

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)
)
FREDERICK T. JELIN)
)
Member No. 105786)
)
A Member of the State Bar.)

Case No.: 07-C-14226-LMA

DECISION AND ORDER

I. Introduction

This matter is before the court on order of reference filed by the Review Department of the State Bar Court on April 5, 2012, for a hearing and decision as to whether the facts and circumstances surrounding misdemeanor violations of Penal Code section 148, subdivision (a) (resisting arrest), of which respondent **Frederick T. Jelin** (respondent) was convicted, involved moral turpitude or other misconduct warranting discipline and, if so found, a recommendation as to the discipline to be imposed.

In view of respondent's misconduct and the aggravating and mitigating evidence, the court recommends, among other things, that respondent receive a public reproof.

II. Significant Procedural History

On November 17, 2008, a jury convicted respondent of violating Penal Code section 148(a) [Resisting Arrest]. Respondent appealed the conviction. On December 12, 2008, pending finality of the conviction, the Review Department referred this matter to the Hearing

Department for a hearing on whether there is probable cause to believe that the facts and circumstances surrounding the offense involved moral turpitude. The matter was subsequently set for trial on that issue.

On June 8, 2010, the parties stipulated that the facts and circumstances do not involve moral turpitude. The matter was abated pending the outcome of respondent's criminal appeal. On December 7, 2011, the Appellate Division of the Superior Court denied respondent's appeal.

On March 13, 2012, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) transmitted evidence of finality to the Review Department. On April 5, 2012, the Review Department referred the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the facts and circumstances surrounding the conviction involved moral turpitude or other misconduct warranting discipline.

In accordance with the Review Department's referral order, this case proceeded to trial in the Hearing Department of the State Bar Court on May 21 and 22, 2012. The State Bar was represented by Deputy Trial Counsel Mia Ellis. Respondent represented himself. The court took this matter under submission for decision on May 22, 2012.

III. Findings of Fact and Conclusions of Law

Respondent is conclusively presumed, by the record of his conviction in this proceeding, to have committed all of the elements of the crime of which he was convicted. (Bus. & Prof. Code, § 6101, subd. (a); *In re Crooks* (1990) 51 Cal.3d 1090, 1097; *In re Duggan* (1976) 17 Cal.3d 416, 423; and *In the Matter of Respondent O* (Review Dept. 1993) 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." (*In the Matter of Respondent O, supra*, 2 Cal. State Bar Ct. Rptr. 581, 589, fn. 6.)

A. Jurisdiction

Respondent was admitted to the practice of law in the State of California on December 3, 1982, and has since been a member of the State Bar of California.

B. Findings of Fact

The following facts are derived from the exhibits and testimony admitted into evidence at trial. As specified below, the court found that certain aspects of respondent's testimony lacked credibility, especially in light of the credible testimony presented by the three Los Angeles Airport police officers and the United Airlines flight attendant.

On February 9, 2007, respondent was a passenger on a United Airlines Flight from Los Angeles to Boston. Before takeoff, a flight attendant asked that all passengers turn off their cell phones and other electronic devices. At the time of the announcement, respondent was speaking on his cell phone with his girlfriend. The flight attendant asked respondent to turn off his cell phone several times. Respondent continued speaking on his cell phone and told the flight attendant, "She won't hang up the phone." The flight attendant told respondent "I will turn it off for you." Respondent handed the flight attendant the phone, she turned it off and then handed the phone back to respondent. Respondent immediately tried to turn the phone on again. At that time, it was determined that respondent would be removed from the plane.¹

The captain was notified; and the plane was put back on the jetway and the doors were opened. A United Airlines representative boarded the aircraft and advised respondent that he couldn't fly and repeatedly told respondent that he had to leave the plane. Respondent did not comply and refused to leave the plane.

The Los Angeles Airport Police Department was notified. Airport Police officers arrived and repeatedly instructed respondent to leave the plane.

¹ Respondent's testimony that he was having trouble turning off his phone was not credible.

Respondent told the police officers that he was a lawyer and he knew his rights. After several requests by the police officers that respondent leave the plane, they warned respondent that he would be arrested and forcefully removed from the plane. Respondent still refused to leave the plane.

