

**STATE BAR COURT
REVIEW DEPARTMENT**

In the Matter of

ROLAND RAMEZ SALAMEH

A Member of the State Bar

No. 91-C-04384

Filed March 7, 1994

SUMMARY

The Office of the Chief Trial Counsel requested that respondent be summarily disbarred based on his felony conviction for forgery of a court document.

The review department found that the statutory requirements for summary disbarment were satisfied in that an element of the crime was a specific intent to defraud and the offense was committed in the practice of law. It concluded that based on the seriousness of the conviction, disbarment was consistent with Supreme Court precedent. Respondent's contention that he should be granted a hearing on the question of discipline, because he did not actually intend to commit a crime, was rejected as inconsistent with the conclusive presumption of guilt which arose from his conviction. The review department therefore recommended that respondent be summarily disbarred.

COUNSEL FOR PARTIES

For Office of Trials: Lawrence J. Dal Cerro, Geri Von Freymann

For Respondent: Jeffrey S. Benice, Cheryl A. Canty

HEADNOTES

- [1] **191 Effect/Relationship of Other Proceedings**
 192 Due Process/Procedural Rights
 1691 Conviction Cases—Record in Criminal Proceeding

An attorney is charged with knowledge that the legal consequences of the attorney's conviction include summary disbarment when statutory authority provides therefor.

- [2 a, b] **162.90 Quantum of Proof—Miscellaneous**
191 Effect/Relationship of Other Proceedings
1518 Conviction Matters—Nature of Conviction—Justice Offenses
1519 Conviction Matters—Nature of Conviction—Other
1553.10 Conviction Matters—Standards—Enumerated Felonies—Summary Disbarment
1691 Conviction Cases—Record in Criminal Proceeding

Summary disbarment is statutorily authorized where an attorney is convicted of a felony and (1) an element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement, and (2) the offense was committed in the course of the practice of law or in any manner such that a client of the attorney was a victim. The crime of forgery includes as one of its elements the specific intent to defraud. A forgery conviction for altering a court document was unquestionably committed in the course of the practice of law in that it involved fraud on the court perpetrated on behalf of the attorney's client. Accordingly, summary disbarment was appropriate in the absence of conflicting Supreme Court precedent or a violation of due process in disbaring respondent without a hearing.

- [3] **191 Effect/Relationship of Other Proceedings**
192 Due Process/Procedural Rights
1691 Conviction Cases—Record in Criminal Proceeding
1699 Conviction Cases—Miscellaneous Issues

An attorney convicted of a felony is chargeable with notice that the crime remains a felony for State Bar discipline purposes irrespective of whether in a particular case the crime may be considered a misdemeanor as a result of post-conviction proceedings. Under some circumstances, prosecutorial discretion in originally charging a particular crime as a felony rather than a misdemeanor may raise questions as to the propriety of summary disbarment, but no such issue was presented where there was no evidence of abuse of discretion or other unfairness in charging forgery of a court document as a felony.

- [4] **101 Procedure—Jurisdiction**
1091 Substantive Issues re Discipline—Proportionality
1553.10 Conviction Matters—Standards—Enumerated Felonies—Summary Disbarment
1699 Conviction Cases—Miscellaneous Issues

The Legislature itself has recognized that the inherent authority of the Supreme Court controls the outcome in disciplinary proceedings. It is therefore incumbent upon the review department not only to review the statutory criteria for summary disbarment, but also to review Supreme Court precedent to assure that application of statutory summary disbarment does not conflict with Supreme Court standards for disbarment.

- [5 a-c] **147 Evidence—Presumptions**
191 Effect/Relationship of Other Proceedings
192 Due Process/Procedural Rights
1691 Conviction Cases—Record in Criminal Proceeding

Where respondent contended that he had only pleaded guilty in order to avoid two separate trials, and that he had not intended to commit a crime, due process did not entitle him to a hearing before the State Bar Court to prove these contentions, because he would be precluded from presenting evidence thereof by the statute providing that proof of an attorney's conviction of a felony or misdemeanor involving moral turpitude is conclusive evidence of the attorney's guilt of the elements of the crime in any proceeding to suspend or disbar the attorney. This conclusive presumption precludes collateral attack on the conviction by attorneys who seek to reassert their

innocence in subsequent State Bar proceedings. In this regard, a conviction following a guilty plea is just as conclusive as a conviction following a full criminal trial.

- [6] **1518** **Conviction Matters—Nature of Conviction—Justice Offenses**
 1519 **Conviction Matters—Nature of Conviction—Other**
 1521 **Conviction Matters—Moral Turpitude—Per Se**
 1552.10 **Conviction Matters—Standards—Moral Turpitude—Disbarment**
 1553.10 **Conviction Matters—Standards—Enumerated Felonies—Summary Disbarment**
- Forgery is by definition a crime of moral turpitude. Under Supreme Court case law, disbarment is the rule rather than the exception for this serious crime. Forgery of a court document involves fraud on the court, which is particularly egregious. Accordingly, where respondent was convicted of such crime, respondent would have faced disbarment even if granted a hearing on the issue of appropriate discipline.

