STATE BAR COURT
REVIEW DEPARTMENT

In the Matter of

DANIEL G. MEZA

A Member of the State Bar

[No. 90-C-16535]

Filed July 16, 1991

SUMMARY

An attorney was convicted of violating Penal Code section 288.5 (engaging in three or more acts of substantial sexual conduct with a child under age 14), a felony and a crime of moral turpitude per se. The attorney was placed on interim suspension by the Acting Presiding Judge of the State Bar Court pursuant to Business and Professions Code section 6102(a) and rule 951(a), California Rules of Court.

Prior to the effective date of the interim suspension order, the attorney petitioned to set it aside under the "good cause" provision of section 6102(a). The basis for the petition was the leniency of petitioner's criminal sentence, evidence of his rehabilitation, and claimed financial hardship to his family. The review department concluded that the contested factual basis for the petition did not support a finding of good cause to vacate the order of interim suspension, as required by Business and Professions Code section 6102(a). The review department therefore denied the petition on the ground that petitioner's showing was insufficient for the relief requested.

COUNSEL FOR PARTIES

For Office of Trials: Janet S. Hunt

For Respondent: Arthur L. Margolis, Susan L. Margolis

HEADNOTES

[1] **162.20 Proof—Respondent's Burden**
1549 Conviction Matters—Interim Suspension—Miscellaneous
There is no statutory or case law definition for the type of showing necessary to support the setting aside of an interim suspension order of an attorney convicted of a felony or of a crime of moral turpitude. Generally, "good cause" is dependent on the particular facts of each case.

Editor's note: The summary, headnotes and additional analysis section are not part of the opinion of the Review Department, but have been prepared by the Office of the State Bar Court for the convenience of the reader. Only the actual text of the Review Department's opinion may be cited or relied upon as precedent.

[2 a-c] **1549 Conviction Matters—Interim Suspension—Miscellaneous**

Interim suspension of an attorney following a criminal conviction is provisional and temporary, and one of its purposes is to preserve the respect and dignity of the court until a final judgment is entered. Consideration of the integrity of the legal profession has also been incorporated into the balancing test for determination of whether the interest of justice is served by setting aside an order of interim suspension. The purpose of interim suspension is to protect the public, the courts and the legal profession until all facts relevant to a final disciplinary order are before the court.

[3] **1549 Conviction Matters—Interim Suspension—Miscellaneous**

Present fitness to practice law and the concomitant question of public protection are factors to be considered in determining whether good cause exists to decline to impose an interim suspension.

[4 a, b] **139 Procedure—Miscellaneous**
162.20 Proof—Respondent's Burden
191 Effect/Relationship of Other Proceedings
1549 Conviction Matters—Interim Suspension—Miscellaneous
1691 Conviction Cases—Record in Criminal Proceeding
1699 Conviction Cases—Miscellaneous Issues

One distinction between an interim suspension order and a final order of discipline is the type of record before the court. At the interim suspension stage, the court has the criminal conviction and a statutory mandate to order interim suspension absent a showing of good cause. The petitioner has the burden of showing good cause to set aside an order of interim suspension, and no evidentiary hearing has occurred to test alleged mitigating factors. Thus, contested facts cannot be relied upon as a basis for vacating the order of interim suspension.

[5] **1521 Conviction Matters—Moral Turpitude—Per Se**
1549 Conviction Matters—Interim Suspension—Miscellaneous

Where a criminal conviction is for a felony and involves moral turpitude per se, these are strong factors militating in favor of interim suspension since felons convicted of crimes involving moral turpitude are presumptively considered unsuitable legal practitioners. Interim suspensions for such crimes have rarely been vacated, but the governing statute does permit the court to set aside orders of interim suspension based on such convictions, and it has been done on occasion.

[6] **191 Effect/Relationship of Other Proceedings**
793 Mitigation—Other—Found but Discounted
1549 Conviction Matters—Interim Suspension—Miscellaneous
1691 Conviction Cases—Record in Criminal Proceeding

While the leniency of an attorney's criminal sentence might be relevant in assessing final discipline, punishment by the criminal court serves a fundamentally different purpose than the provisions of the State Bar Act, and leniency of the criminal sentence therefore is not relevant to the determination whether there is good cause to vacate the attorney's interim suspension.

