PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

Filed February 14, 2014

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. 11-C-18189
	)	
NICHOLAS ASHLEY BRAVO,	)	OPINION AND ORDER
	)	
A Member of the State Bar, No. 264299.	)	
	)	

Nicholas Ashley Bravo has been convicted of three alcohol-related driving offenses in less than 10 years — the first two were before his 2009 admission to the Bar and the third occurred during his second year in practice. He appeals a hearing judge's discipline order based on his third offense, a 2011 misdemeanor conviction for alcohol-related reckless driving ("wet reckless"). The judge found the facts and circumstances surrounding this conviction do not involve moral turpitude but do constitute other misconduct warranting discipline, and ordered a public reproval with conditions, relying on *In re Kelley* (1990) 52 Cal.3d 487 (*Kelley*).

Bravo argues this case should be dismissed because the conviction does not comprise misconduct warranting discipline. If we determine that it does, he requests no more than a private reproval. Although the State Bar did not appeal, it argues for the first time on review that Bravo is culpable of moral turpitude for his dishonesty to the police officers. Even absent a moral turpitude finding, the State Bar urges a minimum 30-day suspension.

After independently reviewing the record (Cal. Rules of Court, rule 9.12), we find that the facts and circumstances surrounding Bravo's conviction involve other misconduct warranting

discipline; those circumstances include his two prior records of alcohol-related driving offenses and his dishonest denial to the police officers that he had not been drinking on the day of his arrest. Importantly, Bravo was on notice that alcohol-related driving convictions are of serious concern to the State Bar because his second conviction impeded his admission to the Bar. Even so, he continued to drink and drive illegally, evidencing a lack of respect for the legal system and an alcohol abuse problem. The criminal court imposed punishment for Bravo's crime; professional discipline is also warranted. We affirm the hearing judge's order for a public reproval with conditions as the proper discipline under *Kelley* to protect the public, the courts, and the legal profession.

I. FINDINGS OF FACT[1] AND CONCLUSIONS OF LAW

A. Bravo's Prior Alcohol-Related Driving Convictions in 2002 and 2006

Bravo's first conviction for alcohol-related driving occurred just after midnight on March 27, 2002. A police officer stopped him for erratic driving in the Lake Tahoe area. Bravo smelled like alcohol, his speech was slow and slurred, and he was unsteady on his feet. He told the officer he had consumed one beer. While testifying in the present proceeding, however, Bravo said he drank a screwdriver. As a result of the traffic stop, Bravo was arrested for driving under the influence of alcohol (DUI), and his blood alcohol level (BAC) registered 0.08%. He pled no contest and was convicted of "wet reckless" in violation of Vehicle Code section 23103. (See Veh. Code, § 23103.5 [requiring statement as to alcohol or drug involvement when prosecution agrees to reckless driving conviction after charging DUI].) He was placed on conditional probation for 36 months and ordered to serve one day in county jail, attend the First

[1] The facts are based on the hearing judge's findings, the trial evidence, and the documents admitted into evidence. (See Rules Proc. of State Bar, rule 5.155(A) [hearing judge's factual findings entitled to great weight on review].)

Offender three-month alcohol education program, and submit to chemical testing of blood, breath, and urine at the request of any peace or probation officer.

Bravo's second conviction occurred in Los Angeles about four years later on May 17, 2006 at 1:30 a.m. Police officers stopped him after he made an illegal turn. One officer observed that he had red eyes and smelled like alcohol. The officer asked Bravo if he had been drinking, and Bravo said no. After showing other signs of impairment while performing field sobriety tests, Bravo was arrested. He submitted to a Breathalyzer test and registered a BAC of 0.11%. Bravo pled no contest to, and was convicted of, DUI in violation of Vehicle Code section 23152, subdivisions (a) and (b).[2] The superior court placed him on 36 months' probation and ordered him to spend a day in county jail, provide 20 hours of community service, and attend an 18-month alcohol abuse program for repeat offenders.

