

Response to Notice of Disciplinary Charges

FILED

MAR 1 1 2009

Case No. 08-C-13287- PEM

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

1. Address for Service on Respondent: 2100 Garden Rd. –
A, Monterey CA 93940
2. I admit that I was convicted of a violation of PC Section
240.
3. I deny the conviction was for a crime that involves moral
turpitude.
4. I deny that the acts that led to the conviction involved other
misconduct warranting discipline by the State Bar.
5. Facts that are relevant:
 - a. In October of 2007, on a Saturday morning in
Monterey CA, I was having coffee with numerous
members of a Monterey based bicycling club after
completion of the regular 35 mile Saturday ride.
 - b. We were sitting in the non smoking area of a city
plaza.
 - c. Approximately 15 feet north (and upwind) of the non
smoking area, three women sat having coffee. One of
the women was a chain smoker.
 - d. I asked her not to smoke just upwind of us. She at
first complied. Then, as it turns out, she was egged on
by her companions to “assert her smoker’s rights.”
Within approximately five minutes, she lit another
cigarette. She ignored my request that she not smoke
there. I tossed a paper cup near her feet to show my
disgust.

- e. She finished her cigarette and lit another within a five minute period. I tossed a slice of newspaper near her feet.
- f. Approximately five minutes later, a Monterey Police officer arrived, spoke with the chain smoker and then came to me and asked if I tossed the newspaper. I said yes. She said you are under arrest. She cuffed me and had me hauled away by her partner. My wife and some of the other riders attempted to find out what was going on and they were threatened with arrest for interference. She would take no statements from anyone other than the chain smoker and her companions.
- g. I later learned that the smoker told the police officer that she was struck by the paper cup and newspaper and that she was generally harassed by me.
- h. After I learned what the allegations were I started asking other cyclists who were present what they saw. I soon found witnesses who could verify that the woman was not struck with anything and that I never left my seat to approach her. (She had alleged that I came to her table and screamed obscenities at her.)
- i. The witnesses sent me their written statements. I sent them to the D.A. with a request that he have an investigator speak with them. He never did.
- j. My wife is a friend of one of the local police chiefs. She asked him to see if he could find out why they were not interested in talking to witnesses. He told her that someone of importance in the D.A.'s office thought I needed to be taught a lesson in manners.

- k. I asked one of the deputy D.A.s (David Frost) who is also a cyclist why they didn't want to speak to the witnesses and why they were pursuing a battery charge when they had statements indicating that a false police report had been filed. He told me that perhaps it was an assault – PC 240 instead. I asked how that could be since 240 requires an attempt to commit a “violent injury.” His reply was that: “[I]t is not always like you learned in law school.”
- l. I believed that with my solid witnesses (Cath Tendler-Valencia who teaches blind children and James Wrona, a programmer for a U.S. Government contractor), I would have a fair court trial so I waived jury. (I also considered calling appellate court justice Wendy Duffy as a witness to the fact that there was no general ruckus as was alleged. She was a part of the cycling group I was with. However, this so upset the trial judge that I decided not to do so. I let my general desire to help with the smooth running of the courts take precedent.)
- m. Trial was initially scheduled in April 2008. I prepared. I retained Salinas defense attorney, Richard Rosen. He prepared. After spending a considerable amount of time and money in preparation, the trial judge announced he was continuing the case so he could attend a social function. It was reset for May. (My initial letter to bar stated it was in April. However, this was in error as I had forgotten about the continuance.)
- n. The trial went well. The chain smoker was very inconsistent in her story. She identified an audience

member as being me at one point. My witnesses were extremely credible.

- o. The trial judge (Robert A. Burlison) announced at the conclusion that there was insufficient evidence to convict me of battery. He then found me guilty of the “lesser, included offense” of assault. When I asked the judge how he could come to that conclusion even if he really did believe I was trying to hit her since **PC 240 requires a finding of an *attempt to commit a violent injury***, he stated that he did not have to follow that code since the jury instructions did not have the same requirement.
 - p. I did not appeal. While I believed his ruling was unfair and was not “what you learned in law school” as deputy Frost had told me, I did not want to put more time or money into this annoyance.
6. Report to the Bar – I thought it unusual that the State Bar would have any interest in this since it did not involve moral turpitude. The D.A. told my trial lawyer that I had to report it or they would, so I did by letter. (copy attached)

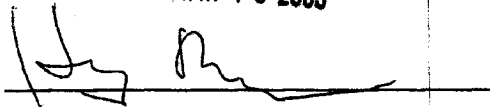
In conclusion. There are many unusual circumstances at play here. I think that I may have been a victim of some gender and perceived gang bias in the beginning. (Woman to woman with no questions of me who was with what she described as a “large group of cyclists” in her report.) This led to someone’s opportunity in the D.A.’s office to uphold the smoker’s rights and teach the older lawyer a lesson which somehow spilled over to the judge. (I have practiced law in Monterey County for over thirty years but had no prior dealings with this judge – a former member of the Monterey County DA’s staff.) Did he

independently think that I needed to learn a lesson in manners regardless of the legal requirements because “[I]t is not always like you learned in law school”? Does the smoker have any connections with local law enforcement? To me, there are many unanswered questions.

I understand that I waived appeal and that I am not entitled to a trial de novo but I think the language of PC 240 as applied to these facts (paper cup and a piece of newspaper) is relevant when you consider whether “the conviction involved other misconduct warranting discipline.”

Dated:

MAR 10 2009

A handwritten signature in black ink, appearing to read "Harry Rogers", is written over a horizontal line.

Harry Rogers - 48561

**Harry E. Rogers
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August 22, 2008

State Bar of California
180 Howard St.
San Francisco CA 94105

Re: Misdemeanor Conviction under PC 240

To: Whom it May Concern

My bar number is 48561.

In October of 2007, I tossed some newspaper and an empty paper cup at an upwind chain smoker in a public park outside of a Monterey coffee shop.

She accused me of battery with the newspaper and cup. I was arrested. I waived jury. Independent witnesses testified that she was not touched with either of the paper items.

I was thus not convicted of the charge. However, the judge found me guilty of the "lesser, included charge" of assault under PC Section 240. I was given a small fine and a year's informal probation. This occurred in April of this year.

Today, I received an email from my attorney, Richard Rosen (62564) saying that the District Attorney's office suggested I self report, citing B&P Section 6068 (o) (5).

If this event would be considered "improper conduct" under that section, this is my report. Thank you.

Harry Rogers

Copy emailed to Richard Rosen

Proof of Service by Mail

I served the following documents by enclosing them in an envelope and placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

Documents: **Response to Notice of Disciplinary Charges**

The envelope was addressed and mailed as follows:

Donald R. Steedman
State Bar of California
180 Howard St.
San Francisco CA 94105

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated:

MAR 10 2009


Harvey Schrier
2100 Garden Rd. - A
Monterey, CA 93940
(831) 372-3076