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STATE BAR COURT
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STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

IN BANK

In the Matter of)	Case No. 16-Q-15408
)	
JOHN DARWIN MCCURDY II,)	RECOMMENDATION ON
)	RESIGNATION
A Member of the State Bar, No. 54091.)	
_____)	

On August 2, 2016, John Darwin McCurdy II filed his resignation with charges pending and was transferred to inactive status. On November 22, 2016, the Office of the Chief Trial Counsel of the State Bar (OCTC) filed its report on the resignation and the parties' "Stipulation as to Facts and Conclusions of Law" (Stipulation). On January 17, 2017, pursuant to this court's order, OCTC filed a supplemental report that attached respondent's record of conviction in State Bar Court case no. 15-C-13646. In both reports, OCTC stated its support for the resignation but articulated only a generalized rationale in support.

On February 9, 2017, we issued an order in which we summarized respondent's serious criminal and disciplinary history, and sought a second supplemental report. Namely, we ordered OCTC to provide specific reasons why acceptance of the resignation would not be inconsistent with the need to protect the public, the courts, and, *in particular*, the legal profession, in light of respondent's serious criminal and disciplinary history and Standard 1.8(a) of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional



Misconduct.¹ (Cal. Rules of Court, rule 9.21(c) & (d)(9).)² On February 21, 2017, OCTC filed its second supplemental report. OCTC continues to recommend that the resignation be accepted.

We recommend that the Supreme Court reject the resignation in light of the grounds set forth in rule 9.21(d), as detailed below.

I. BACKGROUND

Respondent was admitted to practice law in California on December 14, 1972. He has: a criminal conviction that did not result in attorney discipline; one prior record of discipline; and a pending disciplinary proceeding.

A. Criminal and Disciplinary History

In 1986, respondent pled guilty to a violation of Vehicle Code section 23152, subdivision (b) (driving with blood alcohol concentration [BAC] of 0.08% or more), which did not result in the filing of a disciplinary case.

In 1994, at 4:30 in the afternoon, respondent had been drinking and made an unsafe lane change while driving. He struck another vehicle, causing it to overturn. There was a family of five in the vehicle. Four suffered injuries requiring hospital treatment, and the family's eleven-year old son was pronounced dead at the scene. Respondent pled no contest to violations of: Penal Code section 191.5, subdivision (a) (felony gross vehicular manslaughter); Vehicle Code section 23153, subdivision (a) (driving under the influence (DUI) of alcohol causing bodily injury); and Vehicle Code section 23152, subdivision (b) (driving with BAC of 0.08% or more). Respondent was sentenced to six years in prison (a mid-term sentence).

¹ In relevant part, standard 1.8(a) states that “[i]f a member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction.”

² All further references to rules are to this source unless otherwise noted.

For this criminal conduct, effective February 6, 1997, the Supreme Court ordered respondent suspended for four years, execution stayed, and placed on probation for four years subject to the conditions of probation, including that respondent be suspended from the practice of law for two years and until he showed rehabilitation and fitness to practice. (*In re John Darwin McCurdy II* (S056789), State Bar Court Case No. 94-C-15959.) Respondent stipulated that he committed misconduct warranting discipline by wilfully violating the laws of California and his oath and duties but that his conduct did not constitute moral turpitude. (Bus. & Prof. Code, §§ 6102, 6106, 6068(a).) In aggravation, he stipulated to his earlier criminal conviction and that his conduct “irreparably damaged the lives of the victim’s family members.” In mitigation, at respondent’s direction, his insurance carrier promptly compensated the victim’s family in the amount of \$1,350,000, which obviated the need for legal action, and he wrote a letter of apology to the family; he cooperated with the State Bar; he demonstrated good character; he did not have a prior record of discipline; and he sought alcohol treatment including becoming involved with Alcoholics Anonymous while in prison.

B. Pending Charges

Respondent was reinstated to practice in 2000 after demonstrating rehabilitation and fitness to practice law. Respondent stipulates to the following related to the pending charges. On June 2, 2015 at 1:49 P.M., a California Highway Patrol Officer observed respondent driving 80 miles per hour on US-101 in Santa Barbara, California, and conducted a traffic stop. During the stop, the officer noted respondent’s red/watery eyes and slurred speech, and that respondent smelled like alcohol. Two alcohol screening tests revealed a BAC of 0.189 percent and 0.198 percent respectively. Respondent was arrested. A search of his car resulted in a water bottle filled with alcohol and two loaded pistols, one of which was not registered to respondent and for

which there was no record of sale or ownership. Respondent told the officer the pistols were target pistols.

Respondent was charged, inter alia, with a misdemeanor violation of Vehicle Code section 23152, subdivision (b) (driving with BAC of 0.08% or more) and a felony violation of Penal Code section 25400, subdivision (c)(6)(A) (carrying a concealed loaded firearm in a vehicle). The felony charge was reduced to a misdemeanor before conviction. Respondent pled no contest to both misdemeanors on November 12, 2015. The court suspended imposition of sentence, placed respondent on probation for 36 months, and respondent was sentenced to 90 days in county jail and ordered to enroll in a three month First Offender Program and a Clean and Sober Program. He was ordered not to own or possess firearms, fined, and ordered to pay restitution to the State. The superior court subsequently modified respondent's probation and ordered respondent to pay a reasonable monthly supervision fee, not to exceed 90 dollars per month and rescinded the requirements to enroll in the First Offender and Clean and Sober Programs.