[7 a, b] **113 Procedure—Discovery**
750.59 Mitigation—Rehabilitation—Declined to Find
1549 Conviction Matters—Interim Suspension—Miscellaneous

Evidence of convicted attorney's efforts toward rehabilitation would be relevant at the hearing on final discipline, but could not be relied upon in proceedings seeking to vacate interim suspension because of lack of opportunity for pretrial discovery and full development of facts.

[8] **1514.20 Conviction Matters—Nature of Conviction—Sex Offenses**
Case law indicates a wide range of available discipline for cases involving sexual conduct toward children depending on the circumstances.

[9 a-c] **162.20 Proof—Respondent's Burden**
760.59 Mitigation—Personal/Financial Problems—Declined to Find
1521 Conviction Matters—Moral Turpitude—Per Se
1549 Conviction Matters—Interim Suspension—Miscellaneous
Every attorney convicted of a felony or crime of moral turpitude can anticipate an order of interim suspension and attendant hardships, but hardship to the attorney's family does not outweigh the need to protect the public and maintain the integrity of the legal profession pending a full hearing on the merits. Where, due to delay in transmittal of conviction, attorney had had several months to make alternative employment arrangements, and attorney had given no details of his current income, recent earnings, or efforts to seek other employment, attorney's showing of hardship was insufficient in light of all factors to constitute good cause to vacate interim suspension.

ADDITIONAL ANALYSIS

Other

1541.10 Conviction Matters—Interim Suspension—Ordered
1541.20 Conviction Matters—Interim Suspension—Ordered

OPINION

PEARLMAN, P.J.:

Petitioner Daniel G. Meza was admitted to membership in the State Bar of California in 1983.[1] On March 11, 1991, Acting Presiding Judge Stovitz ordered petitioner interimly suspended pursuant to Business and Professions Code section 6102 (a)[2] upon receipt of evidence of petitioner's felony conviction in November 1990 for violation of Penal Code section 288.5, engaging in three or more acts of substantial sexual conduct with a child under age 14, a crime involving moral turpitude. The interim suspension was ordered to commence April 10, 1991.

On March 26, 1991, the instant petition to set aside order for interim suspension pursuant to Business and Professions Code section 6102 (a) and California Rules of Court, rule 951(a) was filed. Petitioner asserted that good cause was shown for vacating the interim suspension order on the grounds that the criminal proceeding resulted in no jail time; he has been rehabilitated since the criminal conduct; the crime was unrelated to his law practice; no clients were harmed and interim suspension would result in financial harm to himself and his family. The petition was supported by numerous letters and exhibits including psychiatric reports. The Presiding Judge referred the petition to the review department pursuant to subdivision (c) of rule 1400 of the Provisional Rules of Practice. Upon receipt of evidence of finality of the conviction, the Presiding Judge ordered a proceeding to commence in the hearing department to determine appropriate discipline. The Presiding Judge also granted the late filing of the Office of Trial Counsel's opposition to the petition to set aside the order of interim suspension and temporarily stayed the effective date of the interim suspension in order to give the review department sufficient opportunity to set the matter specially for oral argument on petitioner's petition and issue an opinion disposing thereof. Oral argument was ordered because the petition involved an issue for which there appeared to be no published Supreme Court opinion for guidance.

After hearing oral argument and receiving posthearing briefs from both parties, the review department has concluded that petitioner has failed at this stage of the proceedings to demonstrate that the interests of justice would be served by setting aside the order of interim suspension. His petition is therefore denied.

DISCUSSION

Business and Professions Code section 6102, subdivision (a) provides that: "Upon the receipt of the certified copy of the record of conviction, if it appears therefrom that the crime of which the attorney was convicted involved or that there is probable cause to believe that it involved moral turpitude or is a felony[3] under the laws of California or of the United States, the Supreme Court *shall suspend* the attorney until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal, or has otherwise become final, and until the further order of the court. *Upon its own motion or upon good cause shown the court may decline to impose, or may set aside, the suspension when it appears to be in the interest of justice to do so, with due regard being given to maintaining the integrity of and confidence in the profession.*" (Emphasis supplied.)

