent entered into a stipulation of facts and admission of documents. Respondent's candor and cooperation with OCTC warrants moderate consideration in mitigation.

In sum, the court finds that Respondent has established minimal mitigating credit.

³ Respondent testified that he had not practiced law since 2003.

Discussion

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys. (Std. 1.1.) The discipline analysis begins with the standards, which promote the consistent and uniform application of disciplinary measures and are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 91 [Supreme Court will not reject recommendation arising from standards unless grave doubts as to propriety of recommended discipline].) Standard 1.7 provides that if aggravating or mitigating circumstances are found, they should be considered alone and in balance with any other aggravating or mitigating factors.

Standard 2.16(b) provides that suspension or reproof is the presumed sanction for a final misdemeanor conviction not involving moral turpitude, but involving other misconduct warranting discipline.

The standards, however, “do not mandate a specific discipline.” (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has long been held that the court is “not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender.” (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

OCTC argues that Respondent’s misconduct warrants a public reproof. Respondent, on the other hand, argues that he should receive no greater discipline than a private reproof.

In a conviction referral proceeding, “discipline is imposed according to the gravity of the crime and the circumstances of the case.” (*In the Matter of Katz* (Review Dept. 1991) 1 Cal.

State Bar Ct. Rptr. 502, 510.) The sanction imposed is determined in each case depending on the nature of the crime and the circumstances presented by the record. (*In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 103.) In this case, although Respondent was convicted of a zoning permit violation, his crime involved the recovery of 350 pounds of marijuana and \$19,429, making him a target of a violent home invasion, and causing a great risk of harm to his neighbors. Although both parties argued for a reproof, the court finds that this case calls for a period of actual suspension.

In addition to the standards, the court turns to case law to determine the appropriate level of discipline in this matter. While the court found no comparable cases to Respondent's, the discipline for convictions solely involving possession with intent to sell marijuana and no other drugs, has ranged from a period of stayed suspension to a 30-month actual suspension. (See, e.g., *In re Kreamer* (1975) 14 Cal.3d 524 [three-year stayed suspension for pleading guilty to misdemeanor illegal possession of 20 pounds of marijuana and later felony conviction for conspiracy to possess 791 pounds of marijuana with intent to distribute; misconduct tempered by financial difficulties, past and present good character evidence, cooperation during disciplinary proceedings, offense not related to practice of law, and attorney ceased practice of law months before commission of his first offense]; *In re Cohen* (1974) 11 Cal.3d 416 [two-year actual suspension for felony conviction of possession with intent to distribute 26 pounds of marijuana; attorney knowingly assisted another in transporting marijuana, but misconduct mitigated by lack of discipline record, lack of intent to receive financial gain, honesty and cooperation when arrested, good character evidence and community service]; *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552 [30-month actual suspension and until compliance with former standard 1.4(c)(ii) for felony conviction of possession with intent to sell marijuana; attorney arrested while tending to 25 marijuana plants and subsequent home search recovered

scales for weighing marijuana, marijuana seeds and firearms; offense involved moral turpitude and mitigating circumstances included long-term marijuana and alcohol abuse, rehabilitation and involvement of small amount of marijuana].) The court is mindful that the Supreme Court cases are before the implementation of the standards; however, the discipline in those cases fall within standard 2.16(b) and offer some guidance.

Respondent's misconduct falls at the lower end of the discipline spectrum. Although Respondent's misconduct involved a large quantity of marijuana and cash, he was not convicted of a felony possession with intent to distribute charge. And, although the detectives found a semiautomatic rifle in Respondent's residence, there is no indication that he possessed the weapon illegally. Moreover, the facts and circumstances of Respondent's conviction did not involve moral turpitude. The attorney in *Kreamer, supra*, received a period of stayed suspension, but the court notes that he had extensive mitigation while Respondent had a single mitigating factor that minimally tempered Respondent's misconduct.

Accordingly, based on the facts and circumstances of Respondent's conviction, the single mitigating circumstance, the applicable standard, and case law, the court recommends that Respondent be suspended from the practice of law for one year, stayed, and he be placed on probation for one year, with conditions that include a 30-day actual suspension. This sanction properly promotes the goals of attorney discipline and will adequately protect the public, the courts, and the legal profession.

RECOMMENDATIONS

Discipline – Actual Suspension

It is recommended that Barret Adin Slome, State Bar Number 212564, be suspended from the practice of law for one year, that execution of that suspension be stayed, and that Respondent be placed on probation one year with the following conditions.

Conditions of Probation

1. Actual Suspension

Respondent must be suspended from the practice of law for the first 30 days of the period of Respondent's probation.

2. Review Rules of Professional Conduct

Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to Respondent's compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.

3. Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions

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

4. Maintain Valid Official State Bar Attorney Records Address and Other Required Contact Information

Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR, within ten (10) days after such change, in the manner required by that office.

5. Meet and Cooperate with Office of Probation

Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in person or by telephone. During the probation period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.

6. State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court

During Respondent's probation period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with probation conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official State Bar attorney records address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

7. Quarterly and Final Reports

a. Deadlines for Reports. Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the

next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten (10) days before the last day of the probation period and no later than the last day of the probation period.

b. Contents of Reports. Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.

c. Submission of Reports. All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).

d. Proof of Compliance. Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of Respondent's actual suspension has ended, whichever is longer. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

8. State Bar Ethics School

Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of

completion of the State Bar 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 this session. If Respondent provides satisfactory evidence of completion of the Ethics School after the date of this Decision but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward his duty to comply with this condition.

9. Commencement of Probation/Compliance with Probation Conditions

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the probation period, if Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

Other Requirements (Not Conditions of Probation)

1. Multistate Professional Responsibility Examination Within One Year

It is further recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).) If Respondent provides satisfactory evidence of the taking and passage of the above examination after the date of this Decision but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward his duty to comply with this condition.

2. Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a licensed attorney who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

Yvette D. Roland

Dated: May 29, 2019

YVETTE D. ROLAND
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 Court Specialist 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 May 29, 2019, 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:

ROBERT G. BERKE
BERKE LAW OFFICES, INC.
21911 SHERMAN WAY
CANOGA PARK, CA 91303-1944

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

ESTHER FALLAS, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 29, 2019.



Mazie Yip
Court Specialist
State Bar Court