On February 10, 2016, OCTC transmitted the related records of conviction to this court and, on April 6, 2016, we referred the matter to the Hearing Department for a hearing and decision after receiving evidence that the convictions were final. (State Bar Court case no. 15-C-13646.) On April 11, 2016, the Hearing Department served respondent with a notice of hearing on conviction. On August 2, 2016, respondent filed the pending resignation. In the Stipulation, the parties agreed: "the facts and circumstances surrounding the above-described violations did not involve moral turpitude but did involve other misconduct warranting discipline."

C. OCTC's Support for the Resignation

OCTC has filed three reports in this matter. Viewing the three reports together, OCTC supports the resignation because: (1) respondent has not practiced law since submitting his resignation; (2) respondent cooperated in this proceeding; (3) respondent entered into the Stipulation; (4) respondent has no Client Security Fund claims pending against him; (4) the criminal misconduct underlying his pending case, while serious, was not related to the practice of law; (5) his prior misconduct occurred over 21 years ago and respondent demonstrated his rehabilitation and was reinstated in 2000; (6) respondent was sober for 20 years and has not been subject to disciplinary proceedings for 15 years; (7) respondent has demonstrated remorse for his wrongdoing; (8) respondent was experiencing emotional difficulties that contributed to his most recent criminal conduct; and (9) since June 2015, respondent has been actively pursuing rehabilitation by attending sobriety meetings, submits to blood testing and has complied with his criminal probation.

OCTC also emphasized respondent's willingness to resign and maintains that there is "no reason to believe that public confidence in the discipline system or in the legal profession w[ould] be undermined in anyway by acceptance" of the resignation. Even were the litigation in State Bar Court case no. 15-C-13646 to result in disbarment, the goals of attorney discipline would not be better served than through acceptance of his resignation. To the contrary, further proceedings would use the State Bar's limited resources and would result in the delay of respondent's discipline. OCTC does not address explicitly address the requirement of standard 1.8(a) for progressive discipline in view of Respondent's prior two-year suspension.

II. CONSIDERATION OF THE GROUNDS SET FORTH IN RULE 9.21(d)

We have considered respondent's resignation under the grounds set forth in rule 9.21(d). We summarize below the relevant information for each ground:

1. Whether the preservation of testimony is complete.

OCTC reports that further perpetuation of evidence is not required.

2. Whether after transfer to inactive status, respondent has practiced law or has advertised or held himself out as entitled to practice law.

OCTC reports that since respondent filed his resignation, OCTC is not aware that respondent has practiced law or held himself out as entitled to practice law.

3. Whether respondent performed the acts specified in rule 9.20(a)-(b).

OCTC reports that respondent declared pursuant to penalty of perjury that he has no clients, no client papers or property, has earned all fees paid to him, and is not representing clients in any pending matters. Thus, respondent is not required to perform acts specified in the rule.

4. Whether respondent provided proof of compliance with rule 9.20(c).

Respondent filed an affidavit pursuant to rule 9.20 on September 15, 2016.

5. Whether the Supreme Court has filed a disbarment order.

The Supreme Court has not filed a disbarment order.

6. Whether the State Bar Court has filed a decision recommending disbarment.

The State Bar Court has not filed a decision recommending respondent's disbarment.

7. Whether respondent previously resigned or has been disbarred and reinstated to the practice of law.

Respondent has not previously resigned or been disbarred in California.

8. Whether respondent entered a stipulation with OCTC as to facts and conclusions of law regarding pending disciplinary matters.

The parties entered into a stipulation as to facts and conclusions of law regarding the above described pending charges. No other discipline matters or investigations are pending.

9. Whether accepting respondent's resignation will reasonably be inconsistent with the need to protect the public, the courts, or the legal profession.

We acknowledge the factors OCTC listed in support of this resignation. In particular, we note that respondent demonstrated rehabilitation in 2000, is regularly participating in sobriety programs, and there is no evidence that respondent committed criminal or professional misconduct between 2000 through 2015. Most of the factors listed by OCTC, however, are required of all members seeking resignation rather than factors specific to this case. And while OCTC asserts there is no reason to believe that acceptance of this resignation will harm the profession, we disagree. Respondent has repeatedly driven while under the influence of alcohol over a thirty-year period; each time the public was placed at serious risk and once this conduct resulted in a tragedy. His most recent criminal misconduct involved a BAC more than double the legal limit as well as other serious criminal conduct— carrying a concealed loaded firearm. Finally, his most recent period of sobriety is commendable but relatively short in duration. The circumstances of Respondent's repeated criminal conduct reflects poorly on his judgment and on the legal profession. (See *In re Kelley* (1990) 52 Cal.3d 487 [Supreme Court imposed public re[proval where attorney with continuing alcohol abuse problem suffered two drunk-driving convictions, the second while on probation for the first].)

Accordingly, we find that acceptance of the resignation would be inconsistent with the need to protect the public, the courts, and particularly the legal profession. We conclude that the better course, and an appropriate use of the State Bar's resources, is to allow the Hearing Department to proceed with case number 15-C-13646.

III. RECOMMENDATION

We recommend that the Supreme Court decline to accept the resignation of John Darwin McCurdy II, State Bar number 54091.

PURCELL

Presiding Judge

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Judicial Assistant of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on March 30, 2017, I deposited a true copy of the following document(s):

RECOMMENDATION ON RESIGNATION FILED MARCH 30, 2017.

in a sealed envelope for collection and mailing on that date as follows:

- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

JOHN DARWIN MCCURDY, II
65 HOLLISTER RANCH RD
GOLETA, CA 93117 - 9752

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Jamie J. Kim, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 30, 2017.



Nikiah Hawkins
Judicial Assistant
State Bar Court