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1. Petitioner has no prior record of discipline although a separate proceeding is now pending before the hearing department on a referral order from the Supreme Court with respect to a 1987 Vehicle Code section 23152, subdivision (b) conviction (driving with a greater blood alcohol content than the law allows). (Case No. 89-C-10463-CWS.)

2. Effective December 1, 1990, subdivision (a) of rule 951, California Rules of Court, authorizes the State Bar Court to ". . . exercise statutory powers pursuant to Business and Professions Code sections 6101 and 6102 with respect to the discipline of attorneys convicted of crimes. . . . The power conferred upon the State Bar Court by this rule includes, but is not limited to, the power to place attorneys on interim suspension . . . and the power to vacate, delay the effective date of, and temporarily stay the effect of the orders."

3. Prior to January 1, 1986, interim suspension was mandated only for conviction of crimes of moral turpitude.

[1] There is no statutory or case law definition for the type of showing necessary to support the setting aside of an interim suspension order of an attorney convicted of a felony or of a crime involving moral turpitude. In general, it has been well established that "good cause" is dependent on the particular facts of each case. (See, e.g., *Ex Parte Bull* (1871) 42 Cal. 196, 199; *R.J. Cardinal Co.* v. *Ritchie* (1963) 218 Cal.App.2d 124, 144-145.) The Supreme Court has also from time to time commented on the purposes of interim suspension from which a balancing test can be formulated.

[2a] Prior to the enactment of Business and Professions Code section 6102, in *Shafer* v. *State Bar* (1932) 215 Cal. 706, the Supreme Court articulated the purpose of interim suspension following a felony criminal conviction as follows: "The first order of suspension is provisional and temporary, awaiting the affirmance or reversal of the judgment of conviction. [Citation.] It does not purport to satisfy the charge against a petitioner or to settle his fitness to remain a member of the bar. *Its purpose is to preserve the respect and dignity of the court* until the facts . . . mature into a final judgment." (*Id.* at p. 708, emphasis added.) This "preservation of respect and dignity of the court" rationale justifying interim suspension was also expressed in *In re Jacobsen* (1927) 202 Cal. 289.[4]

The goal of protecting the reputation of the legal profession and the courts was again stated in *In re Rothrock* (1940) 16 Cal.2d 449, 458-459 (declining to interimly suspend an attorney convicted of assault with a deadly weapon, holding that the crime did not involve moral turpitude). The Court reasoned that "[t]he commission of such lesser offenses by an attorney in the heat of anger or as the result of physical or mental infirmities does not, without more, cast discredit upon the prestige of the legal profession or interfere with the efficient administration of the law . . . ." (*Id.* at p. 459.)

[2b] These decisions all predated the enactment of Business and Professions Code section 6102 (a) which incorporates consideration of the integrity of the legal profession into the balancing test for determination of whether the interest of justice is served by setting aside an order of interim suspension. The Supreme Court has more recently stated that "The purpose of interim suspension—like that of disbarment—is to protect the public, the courts, and the profession against unsuitable legal practitioners (see, *In re Conflenti* (1981) 29 Cal.3d 120), and present fitness to practice is the controlling consideration (*In re Petty* [1981] 29 Cal.3d 356)." (*In re Strick* (1983) 34 Cal.3d 891, 902.)

Very recently, the Supreme Court addressed the effect of interim suspension upon a final disciplinary order of suspension, noting "Whether a suspension be called interim or actual, of course, the effect on the attorney is the same—he is denied the right to practice his profession for the duration of the suspension. [¶] We conclude that under the unusual facts and circumstances of this case a further period of suspension is not required for the protection of the public, the profession, or the courts." (*In re Leardo* (1991) 53 Cal.3d 1, 18.)

