

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No.: 12-C-10338-RAP
)	
SERGIO J. LOPEZ,)	DECISION
)	
Member No. 259288,)	
)	
<u>A Member of the State Bar.</u>)	

Introduction¹

This contested conviction referral proceeding is based upon respondent **SERGIO J. LOPEZ's** misdemeanor conviction for violation of Penal Code section 29825, subdivision (a) (unlawful purchasing/receiving a firearm).

After thoroughly reviewing the record, the court finds that the facts and circumstances surrounding respondent's convictions of Penal Code section 29825, subdivision (a), do not involve moral turpitude and but do involve other misconduct warranting discipline. Accordingly, the court recommends that respondent be suspended from the practice of law for a period of two years, that the suspension be stayed, that respondent be placed on probation for a period of two years, on conditions including actual suspension for 30 days.

¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

Significant Procedural History

On September 21, 2012, respondent plead nolo contendere to one misdemeanor count of violating Penal Code section 29825, subdivision (a). (Los Angeles Superior Court case no. KA096704.)

On January 3, 2013, the Review Department of the State Bar Court issued an order referring this matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed if the facts and circumstances surrounding respondent's misdemeanor conviction involved moral turpitude or other misconduct warranting discipline.

On January 24, 2013, the State Bar Court issued and properly served a Notice of Hearing on Conviction on respondent. Respondent filed a response on April 12, 2013. (Rules Proc. State Bar, rule 5.43.)

Trial was held on May 20, 2013. Respondent was represented by attorney John W. Nelson. The Office of the Chief Trial Counsel (State Bar) was represented by Senior Trial Counsel Mia R. Ellis. The matter was submitted for decision on May 20, 2013. After the court granted the State Bar's motion to reopen the record to admit respondent's prior disciplinary record, the submission date was vacated and the matter was again taken under submission on July 1, 2013.

Findings of Fact and Conclusions of Law

Respondent is conclusively presumed, by the record of conviction in this proceeding, to have committed all of the elements of the crime of which he was convicted. (Bus. & Prof. Code section 6101, subdivision (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 only can be reached by and 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.).

Respondent was admitted to the practice of law in California on December 2, 2008, and has been a member of the State Bar of California at all times since that date.

Case No. 12-C-10388 – The Criminal Conviction Matters

Facts

On September 20, 2011, the Los Angeles Superior Court filed a criminal protective order ordering respondent not to have contact with Sirena Zavala.

Respondent received the criminal protective order, but never read it. However, he acknowledged that, since he is a criminal defense attorney, he is generally aware of the contents of such an order.

The criminal protective order prohibited respondent from owning, possessing, purchasing, or attempting to purchase, receiving or attempting to receive, or otherwise obtaining a firearm. Respondent was required to relinquish any firearms and not own or possess any firearms during the period of the criminal protective order. Respondent was also required to surrender to local law enforcement or sell to a licensed gun dealer any firearm owned subject to his or her immediate possession or control within 24 hours after service of the criminal protective order.

The criminal protective order was in effect on January 12 and 13, 2012.

On January 12, 2012, at approximately 5:30 p.m., respondent met privately in his office with a client, Susan Fauchier, whom he represented in a marital dissolution.

When the meeting started, Fauchier retrieved certain items from her handbag, including documents and a green gun rag (a zippered gun holder) which she placed in on respondent’s

desk. Respondent was unaware that she was bringing a gun to their meeting. She told him that the gun was her husband's and that she wanted respondent to return the gun to him. Apparently, in December 2011, someone from respondent's office told her that her husband's counsel was requesting the return of the gun to Mr. Fauchier.

