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10 STATE BAR COURT
11 HEARING DEPARTMENT – LOS ANGELES
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14 In the matter of:
15 CHAD R. FULLER,
16 No. 190830,
17 A Member of the State Bar.
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Case No. 17-C-02077

RESPONSE TO NOTICE OF HEARING
ON CONVICTION

FILED

MAR 26 2019

STATE BAR COURT
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1 still holding a drink in his hand, Mr. Fuller's action resulted in a cut on the other
2 man's face.

3 While Mr. Fuller believed that he had a highly meritorious defense to the
4 criminal charge (self-defense), Mr. Fuller did not want to bring Hannah or the
5 other parents who witnessed the incident to a trial on this matter. Having to
6 relive and air this traumatic event in a public trial would have caused additional
7 anxiety and stress for Hannah, and Mr. Fuller was not willing to put her through
8 the process. Thus, he pled guilty to misdemeanor assault under California Penal
9 Code § 245(a)(4).

10 Though Mr. Fuller lacked the intent required under the criminal standard,
11 he never wanted to bring this matter through the court system, to subject his
12 family and friends to formal proceedings.

13 **MR. FULLER DID NOT COMMIT A REPORTABLE OFFENSE**

14 Business & Professions Code § 6068(o) requires attorneys to report to the
15 Bar certain violations of law. The only misdemeanor convictions that must be
16 reported are those "committed in the course of the practice of law, or in a
17 manner in which a client of the attorney was the victim, or a necessary element
18 of which, as determined by the statutory or common law definition of the
19 misdemeanor, involves improper conduct of an attorney, including dishonesty
20 or other moral turpitude, or an attempt or a conspiracy or solicitation of another
21 to commit a felony or a misdemeanor of that type." (Bus. & Prof. Code
22 § 6068(o)(5).) The charging of a misdemeanor is never reportable; only
23 convictions of these certain misdemeanors trigger the statute's reporting
24 requirement.

25 Mr. Fuller was not required to report the conviction. His assault conviction
26 did not relate to conduct committed in the course of practicing law, nor was a
27 client a victim of his conduct, nor did any element of the crime involve moral
28

1 turpitude, dishonesty, or an attempt or conspiracy or solicitation of another to
2 commit another crime.

3 **MR. FULLER'S CONVICTION DOES NOT INVOLVE MORAL TURPITUDE**

4 Mr. Fuller's conviction did not involve moral turpitude. Moral turpitude is
5 a much-used but unclearly defined term. A review of the authorities struggling
6 to define and apply the term make clear that moral turpitude requires a level of
7 dishonesty and/or depravity not found in this simple assault conviction.

8 As discussed by the California Supreme Court:

9 "Moral turpitude" is an elusive concept incapable of
10 precise general definition. One dramatic exposition of
11 the term was rendered by this court in 1938, and has
12 since been consistently followed: "an act of baseness,
13 vileness or depravity in the private and social
14 duties which a man owes to his fellowmen, or to society
15 in general, contrary to the accepted and customary rule
16 of right and duty between man and man."

16 *In re Higbie* (1972) 6 Cal.3d 562, 569 [99 Cal.Rptr. 865, 493 P.2d 97] (quoting *In re*
17 *Craig* (1938) 12 Cal.2d 93, 97 (emphasis added)).

18 By way of example, crimes and conduct that have been deemed to involve
19 moral turpitude include insider trading, lying to government agencies, and
20 agreement with others to jointly lie to government agencies (*In re Chadwick* (1989)
21 49 Cal.3d 103 110-11 [260 Cal.Rptr. 538, 776 P.2d 240]); manslaughter and forgery
22 (*In re Gossage* (2000) 23 Cal.4th 1080, 1098 [99 Cal.Rptr.2d 130, 5 P.3d 186]);
23 perjury (*In re Kristovich* (1976) 18 Cal.3d 468, 472 [134 Cal.Rptr. 409, 556 P.2d
24 771]); grand theft (*In re Basinger* (1988) 45 Cal.3d 1348, 1358 [249 Cal.Rptr. 110.
25 756 P.2d 833]); and embezzlement (*In re Ford* (1988) 44 Cal.3d 810, 813 [244
26 Cal.Rptr. 476, 749 P.2d 1331]). The common thread to these types of crimes is that
27 they involve dishonest or morally depraved conduct. Further,
28 the statute allowing for sanction of attorneys committing acts of moral turpitude

1 groups them with "dishonesty" and "corruption". (Bus. & Prof. Code, § 6106
2 (providing "commission of any act involving moral turpitude, dishonesty or
3 corruption" is grounds for sanction).)

4 As applied in the context of attorney discipline, the California Supreme
5 Court has stated:

6 In evaluating conduct that may or may not involve
7 moral turpitude, we must recognize the purpose for
8 which we have established the "moral turpitude"
9 standard: to ensure that the public, the courts, and the
10 profession are protected against unsuitable legal
11 practitioners. . . . The objective is not to impose
12 punishment upon members of the profession. To hold
13 that an act of a practitioner constitutes moral turpitude
14 is to characterize him as unsuitable to practice law.

15 *In re Higbie, supra*, 6 Cal.3d at 570 (emphasis added).