The officers then attempted to effectuate an arrest.² Respondent curled up into a ball, wrapped at least one arm around the armrest of his seat and actively resisted his arrest.³ Respondent was eventually forcefully removed from the plane. Respondent's conduct delayed the plane for about an hour.

On November 17, 2008, a jury convicted Respondent of violating Penal Code section 148(a) (resisting arrest). He was sentenced to, among other things, 24 months summary probation, and 15 days in county jail.

C. Conclusions of Law

The court finds that the facts and circumstances surrounding respondent's conviction for resisting arrest do not involve moral turpitude, but do involve other misconduct warranting discipline.

IV. Mitigating and Aggravating Circumstances

The parties bear the burden of proving mitigating and aggravating circumstances by clear and convincing evidence. (Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 1.2.)⁴

² Respondent's testimony that other passengers were singling him out because they thought he was Muslim was not credible. The court also does not find credible respondent's testimony that the other passengers were saying religious related remarks at him.

³ Respondent's testimony that he curled up into a ball because he was being attacked by the officers was also not credible.

⁴ All further references to standard(s) are to this source.

A. Mitigation

No Prior Record of Discipline (Std. 1.2(e)(i))

Respondent has no prior record of discipline in his 24 years of practice prior to engaging in the present misconduct. Practicing law for 24 years before committing misconduct constitutes significant consideration as a mitigating circumstance. (See *Hawes v. State Bar* (1990) 51 Cal.3d 587, 596.)

Community Service

Respondent testified that over the years he has provided pro bono services to clients, served as a judge pro tem, and worked as an editor for Los Angeles Lawyer magazine. Respondent's testimony on this subject was uncontroverted. Accordingly, the court gives respondent's community service activities some consideration in mitigation. (See *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139, 158, fn. 22 [A respondent's own testimony regarding community service may be considered as some evidence in mitigation].)

B. Aggravation

Lack of Insight

Respondent demonstrated a lack of insight regarding his misconduct. (See *In the Matter of Wyshak* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70, 83.) While he acknowledged that he had a participatory role, respondent did not seem to recognize that it was his actions that set the events that ultimately transpired into motion. Instead, respondent blames the arbitrary rules of United Airlines, the flight attendant, and the other passengers. Respondent classified his physical removal from the airplane as an unfair attack and continues to contend that he should not have been convicted in the underlying criminal matter.

“The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for his acts and come to grips with his culpability. [Citation.]” (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) Respondent’s lack of insight into his misconduct warrants consideration in aggravation.

Subsequent Arrest

Respondent testified that following the present misconduct, he was asked to leave another United Airlines flight in or about 2008. This incident resulted in respondent’s arrest, but was subsequently dismissed. Because the court lacks a clear understanding of the facts and circumstances surrounding this event, it warrants no consideration in aggravation.

V. Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.)

The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) However, the standards are not mandatory; they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Standard 3.4 provides that a final conviction of an attorney of a crime which does not involve moral turpitude, but which does involve other misconduct warranting discipline shall result in a sanction appropriate to the nature and extent of the misconduct found to have been committed by the member.

The State Bar argued that respondent's misconduct warrants discipline including a period of actual suspension. Respondent, on the other hand, argued that the present misconduct does not warrant any discipline, but if discipline were to be ordered, a private reproof would be appropriate.

Finding no case law directly on point, the court looked to analogous matters for assistance. The court found *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52, and *In re Kelley* (1990) 52 Cal.3d 487, to be instructive.

In *Stewart*, an attorney was visiting with his 18-month-old son, but the electricity in his apartment had been turned off. He then took his son to his estranged wife's apartment and requested that he be allowed to conduct his visit there. When she refused, the attorney, who was under the influence of alcohol, intimidated his way into his wife's apartment by citing Penal Code sections. Two uniformed police officers arrived on the scene, and the attorney refused to leave the apartment without his son. When the officers attempted to escort the attorney out of the apartment, he jerked away. The attorney and one of the officers then got into a physical altercation causing them both to sustain cuts and bruises. The attorney was handcuffed and arrested. He then became abusive towards the officers, using profanities and racial epithets.