[3] Thus, present fitness to practice law and the concomitant question of protection of the public are clearly factors which must be given consideration in determining whether good cause exists to decline to impose an interim suspension just as such considerations are relevant in imposing final discipline. **[4a]** One major difference, however, between an interim order such as the one before us and a final order of discipline is the type of record before us. At this stage we have the criminal conviction and a statutory

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4. In *In re Jacobsen, supra*, 202 Cal. 289, the attorney, who was convicted of an unspecified felony involving moral turpitude, objected to the Supreme Court's imposition of interim suspension because he had submitted his resignation from the bar. The Supreme Court entered the temporary suspension order, reasoning that "[a]n attorney convicted of a felony involving moral turpitude, the nature of which is calculated to injure his reputation for the performance of the important duties which the law enjoins, should not be permitted to escape punishment. If the court permits it, *such act tends to lessen the respect which the public should have for members of the legal profession.*" (*Id.* at p. 290, emphasis added.)

mandate to order interim suspension absent a showing of good cause.

[4b] Not only does the petitioner have the burden of showing good cause, the procedural posture is such that no evidentiary hearing has yet occurred to test alleged mitigating factors. Contested facts therefore cannot be relied upon as a basis for vacating the suspension order. That is what the disciplinary hearing following petitioner's conviction is for.

[2c] The examiner aptly states that the purpose of interim suspension is to protect the public, the courts and the legal profession until all facts relevant to a final disciplinary order are before the court, citing *In re Bogart* (1973) 9 Cal.3d 743, 748; *Shafer* v. *State Bar*, *supra*, 215 Cal. at p. 708.

We therefore consider the instant petition in light of this test. **[5]** Petitioner was convicted of a felony involving moral turpitude. These are strong factors militating in favor of interim suspension since felons committing crimes of moral turpitude are presumptively considered unsuitable legal practitioners. (See *In re Higbie* (1972) 6 Cal.3d 562, 573; *In re Strick* (1983) 34 Cal.3d 891, 898.) Rarely has the Supreme Court vacated interim suspension for crimes of this nature. Nonetheless, Business and Professions Code section 6102 (a) provides for the court to vacate an interim suspension order even for felony convictions involving moral turpitude and the Supreme Court has on occasion set aside an interim suspension order for a felony involving moral turpitude. (See, e.g., *In re Kristovich* (1976) 18 Cal.3d 468 [perjury and preparation of false documentary evidence]; *In re DeMassa*, Supreme Ct. order filed April 8, 1986 (Bar Misc. 5100) [harboring a fugitive].)

[6] Petitioner contends that his showing here constitutes the good cause necessary to entitle him to relief. Among other things, petitioner points to the leniency of the sentencing judge's action, including no jail time. While that factor might bear some relevance in assessing final discipline, the punishment of petitioner by the criminal court serves a fundamentally different purpose than the Supreme Court's concerns and ours in administering the provisions of the State Bar Act. (See *In re Nevill* (1985) 39 Cal.3d 729, 737; *In re Hanley* (1975) 13 Cal.3d 448, 455.)

[7a] Petitioner also points to extensive evidence of rehabilitation. The Office of Trial Counsel has indicated the need for discovery to test the facts relied upon in the petition. We agree that petitioner's efforts toward rehabilitation are more appropriately offered as evidence at the hearing on the issue of the ultimate discipline. Their offer here causes us to speculate as to the specific facts and circumstances surrounding petitioner's offense and his subsequent conduct when those facts are not yet fully developed.

[7b] Certainly evidence of rehabilitation is relevant to the ultimate degree of discipline warranted when all of the facts are before the court. **[8]** Case law indicates a wide range of available discipline for cases involving sexual conduct toward children depending on all of the circumstances. (Compare *In re Safran* (1976) 18 Cal.3d 134 [indecent exposure; court imposed three years stayed suspension conditioned on three years probation] with *In re Duggan* (1976) 17 Cal.3d 416 [contributing to the delinquency of a minor; respondent was disbarred]. See also *In the Matter of X, An Attorney at Law* (1990) 120 N.J. 459, 461 [577 A.2d 139, 140] [second-degree sexual assault; attorney was disbarred]; *In re Yurman*, Supreme Ct. order filed March 29, 1979 (Bar Misc. 3750) [exciting the lust of a child under 14; two years suspension, stayed, and two years probation].)

