

PUBLIC MATTER - NOT DESIGNATED FOR PUBLICATION

FILED JULY 29, 2011

**STATE BAR COURT OF CALIFORNIA
REVIEW DEPARTMENT**

In the Matter of)	Case No. 10-C-04331
)	
SEAN PATRICK HOWARD,)	OPINION AND ORDER
)	
A Member of the State Bar, No. 158716.)	
_____)	

Respondent Sean Patrick Howard seeks review of the hearing judge’s decision to impose a public reproof based on his conviction of misdemeanor violations of Penal Code sections 415 (disturbing the peace) and 647, subdivision (f) (disorderly conduct, public intoxication). Howard contends that neither his conviction nor the facts and circumstances surrounding it warrants discipline. The State Bar asks us to affirm the decision.

While this case involves an isolated incident of criminal misconduct with no evidence of physical harm, the surrounding factors include Howard’s aggression toward law enforcement and support imposing moderate discipline. Based upon our independent review (Cal. Rules of Court, rule 9.12), we agree with the hearing judge that Howard’s misconduct warrants a public reproof.

I. SUMMARY REVIEW OF THE DECISION

On April 4, 2011, we granted Howard’s request for summary review under rule 5.157 of the Rules of Procedure of the State Bar. On summary review, the hearing judge’s decision is final as to all material findings of fact and the parties are bound by those facts. The issues on review are limited to: “(1) contentions that the facts support conclusions of law different from

those reached by the hearing judge; (2) disagreement about the appropriate disposition or degree of discipline; or (3) other questions of law.”

Further, any legal issue not raised by the parties on summary review is waived. (Rules Proc. of State Bar, rule 5.157(C).) Although Howard filed his reply memorandum two days late and without a motion for late filing, we considered the issues raised in his brief and submitted this matter on May 27, 2011.

II. HOWARD’S MISCONDUCT WARRANTS DISCIPLINE

A. The Hearing Judge’s Binding Factual Findings

Howard was admitted to practice law in 1992 and has no prior record of discipline.

Howard became highly inebriated while attending a Celtic Festival at the Sonora County Fairgrounds (Festival) on March 14, 2009. Other attendees reported to Festival security that Howard was being obnoxious and bumping into people while dancing. When Festival security guards approached him, he was verbally aggressive and repeatedly yelled, “Am I being detained?” Howard confronted the Festival head of security so closely that he spit on her face while yelling at her, and she asked him to leave.

After Howard refused to leave the Festival, the Sonora Police were called to intervene. Howard was so aggressive toward the police officers that they shot him twice with a Taser gun and arrested him. His blood alcohol registered .19% when he was booked at the police station. Howard was charged with one count of violating Penal Code section 647, subdivision (f) (disorderly conduct, public intoxication) and two counts of violating section 148, subdivision (a)(1) (resisting arrest). On April 8, 2010, Howard pled guilty to misdemeanor violations of Penal Code section 415 (disturbing the peace), which was added prior to the plea, and section 647, subdivision (f). The resisting arrest charges were dismissed. He was sentenced to pay fines, perform 150 hours of community service and attend AA/NA 12 times within 90 days.

B. Howard’s Aggressive Conduct While Intoxicated Warrants Discipline

For purposes of attorney discipline, Howard’s conviction for public intoxication and disturbing the peace is conclusive evidence of his guilt of all requisite elements of those crimes. (Bus. & Prof. Code § 6101, subd. (a).)¹ The parties agree that Howard’s offenses did not involve moral turpitude either inherently or in the surrounding facts and circumstances. (*In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208, 214-217 [no moral turpitude found despite assaultive and uncooperative conduct towards arresting officers].) However, even when an attorney does not commit a felony or a crime of moral turpitude under Business and Professions Code sections 6101 and 6102, we may recommend discipline if “other misconduct warranting discipline” surrounds the conviction. (*In re Kelley* (1990) 52 Cal.3d 487, 494-495.) On summary review, Howard contends only that the facts do not support the hearing judge’s conclusion that he committed other misconduct warranting discipline. We disagree.

Howard characterizes his misconduct as nothing more than a single instance of “generalized obnoxiousness” stemming from intoxication. Indeed, if his disorderly conduct were limited to obnoxious behavior, that alone may not warrant discipline. (*In re Kelley, supra*, 52 Cal.3d at p. 496 [“unreasonable to hold attorneys to such a high standard of conduct that every violation of law, however minor, would constitute a ground for professional discipline”]; *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322, 328 [conviction matter

¹ Under Penal Code section 415, it is a violation for: “(1) Any person who unlawfully fights in a public place or challenges another person in a public place to fight. (2) Any person who maliciously and willfully disturbs another person by loud and unreasonable noise. (3) Any person who uses offensive words in a public place which are inherently likely to provoke an immediate violent reaction.” The record does not specify the subdivision that applies to Howard’s conviction.