Bravo testified in this proceeding that he was not truthful in 2006 when he told the officer that he had nothing to drink. He explained that he had shared two pitchers of beer with friends after law school finals before driving. When asked why he did not admit that to the officer, Bravo said he was "probably just very nervous and, you know, I'm in my dad's car and, you know, it's - - I mean something along those lines, I suppose." In short, Bravo was ambiguous in characterizing his 2006 statement to the officer as dishonest.

While on probation in his second case, Bravo graduated from law school, passed the bar examination, and submitted his moral character application to the State Bar. He then learned that his criminal convictions were delaying his application. To move it forward, he filed a motion in superior court to terminate his probation and expunge the conviction. He told the court he wished to "be reincorporated back into society and conclude this terrible but educational chapter

[2] Section (a) provides: "It is unlawful for a person who is under the influence of any alcoholic beverage to drive a vehicle." Section (b) provides "It is unlawful for a person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle."

of [his] life." His motion was successful, his moral application was approved, and he was admitted to the Bar in August 2009.

B. The Present Case — Bravo's 2011 Wet Reckless Conviction

After less than three years as an attorney, Bravo was arrested for his third alcohol-related driving offense. On the evening of August 27, 2011, a member of the Los Angeles Police Department's Driving Under the Influence (DUI) task force stopped Bravo after observing him make an illegal U-turn and create a hazard by backing up his car in traffic. Based on Bravo's bloodshot watery eyes and the odor of alcohol on his breath, the officer formed the opinion that Bravo had been drinking. When asked, Bravo denied it. The officer performed one field sobriety test — the horizontal gaze nystagmus — that also indicated possible alcohol impairment.[3] The officer then asked Bravo to blow into his hand, but Bravo refused and was asked to exit his car. A second DUI officer arrived, and also believed Bravo had been drinking alcohol. The officer asked him to submit to further field testing. Bravo declined and was arrested on suspicion of DUI.

At the police station, Bravo was admonished about the consequences of refusing to submit to a test to determine if he had consumed alcohol. He was directed to the Breathalyzer room. In response, Bravo stated that he wanted a blood test. After waiting 30 to 45 minutes to have his blood drawn, he declined the blood test, claiming the room was not clean and "staph" germs could be present. The officer notified his supervisor, who talked to Bravo about the blood test. At some point, Bravo changed his mind and asked to take the breath test instead. The supervisor deemed this a refusal to take the blood test, and Bravo was booked on DUI and refusal charges.

[3] The officer described this test as a visual eye examination where a suspect is asked to look to the extreme right or left. The officer stated that the eyes will uncontrollably bounce, depending on how much alcohol is in the system, but it is "merely a tool that helps us form the opinion [about impairment] as well as the other tests."

Ultimately, the criminal complaint was amended and Bravo pled no contest to, and was convicted of, another "wet reckless" under Vehicle Code section 23103 (see Veh. Code, § 23103.5 [requiring statement as to alcohol or drug involvement when prosecution agrees to reckless driving conviction after charging DUI]). The DUI and refusal charges were dismissed. Bravo was sentenced to serve 10 days in county jail, complete 24 months of summary probation, and attend 104 Alcoholics Anonymous meetings. At the disciplinary hearing, the judge concluded that Bravo's claim he had not been drinking was contrary to other credible evidence, including the arresting officers' testimony.

C. Bravo's 2011 Wet Reckless Conviction Warrants Discipline

Bravo concedes his conviction in the present case is conclusive proof, for the purpose of attorney discipline, of each element of the crime. (See Bus. & Prof. Code, § 6101, subds. (a) & (e); *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813, 820.)[4] As such, the conviction establishes that he had been drinking and driving recklessly on August 27, 2011. Nevertheless, Bravo contends that since the evidence fails to prove his blood alcohol level was above the legal limit, we may not conclude that his conviction involves misconduct warranting discipline. We disagree. The issue is not Bravo's BAC level, but whether the facts and circumstances surrounding his wet reckless conviction involve other misconduct warranting discipline. (See *Kelley, supra*, 52 Cal.3d at pp. 494-495 [Supreme Court has inherent power to impose discipline for other misconduct warranting discipline].) Like the hearing judge, we find discipline is warranted here based on our Supreme Court's assessment of comparable facts in *Kelley*.