[9a] Petitioner's claim of financial hardship toward his family evokes sympathy, but every attorney convicted of a crime of moral turpitude or of a California or federal felony can anticipate an order of interim suspension with attendant and very real hardships. (Cf. *In re Jones* (1971) 5 Cal.3d 390, 392-393;

In re Lamb (1989) 49 Cal.3d 239, 248.)[5] Petitioner's claim does not outweigh the need to protect the public and maintain integrity of the legal profession pending a full hearing on the merits.

[9b] For reasons unknown to us, petitioner's conviction was not transmitted promptly to us and he has had several months between the date of conviction and the effective date of interim suspension to make alternative employment arrangements. While asserting hardship, petitioner has given us no details of the income he currently earns and has recently earned from law practice or of the efforts he has undertaken to seek other employment in the extended time period he has had since his conviction.

[9c] Considering all of the factors, we deem petitioner's showing insufficient for relief, but do request that the State Bar Court hearing take place expeditiously so that the appropriate order regarding final discipline can be entered without undue delay.

IT IS ORDERED that Daniel G. Meza be interimly suspended effective thirty days after service of this opinion upon his counsel. He is further ordered to comply with subdivisions (a) and (c) of rule 955, California Rules of Court, within 30 and 40 days, respectively, after the effective date of his interim suspension.

We concur:

NORIAN, J.
STOVITZ, J.

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5. Other states follow a similar practice. As stated in a leading case concerning interim suspension, *Mitchell* v. *Association of the Bar of the City of New York* (1976) 40 N.Y.2d 153, 156 [351 N.E.2d 743, 745, 386 N.Y.S.2d 95, 97] (summarily disbarring former U.S. Attorney General John Mitchell following his conviction of Watergate-related felonies): "[t]o permit a convicted felon to continue to appear in our courts and to continue to give advice and counsel would not 'advance the ends of justice', but instead would invite scorn and disrespect for our rule of law." (Cases supporting this rationale in imposing interim or temporary suspension include *United States* v. *Jennings* (5th Cir. 1984) 724 F.2d 436, 450 [upholding federal district court's suspension order imposed immediately following an attorney's conviction for making false claims to a federal agency]; *In re Stoner* (N.D.Ga. 1981) 507 F.Supp. 490, 492-493 [suspending attorney following his conviction for setting off dynamite dangerously near or in an inhabited building]; *United States* v. *Friedland* (D.N.J. 1980) 502 F.Supp. 611, 614-616 [denying defendant/attorney's motion to vacate the interim suspension imposed immediately following his conviction for conspiracy, obstruction of justice, tax violations, and receiving illegal kickbacks]; *Mississippi State Bar* v. *Nixon* (Miss. 1986) 494 So.2d 1388, 1389 [granting state bar's request that attorney, a former U.S. District Court Judge, be temporarily suspended following his conviction for perjury]; *Carter* v. *Romano* (R.I. 1981) 426 A.2d 255, 255-256 [granting disciplinary counsel's request to temporarily suspend an attorney following his conviction for conspiracy, perjury, injury to communications lines, and receiving stolen property]; *In the Matter of Stoner* (1980) 246 Ga. 581, 582 [272 S.E.2d 313, 313-314] [granting special master's request that attorney be temporarily suspended following his conviction for illegal use of explosives]; *Attorney Grievance Commission* v. *Reamer* (1977) 281 Md. 323, 330-336 [379 A.2d 171, 176-178] [granting state bar's request to interimly suspend an attorney following his conviction for mail fraud]; *Florida Bar* v. *Prior* (Fla. 1976) 330 So.2d 697, 702, 704 [holding that attorney had not shown good cause sufficient to avoid interim suspension following an attorney's conviction for making false statements before a federal grand jury].)