Penal Code section 647, subdivision (f), states that a person is guilty of disorderly conduct if he or she is “found in any public place under the influence of intoxicating liquor . . . in a condition that he or she is unable to exercise care for his or her own safety or the safety of others, or by reason of his or her being under the influence of intoxicating liquor . . . interferes with or obstructs or prevents the free use of any street, sidewalk, or other public way.”

dismissed where “singular” incident resulting in conviction for DUI and fighting in public did not involve “evidence of disrespect for the law or dangerous or violent criminal behavior”).) But Howard passed the threshold of a minor violation when he refused to leave and became so belligerent and aggressive that the arresting police officers Tasered him twice.

Historically, alcohol-related arrests unrelated to an attorney’s practice may lead to professional discipline even if they do not involve violence or harm. (*In re Kelley, supra*, 52 Cal.3d 487 [public reproof for second DUI while on probation for first].) An attorney also may be disciplined for crimes related to violent or aggressive behavior that does not involve moral turpitude. (*In re Hickey* (1990) 50 Cal.3d 571, 579 [30-day suspension for carrying a concealed weapon conviction and alcoholism fueled repeated acts of violence towards spouse and others].)² Here, Howard was inebriated, obnoxious, non-cooperative *and* aggressive with the security guards and the police officers. We conclude that Howard’s conviction and the surrounding circumstances warrant discipline because they demonstrate disrespect for law enforcement, which reflects poorly on the legal profession. Given the totality of these circumstances, moderate discipline should be imposed.

III. DEGREE OF DISCIPLINE

We determine the appropriate discipline in light of all relevant circumstances, including any factors in aggravation or mitigation. (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.) The

² See *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52, 60 [60-day suspension when intoxicated attorney trespassed in wife’s apartment, refused to leave, did not accede to authority of police officers, and was convicted of misdemeanor battery on a police officer]; *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581, 591 [discharge of firearm on crowded freeway was other misconduct warranting discipline because it demonstrated reckless disregard for safety, dismissal reversed and case remanded].

State Bar must establish aggravating circumstances by clear and convincing evidence, while Howard has the same burden to prove mitigating circumstances. (Std. 1.2(b) and (e).)³

A. Sixteen Years of Discipline-Free Practice Is Significant Mitigation

Howard established that he has practiced law for 16 years without discipline. His unblemished practice for such a lengthy period significantly mitigates his misconduct. (Std. 1.2(e)(i); *Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [significant weight given for over 10 years of practice before first act of misconduct].)

The State Bar contends that Howard’s misconduct is aggravated by his lack of remorse or insight. (Std. 1.2(b)(v).) We reject this contention because the hearing judge’s undisputed factual findings do not contain clear and convincing evidence that Howard lacks remorse. Although the hearing judge found Howard not credible when he testified he was not verbally aggressive, on review Howard concedes he was inebriated, obnoxious and verbally aggressive.

B. Howard’s Misconduct Warrants Public Reprimand

The purpose of attorney discipline is not to punish the attorney but to protect the public, the courts and the legal profession. (Std. 1.3.) To determine the appropriate discipline and promote consistency, we begin with the standards and further give due consideration to decisional law. (*In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 913.)

Standard 3.4 provides that discipline for conviction of a crime involving “other misconduct warranting discipline” should appropriately reflect the nature and extent of the misconduct. While this case involves an isolated incident of misconduct with no evidence of physical harm, the surrounding factors support imposing moderate discipline. And although Howard’s misconduct is mitigated by his long period of discipline-free practice, the discipline

³ Unless otherwise noted, all further references to “standard(s)” are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

system is responsible for preserving the integrity of the legal profession as well as public protection. (*In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406, 416.) Here, Howard's aggression toward law enforcement violated that integrity and exhibited disrespect for authority, warranting public discipline. (See *In the Matter of Thomason* (S.C. 1983) 304 S.E.2d 821 [public reprimand for South Carolina attorney's misconduct including resisting arrest, public drunkenness, and disorderly conduct]; *In the Matter of McFadden* (Ind. 2000) 729 N.E.2d 137 [public reprimand for deputy county prosecutor after conviction for public intoxication].)

Based on the nature and extent of the misconduct, a public reproof is sufficient to serve the purposes of attorney discipline and is supported by case law as the appropriate discipline. (See *In re Kelley, supra*, 52 Cal.3d 487 [public reproof for two DUIs]; *In the Matter of Buckley* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 201 [public reproof for misdemeanor disorderly conduct of soliciting lewd act].)

IV. ORDER

Sean Patrick Howard is ordered publicly reproofed. The public reproof will be effective 15 days after service of this opinion and order. (Rules Proc. of State Bar, rule 5.127(A).)

Further, Howard must comply with specified conditions attached to the public reproof. (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.

Howard 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 reproof, he must contact the Office of Probation and schedule a meeting with a probation deputy to discuss these conditions attached to his public reproof. 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, 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 each January 10, April 10, July 10, and October 10 period of probation. 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 probation 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 probation period and no later than the last day of the probation 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 reproof, 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.

V. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Sean Patrick Howard be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year of the effective date of the public reproof in this matter and to provide satisfactory proof of such passage to the Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

VI. COSTS

We further recommend 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.

REMKE, P. J.

WE CONCUR:

PURCELL, J.

EPSTEIN, J.