[4] Given this concession, it is unclear what argument Bravo is advancing by repeatedly referencing his nolo plea as one made pursuant to *People v. West* (1970) 3 Cal.3d 595 (where no contest plea is not admission of guilt but agreement to be punished as if guilty). Bravo cites no support for the proposition that a nolo plea made pursuant to *West* operates differently than any other nolo plea for purposes of attorney discipline.

The attorney in *Kelley* was convicted of two DUIs within four years of her 1982 admission to the Bar. (*Kelley, supra*, 52 Cal.3d at pp. 491-492.) She was placed on probation for the first DUI in 1984 and committed her second DUI in 1986, just two and a half years later *and* while still on criminal probation. (*Id.* at p. 491.) In addition, her BAC measured between .16% and .17%, yet she told the officers at the scene that she had not been drinking alcohol. (*Ibid.*) She also refused to submit to a field sobriety test and instead sat on the curb, became agitated, and accused the officer of arresting her because of a personal grievance against her ex-husband. (*Ibid.*) Ultimately, the attorney in *Kelley* entered a plea to a second DUI *and* a probation violation, and was sentenced to 40 days in custody. (*Id.* at p. 492.) Our Supreme Court concluded that the facts and circumstances surrounding her second conviction warranted discipline since she demonstrated disrespect for the legal system by violating probation orders and her two convictions within such a short time indicated an alcohol abuse problem. (*Id.* at p. 495.) The attorney proved three significant mitigating factors (no prior record of discipline, community service, and cooperation) and no evidence established that alcohol use had impacted her work. (*Id.* at pp. 497-498.) Even so, the Court decided not to wait until it did, and imposed "relatively minimal discipline" of a public reproval with conditions. (*Id*. at p. 498.)

As in *Kelley*, Bravo's misconduct warrants discipline. To begin, this is his third alcohol-related driving conviction, although it was a "wet reckless" and not a DUI. He committed the offense after serving time in custody, performing community service, paying a fine, attending alcohol education classes and meetings, and completing six years on criminal probation for similar offenses. Perhaps most significantly, Bravo knew that his second conviction nearly derailed his admission to the Bar. In fact, to advance his application, he sought early termination of his criminal probation and represented to the superior court that he was reformed. Despite these extra efforts to become an attorney, he nevertheless risked further penalties from the

criminal courts and the State Bar by drinking and driving again just two years into his legal career.

We are also troubled by Bravo's dishonesty to the officers. Like the attorney in *Kelley*, Bravo told the officers upon his arrest that he had not consumed any alcohol. He testified likewise at his disciplinary trial, which was contrary to the officers' credible testimony describing his objective signs of alcohol use, and the conclusive elements of his conviction.

The circumstances surrounding Bravo's conviction indicate a disrespect for the legal system and an alcohol abuse problem that has adversely affected his private life. "We cannot and should not sit back and wait until [Bravo's] alcohol abuse problem begins to affect [his] practice of law." (*Kelley*, 52 Cal.3d at p. 495.) Despite three criminal convictions, Bravo testified he does not believe he has an alcohol problem, and presented no evidence he is seeking help. (*Id*. at p. 496 [alcohol abuse problem may "spillover" into practice of law if it goes unchecked].) We recommend that discipline be imposed now in an effort to protect the public from potential harm. (But see *In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260 [no discipline warranted where, on day after inactive attorney convicted of second out-of-state DUI in two years, he quit drinking and began 18-month intense psychotherapy program showing respect for legal system and understanding of seriousness of misconduct].)