Fauchier informed respondent that the gun was unloaded and respondent did a cursory inspection of the firearm² to secure the weapon and pushed the firearm to the side of his desk with the other papers. However, respondent's cursory inspection of the firearm could not have led to a conclusion that the firearm was unloaded. Briefly looking at the closed cylinder of a revolver and seeing no bullets in the exposed cylinders cannot lead to a conclusion that the firearm is not loaded. When a revolver's cylinder is closed, not all of the cylinders are exposed for inspection. An unexposed cylinder may include a bullet and render the firearm unsafe. In the end, respondent testified that he took his client's word that the firearm was unloaded. Fortunately, the firearm was in fact unloaded.

Respondent's meeting with Fauchier did not go well. She left the office in tears at the end of the meeting. He followed her. When passing through the area of his office outside of his private office, respondent instructed his office assistant, Danny Wong to put the stuff on his desk away. Respondent followed Fauchier to the elevator. After she left the building, respondent used the restroom and then went outside the building to smoke a cigarette.

While respondent was out, Wong went into his private office to put the stuff away on respondent's desk. Believing that respondent had a court appearance the next day in the Fauchier matter, Wong started to put Fauchier's file and papers into respondent's briefcase. Wong picked up the gun bag containing the firearm. Wong realized the gun bag contained a firearm. Wong placed the firearm in respondent's briefcase along with the other Fauchier

² Respondent is a former police officer and knows how to safely secure a firearm.

documents. Initially, Wong was afraid to touch the firearm because he is unfamiliar with firearms and he is a convicted felon who was paroled in 2009 and did not want to violate his parole.

A short time later, respondent returned to his office suite and told Wong that it was time to leave for the day. He retrieved his briefcase from his office and he and Wong left the building together.

According to Wong, he never told respondent that he had placed the firearm in his briefcase because respondent was speaking on his cell phone when they left the building.

Respondent placed his briefcase in his vehicle.

On the morning of January 13, 2012, respondent decided to make an appearance in the West Covina courthouse unrelated to the Fauchier matter, which was not scheduled for a court appearance on that date. Respondent took his briefcase from his vehicle and entered the courthouse.

On January 13, 2012, Security Officer Mark Franklin was assigned to provide security near and to the x-ray machine and metal detectors at the West Covina courthouse. At about 9:53 a.m., respondent entered the courthouse and placed his briefcase, containing the unloaded, 4-inch barrel, blue steel .357 magnum Colt revolver, on the x-ray machine conveyor belt. As respondent's briefcase passed through the x-ray machine, Franklin saw the firearm within respondent's briefcase.

Franklin retrieved the firearm from respondent's briefcase and stopped respondent. Respondent was then escorted to the Los Angeles County Sheriff's office located a short distance from the x-ray machine and conveyor belt. Sergeant Gordon Crawl, who was in charge of security at the courthouse, secured the firearm and, after a brief inspection, determined that it was unloaded and functional. Crawl also patted-down respondent and discovered that

respondent was wearing a transponder on his left ankle. Respondent informed Crowl that the transponder was from another case.

Crowl also searched respondent's wallet and discovered his California driver's license and his State Bar of California membership card. Alexander immediately initiated a search of respondent's information.

As part of a memorandum of understanding between the Los Angeles County Sheriff's Office and the City of West Covina, any criminal behavior located in the area of the courthouse x-ray machine/conveyor belt security area comes under the jurisdiction of West Covina police. Crowl notified the West Covina police, and, a short time later, Police Officer Jon Alexander arrived at the sheriff's office.

Upon his arrival, Crowl informed Alexander of the situation and handed him a copy of Penal Code section 171b, subdivision (a) and informed him that bringing a gun into the courthouse was a felony.

Crowl was present for a majority of Alexander's interview of respondent. Lopez identified himself as attorney and stated that a client had given him the firearm last night and that he works hard, was tired and forgot it was there in his briefcase.

Crowl also was able to determine the respondent had been arrested for assault and other charges in September 2011, which eventually resulted in his wearing an ankle transponder.

Crowl had a feeling that Alexander was not going to arrest respondent. Crowl contacted his supervisors and requested permission to break protocol (the memorandum of understanding) and place respondent under arrest.