The attorney subsequently received a misdemeanor conviction of battery on a police officer. In aggravation, the attorney demonstrated a lack of insight and indifference to the seriousness of his misconduct. The attorney also had a prior record of discipline and committed additional uncharged criminal offenses, including trespass. No mitigating circumstances were

found. The Review Department recommended, among other things, that the attorney be suspended from the practice of law for two years, stayed, with two years' probation, and a 60-day actual suspension.

The present matter shares some qualities with *Stewart*. Like the attorney in *Stewart*, respondent failed to acquiesce with multiple instructions by police and failed to respect police authority. The aggravating circumstances in *Stewart*, however, are more extensive than in the instant matter. While no mitigation was found in *Stewart*, respondent's 24 years of discipline-free practice prior to his engaging in the present misconduct merits significant weight. Moreover, respondent's misconduct was considerably less egregious. Thus, the present case warrants significantly lower discipline than that imposed in *Stewart*.

In *Kelley*, the Supreme Court concluded that only "relatively minimal discipline" was warranted for a member who had two DUI's. In that instance, the court carved out a significant period of probation and attached it to a public reproof. The member there was still in denial of her problem with alcohol, had two recent DUI convictions, had a history of violating the terms of her criminal probation, and had been both dishonest and uncooperative with the arresting officers.

Like *Kelley*, respondent has no previous record of attorney discipline. Also similar to *Kelley*, respondent's conduct demonstrated a lack of respect for the lawful authority of the police.

Based on his 24 years with no prior discipline, the present matter appears to be an isolated incident stemming from a series of poor decisions – on respondent's part – that quickly escalated into the present misconduct. Accordingly, the court orders, as outlined below, that respondent receive a public reproof.

VI. Discipline

It is ordered that respondent Frederick T. Jelin is hereby publicly reprovved. Pursuant to the provisions of rule 5.127(A) of the Rules of Procedure, the public reprovval will be effective when this decision becomes final. Furthermore, pursuant to rule 9.19 of the California Rules of Court and rule 5.128 of the Rules of Procedure, the court finds that the interests of respondent and the protection of the public will be served by the following specified conditions being attached to the public reprovval imposed in this matter. Failure to comply with any conditions attached to this reprovval 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.

Respondent is hereby ordered to comply with the following conditions attached to his public reprovval for a period of one year following the effective date of the public reprovval imposed in this matter:

1. During the one-year period in which these conditions are in effect, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;
2. Within thirty days after the effective date of his public reprovval, respondent must contact the Office of Probation and schedule a meeting with a probation deputy to discuss these conditions attached to his public reprovval. Upon the direction of the Office of Probation, respondent must meet with a probation deputy either in-person or by telephone. During the one-year period in which these conditions are in effect, respondent must promptly meet with probation deputies as directed and upon request;
3. Within ten days of any change, respondent must report to the Membership Records Office of the State Bar, 180 Howard Street, San Francisco, California, 94105-1639, and to the Office of Probation, all changes of information, including current office address and telephone

number, or if no office is maintained, the address to be used for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;

4. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period during which these conditions are in effect. Under penalty of perjury, respondent must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions attached to his reproof within the preceding calendar quarter. If the first report will cover less than thirty calendar days, that report must be submitted on the reporting date for the next calendar quarter and must cover the extended period. In addition to all quarterly reports, respondent must submit a final report, containing the same information required by the quarterly reports. The final report must be submitted no earlier than twenty days before the last day of the period during which these conditions are in effect and no later than the last day of that period;

5. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, all inquiries of the Office of Probation which are directed to him personally or in writing relating to whether respondent is complying or has complied with the conditions attached to this reproof; and

6. Within one year of the effective date of this public reproof, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015, and passage of the test given at the end of the session. Arrangements to attend Ethics School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Ethics School (Rules Proc. of State Bar, rule 3201.).

It is further ordered that respondent take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) and provide proof of passage to the Office of Probation, within one year after the effective date of the public reproof imposed in this matter. Failure to pass the MPRE within the specified time results in actual suspension by the Review Department, without further hearing, until passage. (But see Cal. Rules of Court, rule 9.10(b), and Rules Proc. of State Bar, rule 5.162.)

VII. Costs

The court orders 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.

IT IS SO ORDERED.

Dated: August _____, 2012

LUCY ARMENDARIZ
Judge of the State Bar Court