D. **No Consideration of Moral Turpitude Charge**

The hearing judge found the facts and circumstances surrounding Bravo's wet reckless conviction did *not* involve moral turpitude, but assigned some aggravation for indifference based on Bravo's ongoing denial to the officers that he had consumed alcohol. The State Bar did not appeal but asserts for the first time on review that Bravo's denial to the police constitutes an additional criminal offense (false statements to peace officers) and is thus an act of moral

turpitude (Bus. § Prof. Code, § 6106). However, it did not make this request in its pretrial statement or at closing argument, nor did it seek review on this issue. Accordingly, we decline to consider this change in position because doing so denies Bravo the opportunity to have developed the trial record on this issue. (See *In re Strick* (1983) 34 Cal.3d 891, 899 [attorney is entitled to "procedural due process in proceedings which contemplate the deprivation of his license to practice his profession"]; *Dimmick v. Dimmick* (1962) 58 Cal.2d 417, 422-423 [points not raised at trial not considered on appeal].) We relied on Bravo's dishonest statement to the police that he did not drink alcohol as a significant factor in determining that his conviction warrants discipline. As discussed below, we also consider his ongoing denial that he drank alcohol as an aggravating factor.

II. AGGRAVATION AND MITIGATION

The offering party bears the burden of proof for aggravation and mitigation. The State Bar must establish aggravating circumstances by clear and convincing evidence. (Rules Proc. of the State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b).)[5] Bravo has the same burden to prove mitigating circumstances. (Std. 1.2(e).) The hearing judge found one factor in aggravation — indifference toward rectification — and none in mitigation. Bravo does not challenge the lack of mitigation; the State Bar argues more weight should be given to aggravation. We agree with the hearing judge's findings.

The hearing judge found the evidence proved Bravo to be indifferent toward rectification of or atonement for the consequences of his misconduct. The judge reasoned: "Despite the considerable evidence to the contrary [arresting officers' testimony], respondent denies that he had consumed any alcohol prior to his arrest." The judge concluded Bravo has failed to come to

[5] Effective January 1, 2014, the standards were amended. Since this case was submitted for ruling in 2013, we apply the earlier version to this case, and unless otherwise noted, all references are to the former standards.

terms with the facts and circumstances surrounding his arrest and assigned "some consideration" in aggravation. We give great weight to the hearing judge's credibility determinations (Rules Proc. of State Bar, rule 5.155(A); *Connor v. State Bar* (1990) 50 Cal.3d 1047, 1055), and adopt the aggravation finding.

III. LEVEL OF DISCIPLINE

Standard 3.4 provides that conviction of a crime not involving moral turpitude but involving other misconduct warranting discipline shall result in discipline that appropriately reflects the nature and extent of the misconduct.[6] The discipline system is responsible for preserving the integrity of the legal profession as well as protection of the public. (*In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406, 416; std. 1.3.)

We found *Kelley, supra*, 52 Cal.3d 487 to be instructive on the threshold issue of whether discipline is warranted. We now look to it for guidance on the degree of discipline, as did the hearing judge. In *Kelley*, the Supreme Court found that the attorney's "repeated criminal conduct calls into question her judgment and fitness to practice law," and issued a public reproval with conditions for her second DUI conviction within four years, both occurring after she was licensed to practice law. (*Id*. at pp. 490-491, 499.) While the attorney in *Kelley* proved significant mitigation, her misconduct included serious components of wrongdoing not present in Bravo's case (misbehavior toward the officers, high BAC, and disregard of probation conditions). (See *id.* at pp. 491, 498.) On balance, we consider the cases to be comparable and believe the same discipline is warranted.

[6] As of January 1, 2014, standard 2.12(b) replaces former standard 3.4 regarding misdemeanor criminal convictions not involving moral turpitude. The new standard provides: "Suspension or reproval is appropriate for final conviction of a misdemeanor not involving moral turpitude but involving other misconduct warranting discipline." As stated above, we apply former standard 3.4 in this case and note that the new standard does not conflict.