While Crowl contacted his supervisors, Alexander released respondent from custody and returned to the firearm to him. Alexander informed Crowl that he had done so. Crowl

immediately ordered a deputy sheriff to search outside the courthouse for respondent and place respondent under arrest but respondent could not be found.

Approximately half an hour after being released from custody by Alexander, respondent returned to his office and placed the firearm in the possession of Raazia Bokhari, an attorney who leased office space from respondent. Respondent asked Bokhari to secure the firearm until another attorney came to pick it up later in the day. Alexander had advised respondent to give the firearm to the other attorney.

Bokhari initially hesitated taking possession of the firearm but eventually placed it in her locked cabinet drawer. Bokhari gave the key to the cabinet drawer to Naomi, respondent's assistant, because she was leaving the office early that day. The firearm was not in her cabinet drawer when Bokhari returned to the office on her next work day.

According to respondent, someone from Mr. Fauchier's counsel's office came to respondent's office and picked up the firearm.

Respondent's testimony on the securing of the firearm in his office on January 12, 2012, is not credible. As previously discussed, respondent's testimony that he made a cursory check to insure that the firearm was not loaded is not credible nor is his testimony that he instructed Wong to put the stuff on his desk away, including the firearm, and then did nothing to inquire of Wong what he had done with the firearm. Wong testified that he never handled a gun while in respondent's employment, a period of one and one-half years. Respondent had no office policy on the handling of firearms in the law office's possession. The assertions that respondent did not ask Wong where and how he secured the firearm and that Wong did not think to inform respondent that he placed the firearm in respondent's briefcase are not credible. Respondent is a former police officer and is knowledgeable in the safe handling and securing of firearms. The

thought that respondent would leave his office without first determining whether or not the firearm had been safely secured is almost unconceivable to the court.

On January 27, 2012, respondent was remanded and charged with violation of Penal Code section 171b, subdivision (a) [unlawfully possessing a handgun within a courtroom and building designated as a courthouse and court building and at a meeting required to be open to the public] and section 29825, subdivision (a) [unlawfully purchasing or receiving a firearm knowing that he was prohibited from doing so by a temporary restraining order, by an injunction or by a protective order], both felonies.

On September 21, 2012, respondent pled nolo contendere to one misdemeanor count of Penal Code section 29825, subdivision (a). The court sentenced respondent to serve 120 days in jail with credit for time served, and to pay a fine and fees. Respondent eventually served about three and one-half months in jail.

The court finds that respondent's misdemeanor conviction for violation of Penal Code section 29825, subdivision (a), does not involve moral turpitude but does involve other misconduct warranting discipline.

Aggravation³

The parties bear the burden of establishing mitigation and aggravation by clear and convincing evidence.

Prior Record of Discipline (Std. 1.2(b)(i).)

A public reproof subject to conditions for one year was ordered on May 22, 2013. The parties stipulated that, in one client matter, respondent violated rules 3-310(F) and

³ All references to standards (std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

3-700(D)(1) and (2) between April 2011 and March 2013. Multiple acts of misconduct and cooperation were the aggravating and mitigating factors, respectively.

Mitigation

Candor/Cooperation to Victims/State Bar (Std. 1.2(e)(v).)

Respondent cooperated with the State Bar by entering into a stipulation of facts and admission of documents prior to trial in this matter.

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession, and maintain the highest possible professional standards for attorneys. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.) 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.) Although the standards are not binding, they are to be afforded great weight because “they promote the consistent and uniform application of disciplinary measures.” (*In re Silvertown* (2005) 36 Cal.4th 81, 91-92.) Nevertheless, the court is not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, the court is permitted to temper the letter of the law with considerations peculiar to the offense and the offender. (*In the Matter of Van Sickle* (2006) 4 Cal. State Bar Ct. Rptr. 980, 994; *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) In addition, the court considers relevant decisional law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal.

State Bar Ct. Rptr. 920, 940.) In fact, this court's discipline recommendation in conviction referral proceedings are often based "on a wide scope of evidence not directly connected to the crimes themselves." (*In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679, 688-689.)