16 The California Supreme Court has further provided the following
17 guidance in defining moral turpitude as to attorney discipline:

18 Criminal conduct not committed in the practice of law
19 or against a client reveals moral turpitude if it shows a
20 deficiency in any character trait necessary for the
21 practice of law (such as trustworthiness, honesty,
22 fairness, candor, and fidelity to fiduciary duties) or if it
23 involves such a serious breach of a duty owed to
24 another or to society, or such a flagrant disrespect for
25 the law or for societal norms, that knowledge of the
26 attorney's conduct would be likely to undermine public
27 confidence in and respect for the legal profession.

28 *In re Lesansky* (2001) 25 Cal.4th 11, 16 [104 Cal.Rptr.2d 409, 17 P.3d 764] (emphasis
added).

As to lawyers, failure to pay a tax when there is no intent to defraud is not
moral turpitude (*In re Higbie*, 6 Cal.3d at 568-71), nor is possession of an illicit

1 substance (*Id.* at 572), nor is willful failure to file a federal income tax return (*In re*
2 *Rohan* (1978), 21 Cal.3d 195, 200 [145 Cal.Rptr. 855, 578 P.2d 102] (finding,
3 however, that such a violation did warrant discipline)). Even two close-in-time
4 convictions for driving under the influence, including the second conviction
5 occurring while the defendant was on probation for the first, was not moral
6 turpitude. *In re Kelley* (1990) 52 Cal.3d 487, 494 [276 Cal.Rptr. 375, 801 P.2d 1126].

7 It is clear from the case law that Mr. Fuller's conviction for assault does not
8 rise to the level of moral turpitude. Moreover, all doubts as to whether an act
9 involved moral turpitude must be resolved in his favor. *In re Higbie*, 6 Cal.3d at
10 569 (citing *Himmel v. State Bar* (1971) 4 Cal.3d 786). Thus it is clear that no moral
11 turpitude finding is appropriate here.

12 **MR. FULLER'S CONDUCT DOES NOT WARRANT DISCIPLINE**

13 The Court does have an inherent power to control the practice of law to
14 protect the profession and the public by sanctioning attorneys for "misconduct
15 warranting discipline." See *In re Rohan, supra*, 21 Cal.3d at 198; *In re Kelley*, 52
16 Cal.3d at 495. However, even with this power, Mr. Fuller's conduct does not give
17 rise to sanctions.

18 In *In re Kelley*, the Court found it appropriate to sanction an attorney under
19 its inherent powers for her two driving under the influence convictions that were
20 within 31 months of each other, and the second conviction was during the
21 probation period for her first. The Supreme Court of California found that her
22 two convictions being so close in time and the circumstances surrounding them
23 were "indications of a problem of alcohol abuse". *In re Kelley*, 52 Cal.3d at 495. It
24 also found that her second conviction while on probation for her first
25 "demonstrated a complete disregard for the conditions of her probation, the law,
26 and the safety of the public" and "a lapse of character and a disrespect for the
27 legal system that directly relate to an attorney's fitness to practice law and serve
28 as an officer of the court." *Id.*

1 Unlike Ms. Kelley, Mr. Fuller does not have a problem with alcohol abuse
2 nor any other chronic issue, nor does his behavior demonstrate a disregard for
3 the courts or the law. Rather, the Court in *Kelley* stated that "it would be
4 unreasonable to hold attorneys to such a high standard of conduct that every
5 violation of law, however minor, would constitute a ground for professional
6 discipline," and that statement applies here to Mr. Fuller. This unfortunate
7 incident does not, like Ms. Kelley's case, "evidence a lack of respect for the legal
8 system and an alcohol abuse problem." *See id.* at 496.

9 Here an isolated incident, the facts of which do not indicate any
10 larger problem with Mr. Fuller or disregard for the sanctity of the courts, simply
11 does not warrant any sanction whatsoever. The Court's inherent authority to
12 sanction is to protect the public and the profession, and no protection is needed
13 from Mr. Fuller.

14 CONCLUSION

15 In response to the Review Department's Order, no level of discipline is
16 appropriate for Mr. Fuller as a result of his conviction for violation of Penal Code
17 § 245(a)(4).

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19 Dated: 3/25/19



20 Megan Zavieh
21 Counsel for Respondent
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PROOF OF SERVICE

I, Megan Zavieh, declare as follows:

I am over the age of eighteen years and not a party to this action.


On March 25, 2019, I served a true and correct copy of the within document(s):

- Respondent's Response to Notice of Conviction

- ☐ by **FACSIMILE** by transmitting the document(s) listed above to the fax number(s) set forth below.
- ☐ by **PERSONAL DELIVERY**. I personally delivered the document(s) listed above, addressed as set forth below.
- ☒ by **US MAIL** by depositing the document(s) listed above in a sealed envelope, with delivery fees fully prepaid, into the United States Postal Service delivery system containing the aforesaid document(s), addressed as stated above, at Alpharetta, Georgia.

Shannon Broderick
The State Bar of California
Office of the Chief Trial Counsel
845 S. Figueroa St.
Los Angeles, CA 90017

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


Megan Zavieh