The most important similarity in *Kelley* and in Bravo's case is that both attorneys continued to drink and drive illegally after suffering at least one alcohol-related conviction and receiving intensive alcohol abuse education. Other parallels include that neither attorney had a prior record of discipline after a short period of practice, their misconduct did not cause harm to clients or to any individual member of the public, and no evidence established that either attorney had abused alcohol in a manner that interfered with the practice of law. Significantly, both attorneys told the officers they had not consumed any alcohol despite evidence to the contrary. And as the attorney in *Kelley* demonstrated disregard for the conditions of her probation, Bravo ignored his professional obligations by drinking and driving while aware that such conduct is within the State Bar's purview. Finally, like the attorney in *Kelley*, Bravo's alcohol abuse is serious, has resulted in multiple criminal convictions, and involves "a threat of harm to the public." (*Kelley, supra*, 52 Cal.3d at p. 498.)

We fully agree with our dissenting colleague that drinking and driving is a serious crime with dangerous consequences to the public. However, we are mindful that "the aim of attorney discipline is not punishment or retribution; rather, attorney discipline is imposed to protect the public, to promote confidence in the legal system, and to maintain high professional standards." (*In re Brown* (1995) 12 Cal.4th 205, 216.) In other words, it is not our role to impose punishment for Bravo's conviction — the superior court has taken care of that by ordering him to serve 10 days in jail, be placed on probation, and attend an alcohol education program.

The issue before us is the level of discipline necessary to "protect the public from the threat of future *professional* misconduct." (*Kelley, supra*, 52 Cal.3d at p. 498, italics added.) We find, as did the hearing judge, that *Kelley* is the most comparable precedent. In contrast, we note that our Supreme Court has imposed an actual suspension, the discipline our dissenting colleague recommends, where the facts and circumstances surrounding a misdemeanor

conviction related to alcohol abuse involved violent conduct or when the attorney had a prior record of discipline. (*In re Hickey* (1990) 50 Cal.3d 571, 581-582 [30-day suspension where circumstances surrounding conviction for carrying concealed weapon demonstrated pattern of violence from alcohol abuse, including beating wife with gun and assaulting bystander]; *In re Carr* (1988) 46 Cal.3d 1089, 1090-1091 [six-month suspension where attorney was convicted of two DUIs one year apart; suspension consecutive to two-year suspension attorney was serving in prior discipline case].) Accordingly, we find that *Kelley* is the controlling authority and affirm the hearing judge's order for a public reproval with conditions.

IV. ORDER

Nicholas Ashley Bravo is ordered publicly reproved, which will be effective 15 days after service of this opinion and order. (Rules Proc. of State Bar, rule 5.127(A).)

Further, Bravo must comply with specified conditions attached to the public reproval. (Cal. Rules of Court, rule 9.19; Rules Proc. of State Bar, rule 5.128.) Failure to comply with any condition may constitute cause for a separate proceeding for willful breach of rule 1-110 of the Rules of Professional Conduct of the State Bar of California.

Bravo is ordered to comply with the following conditions for a period of one year following the effective date of this order:

1. He must comply with the provisions of the State Bar Act and the Rules of Professional Conduct.

2. Within 30 days after the effective date of this public reproval, he must contact the Office of Probation and schedule a meeting with a probation deputy to discuss these conditions attached to his public reproval. Upon direction of the Office of Probation, he must meet with a probation deputy either in person or by telephone. During the one-year period in which these conditions are in effect (reproval period), he must promptly meet with probation deputies as directed and upon request.

3. 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 his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, he

must report such change in writing to the Membership Records Office and the State Bar Office of Probation.

4. He must submit written quarterly reports to the Office of Probation on January 10, April 10, July 10, and October 10 of his reproval period. Under penalty of perjury, he must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his reproval during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the reproval period and no later than the last day of the reproval period.

5. Subject to the assertion of applicable privileges, he must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein.

6. Within one year of the effective date of this public reproval, he 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 he shall not receive MCLE credit for attending Ethics School.

7. He must take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year of the effective date of this public reproval and provide satisfactory proof of such passage to the Office of Probation within the same period.

V. COSTS

We further order that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment.

PURCELL, J.

I CONCUR:

REMKE, P. J.

EPSTEIN, J., dissenting.