Standard 1.6(b) provides, in relevant part, that the specific sanction for the particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions. Discipline is progressive. (Std. 1.7(a).)

The State Bar recommends that respondent be actually suspended from the practice of law for 30 days. Respondent suggests a one year period of unsupervised probation.

Standard 3.4 provides that final conviction of an attorney of a crime which does not involve moral turpitude, but which does involve other misconduct warranting discipline, must result in a sanction as prescribed under the standards for misconduct in original disciplinary proceedings appropriate to the extent and nature of the member's misconduct. "Discipline is imposed according to the gravity of the crime and the circumstances of the case." (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 510.)

In applying standard 3.4, the court refers to standard 2.6 as a comparable reference point for the range of discipline in original proceedings. Standard 2.6 suggests suspension or disbarment depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline. It applies to violations of Business and Professions Code, section 6068, subdivision (a) which makes it a duty of California attorneys to support the Constitution and laws of California and the United States. On the basis of his criminal conviction, respondent did not support the laws of the State of California as required.

Having considered the parties' contentions, the court agrees with the State Bar that 30 days' actual suspension, among other things, is sufficient to protect the public, the courts and the legal profession in this instance. As a former police officer, respondent knows the importance of securing and properly handling firearms. As an attorney, he knows the importance of obeying court orders and, in general, the law. He did neither in this instance, but rather, took custody of the firearm, left it on his desk for someone else to pick up and did not follow through with that person as to the gun's whereabouts. He then transported it to court where it was found and checked. Had it been loaded, he could have endangered visitors and personnel in the emotionally-charged atmosphere of a busy courthouse. Respondent, however, was cooperative with law enforcement after the gun was found and thereafter. Accordingly, having considered the gravity of the crime and the facts and circumstances surrounding it, the court believes that 30 days' actual suspension is sufficient in this instance to protect the public, the courts and the legal profession.

Recommendations

It is recommended that respondent **SERGIO LOPEZ**, State Bar Number 259288, be suspended from the practice of law in California for two years, that execution of that period of suspension be stayed, and that respondent be placed on probation⁴ for a period of two years subject to the following conditions:

1. Respondent **SERGIO LOPEZ** is suspended from the practice of law for the first 30 days of probation.
2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation.
3. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the

⁴ The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request.

4. During the probation period, respondent must report in writing quarterly to the Office of Probation. The reports must be postmarked no later than each January 10, April 10, July 10, and October 10 of the probation period. Under penalty of perjury, respondent must state in each report whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of respondent's probation conditions during the preceding calendar quarter or applicable reporting period. If the first report would cover less than 30 days, no report is required at that time; however, the following report must cover the period of time from the commencement of probation to the end of that next quarter. In addition to all quarterly reports, a final report must be postmarked no earlier than 10 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, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with respondent's probation conditions.
6. Respondent must comply with all conditions of respondent's criminal probation and must so declare under penalty of perjury in any quarterly report required to be filed with the Office of Probation. If respondent has completed probation in the underlying criminal matter, or completes it during the period of his disciplinary probation, respondent must provide to the Office of Probation satisfactory documentary evidence of the successful completion of the criminal probation in the quarterly report due after such completion. If such satisfactory evidence is provided, respondent will be deemed to have fully satisfied this probation condition.
7. It is not recommended that respondent attend Ethics School, as respondent attended and completed that course within the last two years.
8. It is not recommended that respondent attend Ethics School, as he was ordered to do so in connection with State Bar Court case no. 12-O-11661.

At the expiration of the probation period, if respondent has complied with all conditions of probation, respondent will be relieved of the stayed suspension.

Multistate Professional Responsibility Examination

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) because he was ordered to do so in connection with State Bar Court case no. 12-O-11661.

Costs

It is recommended 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.

Dated: September 16, 2013

RICHARD A. PLATEL
Judge of the State Bar Court