ADDITIONAL ANALYSIS

Discipline

1610 Disbarment

Other

175 Discipline—Rule 955
1541.10 Conviction Matters—Interim Suspension—Ordered
1541.20 Conviction Matters—Interim Suspension—Ordered

OPINION

PEARLMAN, P.J.:

Respondent Roland Ramez Salameh was convicted on September 15, 1992, of one felony count of violating Penal Code section 470, subdivision (a) (forgery) following entry of his guilty plea. This conviction resulted from a plea bargain following charges of violating Penal Code section 182 (conspiracy to commit the crime of falsifying documents); Penal Code section 134 (falsifying documents to be used in evidence); and Penal Code section 132 (offering forged or altered documents as genuine). The record of conviction was transmitted by the State Bar to the State Bar Court on or about January 5, 1993. On January 8, 1993, under the authority of rule 951(a) of the California Rules of Court, the Presiding Judge ordered Salameh suspended effective February 9, 1993. He has remained on interim suspension ever since.

In July of 1993, the Office of the Chief Trial Counsel ("OCTC"), on behalf of the State Bar, submitted evidence of the finality of respondent's conviction to the State Bar Court Review Department and requested respondent's summary disbarment pursuant to Business and Professions Code section 6102 (c). Respondent's counsel objected thereto and the matter was set for briefing and oral argument.¹ Upon due consideration of the arguments raised by both parties, we conclude that the criteria for summary disbarment have been met and recommend to the Supreme Court that respondent be summarily disbarred.

DISCUSSION

Respondent asserted in a declaration in support of his brief that he was led to believe he would receive a trial in the State Bar disciplinary proceedings and that the plea bargain would preserve his right to present a defense in the State Bar Court. At oral argument, his counsel withdrew the suggestion that respondent was misled by the State Bar. He also indicated that there was no basis for respondent to file a writ of error *coram nobis* attacking the validity of his conviction. We therefore proceed to analyze his rights following his felony conviction.

Business and Professions Code section 6102 (c) was enacted several years prior to respondent's commission of his crime and entry of his guilty plea. [1] An attorney is charged with knowledge that the legal consequences of his conviction include summary disbarment when statutory authority provides therefor. (*In re Collins* (1922) 188 Cal. 701, 707-708; see also *In re Riccardi* (1920) 182 Cal. 675.)

[2a] Business and Professions Code section 6102 (c) authorizes summary disbarment after a felony conviction becomes final² [3 - see fn. 2] if two criteria are met: "(1) An element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement. [9] (2) The offense was committed in the course of the practice of law or in any manner such that a client of the attorney was a victim."

In this case, the conviction was based on forgery of a court document—a proof of service and declaration re diligence which was altered after filing with

1. In connection therewith, respondent requested that this court take judicial notice of certain court files maintained by the Orange County District Attorney's office (*O'Rourke v. Dominguez et al.*) and Orange County Superior Court case number C-88760 (*People v. Roland Ramez and Linda Lucille Brierley*) and the corresponding investigative file maintained by the District Attorney. We agree with the State Bar that respondent has failed to establish the relevance of such documents and we decline respondent's request.

2. Respondent asserts that the plea bargain included conversion of the felony conviction to a misdemeanor after one year.

[3] He is also chargeable with notice that a crime remains a felony under section 6102 of the Business and Professions Code "irrespective of whether in a particular case the crime may be considered a misdemeanor as a result of post conviction proceedings." (Bus. & Prof. Code, § 6102 (b).) While, under some circumstances, prosecutorial discretion in originally charging a particular crime as a felony rather than a misdemeanor might raise questions as to the propriety of summary disbarment (cf. *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465, 470-471), no evidence of abuse of discretion or other unfairness in the charges was raised here.

the Orange County Superior Court in connection with a motion to enter default in a pending personal injury case in which respondent represented the plaintiff. The alteration was made by a court clerk named Linda Brierley who also performed clerical services for respondent. Respondent offered the following facts to the superior court judge as the basis of his guilty plea: "During November 1990, in Orange County, with the intent to prejudice I aided and abetted in the false alteration of a document executed and filed on my behalf by Linda Brierley and later presented the document as true and accurate."

[2b] The crime of forgery to which respondent pled guilty includes as one of its elements the specific intent to defraud. (*People v. Prantil* (1985) 169 Cal.App.3d 592, 596; see generally 2 Witkin & Epstein, Cal. Crim. Law (2d ed. 1988) §§ 714, 715; CALJIC 15.00 ["Every person who, with the specific intent to defraud . . ."]). Respondent's crime was unquestionably committed in the course of the practice of law. It involved fraud on the court perpetrated on behalf of his client. The only remaining question is whether, as respondent's counsel contends, there is no Supreme Court precedent for his summary disbarment and due process would be violated if respondent were disbarred without a hearing.