I agree with the majority's culpability determinations but respectfully dissent from the recommended discipline. A public reproval is insufficient, given Bravo's denial of the serious nature of his misconduct, his failure to recognize the public safety concerns engendered by his misconduct, and his dishonesty. Instead, I conclude that public protection, which is a primary purpose of our disciplinary system (Bus. & Prof. Code, § 6001.1), warrants a 30-day suspension to provide Bravo with time to gain insight into the nature and consequences of his three alcohol-related criminal convictions.

A. Bravo's Denial of the Cause and Seriousness of his Misconduct

Significant discipline is necessary here because Bravo is indifferent to the consequences of his misconduct, which is a seriously aggravating factor. (Std. 1.2(b)(v).) Indeed, he staunchly maintains in his brief on appeal that "there is no competent evidence of any alcohol-related problem."

The Supreme Court has observed that two convictions for DUI under circumstances similar to the instant matter "are indications of a problem of alcohol abuse. The review department concluded that petitioner's contrary evidence was 'strongly impeached' by petitioner's two drunk driving convictions occurring within a short period of time." (*Kelley, supra,* 52 Cal.3d at p. 495.) Bravo's denial that there is any evidence of an alcohol-related problem not only flies in the face of the elements of each of his convictions, it reflects a seeming unwillingness to even consider the significance of his incarceration on three occasions for drinking and driving, his three probationary periods totaling eight of the past ten years, and his court-ordered participation in three alcohol education and recovery programs.

B. Bravo's Denial that his Convictions Involve Public Safety Concerns

We must also assess the need for significant discipline in light of Bravo's insistence that his three alcohol-related convictions "do not demonstrate a disregard of public safety." Yet a critical element of his convictions involves "driv[ing] a vehicle upon a highway in willful or wanton disregard of the safety of persons or property." (Vehicle Code § 23103, subd. (a).)

Bravo's cavalier attitude towards the consequences of his misconduct shows his contempt for the heightened public concern about drinking and driving and the concomitant strengthening of DUI laws. As the Court of Appeal observed in *People v. Ford* (1992) 4 Cal.App.4th 32, 38: "The community's interest in prosecuting driving under the influence cases has increased dramatically . . . . The Legislature has declared 'that problems related to the inappropriate use of alcoholic beverages adversely affect the general welfare of the people of California. These problems, which constitute the most serious drug problem in California, include . . . substantial fatalities, permanent disability, and property damage which result from driving under the influence of alcoholic beverages and a drain on law enforcement, the courts, and penal system which result from crimes involving inappropriate alcohol use.' [Citation.]."

That Bravo has been fortunate enough to avoid injury to individuals or property does not affect the seriousness with which we should address his misconduct. As our Supreme Court observed in *Kelley, supra,* 52 Cal.3d at p. 496: "Although it is true that petitioner's misconduct caused no harm to her clients, this fact alone does not insulate her from discipline aimed at ensuring that her potentially harmful misconduct does not recur."

C. Bravo's Conduct Is Aggravated by Dishonesty

Bravo's obdurate denial of the cause and effect of his misconduct has on numerous occasions resulted in dishonesty. At the time of his first drinking and driving offense in 2002, he told the arresting police officer he had consumed one beer, while in this proceeding he testified

that he drank a screwdriver. His BAC was 0.08% at the time of his arrest in 2006. While this first incident of stretching the truth could arguably be seen as youthful indiscretion, his conduct at the time of his subsequent arrest and conviction for DUI must be viewed through an entirely different prism. Less than a year after the end of his probation from his first conviction — and while he was in law school — Bravo lied to the arresting officer that he had not consumed *any* alcohol, although his BAC was .11% at the time. The Supreme Court recently voiced its concern about misconduct involving dishonesty committed while an individual was "pursuing a law degree and license to practice law, when the importance of honesty should have gained new meaning and significance to him." (*In re Glass* (Jan. 27, 2014, S196374) ___ Cal.4th ___ [p. 28].) Bravo's blatant lie, after having been previously convicted and while pursuing his law degree, seriously aggravates his misconduct.