OCTC has not sought summary disbarment solely based on the technical applicability of Business and Professions Code section 6102 (c), but also on the basis of Supreme Court precedent. [4] As we noted in *In the Matter of Segall* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 71, 76, the Legislature itself has recognized that the inherent authority of the Supreme Court controls the outcome in disciplinary proceedings. It is therefore incumbent upon the review department not only to review the statutory criteria for summary disbarment, but also to review Supreme Court precedent to assure that application of section 6102 (c) does not conflict with Supreme Court standards for disbarment.

Among the numerous cases cited by OCTC in support of disbarment are *In re Rivas* (1989) 49 Cal.3d 794; *In re Scott* (1991) 52 Cal.3d 968; *In re Ford* (1988) 44 Cal.3d 810 and *In re Collins, supra*, 188 Cal. 701. The first three involved disbarment after a hearing but regardless of mitigating circum-

stances, while the fourth involved summary disbarment. The only recent cases cited by respondent's counsel either involved felonies not committed in the practice of law (e.g., *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 103-104) or misconduct not involving a felony conviction. (E.g., *Friedman v. State Bar* (1990) 50 Cal.3d 235.) Respondent's counsel, moreover, in attempting to distinguish the cases cited by OCTC, fails to acknowledge that respondent submitted a factual basis for his guilty plea and fails to recognize the legal effect of respondent's guilty plea. [5a] Rather, respondent's counsel contends that respondent's plea did not address whether he actually intended to do the act alleged; that respondent only agreed to the conviction in order to avoid the expense and trouble of two separate trials; and that he did not intend to commit a crime. He argues that respondent should be entitled to a hearing before the State Bar Court to prove these contentions and that, if such hearing is not afforded, he will be deprived of his right to due process under the United States Constitution.

[5b] Business and Professions Code section 6101 (a) expressly makes proof of conviction of a felony or misdemeanor involving moral turpitude conclusive evidence of the attorney's guilt of the elements of the crime in any proceeding to suspend or disbar the attorney. This is consistent with Supreme Court case law. (*In re Crooks* (1990) 51 Cal.3d 1090, 1097; *In re Duggan* (1976) 17 Cal.3d 416, 423.) The conclusive presumption precludes collateral attack on the conviction by respondents who seek to reassert their innocence in subsequent State Bar proceedings. (*In re Prantil* (1989) 48 Cal.3d 227, 232; *In re Kirschke* (1976) 16 Cal.3d 902, 904.) Indeed, in *Prantil*, the Supreme Court specifically rejected due process arguments similar to those raised here, noting that it perceived "no constitutional infirmity in the conclusive presumption provision contained in section 6101." (48 Cal.3d at p. 233.) As we recently noted in *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581, a conviction following a guilty plea is just as conclusive evidence of the respondent's guilt of all of the elements of the crime for which he was convicted as a conviction following a full criminal trial. (See *In re Prantil, supra*, 48 Cal.3d at p. 233,

quoting *In re Gross* (1983) 33 Cal.3d 561, 567 [“[N]either constitutional nor policy reasons’ preclude the Legislature from giving conclusive effect to convictions based on nolo contendere pleas in bar disciplinary proceedings”].)

[5c] Thus, even assuming arguendo that respondent were not summarily disbarred pursuant to section 6102 (c), application of section 6101 at an ensuing subsequent hearing would preclude him from putting on the evidence that he seeks to offer: that he did not intend to commit a crime and that the crime was not one involving moral turpitude. [6] Respondent was convicted of forgery which is by definition a crime of moral turpitude. (*In re Prantil, supra*, 48 Cal.3d at p. 234.) Moreover, even if a hearing were held, under Supreme Court case law respondent should have expected to face disbarment. As the Supreme Court noted in *Prantil*, for the serious crime of forgery “disbarment is the rule rather than the exception.” (*Ibid.*, citing *In re Silverton* (1975) 14 Cal.3d 517, 523; *In re Bogart* (1973) 9 Cal.3d 743, 748.) The Supreme Court proceeded to reject evidence offered by Prantil in mitigation as insufficient to justify lesser discipline than disbarment for Prantil’s conviction of forgery under Penal Code section 470. Prantil had been found to have assisted in the negotiation of a forged check. The forgery was discovered before the funds were withdrawn. Here, respondent’s crime involved fraud on the court, which the Su-

preme Court considers particularly egregious. (Cf. *Rodgers v. State Bar* (1989) 48 Cal.3d 300, 315 [“No act of concealment or dishonesty is more reprehensible than Rodgers’s attempts to mislead the probate court”].) The fact that the fraud was discovered in time to prevent substantial harm is no more availing here than it was in *Prantil*.

RECOMMENDATION

We conclude that, based on the seriousness of a felony conviction for the crime of forgery, a recommendation of summary disbarment pursuant to section 6102 (c) is clearly consistent with Supreme Court precedent. We therefore recommend that respondent Roland Ramez Salameh be summarily disbarred.

As respondent was interimly suspended effective February 9, 1993, and ordered at that time to comply with subdivisions (a) and (c) of rule 955 of the California Rules of Court within 30 and 40 days respectively, we do not include a recommendation of compliance with rule 955. An award of costs in favor of the State Bar is recommended pursuant to Business and Professions Code section 6086.10.

We concur:

NORIAN, J.
STOVITZ, J.