Bravo was placed on probation for 36 months after his second conviction, and he sought early termination of this probation in 2009 to expedite his moral character determination by the State Bar. He pledged to the Superior Court that he "would like to take the initiative in moving forward on a positive note and making good on his legal as well as financial obligations." Yet, two years later, and now an attorney, Bravo again was arrested and convicted of an alcohol-related driving offense. He stated that alcohol was not involved. The majority finds, and I agree, that "Bravo's dishonest statement to the police that he did not drink alcohol is a significant factor. . ."

D. The Facts and Circumstances Unique to this Case Warrant a 30-Day Suspension

In assessing the appropriate level of discipline, the majority has carefully parsed the facts in *Kelley, supra,* 52 Cal.3d 487, and in so doing, it concludes that the misconduct in *Kelley* is "comparable" with Bravo's misconduct. I agree with this assessment, but for two distinguishing factors that support a greater level of discipline in the present matter.

First, Bravo's dishonesty permeates his course of conduct over the past 12 years, beginning with the misinformation that he provided to the arresting officer in 2002, continuing when he lied about his alcohol consumption in 2006 while he was in law school, persisting during his arrest in 2011, and again manifesting during these proceedings. Bravo's recurrent dishonesty is a very significant factor in recommending a 30-day suspension. The Supreme Court has repeatedly admonished: "Honesty is absolutely fundamental in the practice of law; without it ' " ' "the profession is worse than valueless in the place it holds in the administration of justice." ' " ' [Citation.]." (*In re Glass, supra,* ___ Cal.4th ___ [p. 30].)

Second, there is a complete absence of evidence in mitigation in this case, whereas the mitigating factors in *Kelley* were the very reason why the Supreme Court recommended a public reproval. In fact, the Supreme Court adopted the review department's findings of "several significant mitigating factors (e.g., lack of a prior disciplinary record, extensive involvement in community service, and cooperation during disciplinary proceedings)." (*Kelley, supra,* 52 Cal.3d at p. 498.) The Court then concluded: "*For these reasons, relatively minimal discipline is warranted* in this case, even though petitioner's crimes were serious and involved a threat of harm to the public." (*Ibid.*, italics added.)

The majority emphasizes that our concern here is with *professional* misconduct. Such was the concern of the Supreme Court in *Kelley*, when it found a nexus between the attorney's two DUI convictions and her fitness to practice law. (*Kelley, supra,* 52 Cal.3d at p. 496.) "Petitioner's behavior evidences both a lack of respect for the legal system and an alcohol abuse problem. Both problems, if not checked, may spill over into petitioner's professional practice and adversely affect her representation of clients and her practice of law." (*Ibid.*)

The majority also considered *In re Hickey, supra,* 50 Cal.3d 571 for additional guidance, noting that the attorney received a 30-day suspension for assaultive behavior that was related to

alcohol abuse, and therefore involved more serious misconduct. However, in *Kelley*, the Supreme Court indicated its willingness to impose a six-month suspension for an attorney based on "two convictions of drunk driving, even when no moral turpitude was found. (See, e.g., *In re Carr* (1988) 46 Cal.3d 1089 [six months' actual suspension levied on attorney with prior disciplinary record for two convictions of drunk driving].)" (*Kelley, supra,* 52 Cal.3d at p. 496.) While Bravo does not have a prior discipline, as did the attorney in *Carr*, he committed his third alcohol-related crime knowing that his two prior convictions had impeded his moral character determination and presented a serious obstacle to gaining admittance to practice law.

The absence of any mitigation and the presence of dishonesty justifies a more serious discipline than the public reproval imposed in the *Kelley* case. Moreover, in the past 24 years since the *Kelley* and *Hickey* decisions, there has been a marked shift in public concern over the serious public safety implications of alcohol-related driving offenses. I conclude that a 30-day suspension is consistent with the evolving public policy in this State and is necessary under the facts and circumstances of this case "to preserve the integrity of the legal profession" as well as protection of the public. (*In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406, 416.)

EPSTEIN, J.