

8(B) Attorneys

In an unpublished State Bar discipline case, an attorney had been convicted of a violation of Veh. C. §23153, drunk driving with injury, with no prior convictions. The attorney had a B.A.C. of 0.20%, and entered a no contest plea to the charges. The attorney was remorseful and was completely cooperative with the State Bar. The discipline imposed was a chemical dependency program and an after care program, and two years State Bar probation.

The Supreme Court has approved the State Bar's issuance of a public reproof for nothing more than a second drunk driving conviction while on probation for the first conviction (*In re Kelley* (1990) 52 C3d 487, 276 CR 375).

Additional cases on attorney discipline for alcohol are:

In re Billings (1990) 50 C3d 358, 267 CR 319.

Stanley v. State Bar (1990) 50 C3d 555, 268 CR 183.

In re Ewaniszyk (1990) 50 C3d 543, 268 CR 176.

In re Hickey (1990) 50 C3d 571, 268 CR 170.

In re Matter of Anderson (Review Dept, 1990) 1 Cal. State Bar Ct. Rptr. 39 - Three drunk driving convictions could be moral turpitude.

In re Matter of Carr (Review Dept., 1991) 1 Cal. State Bar Ct. Rptr. 756 - Third DUI conviction neither warrants bar discipline per se nor under facts here.

In re Matter of Carr (Review Dept., 1992) 2 Cal. State Bar Ct. Rptr. 108- Two years probation for alcohol and drug abuse and convictions that harmed neither clients nor courts.

In re Matter of Anderson (Review Dept., 1992) 2 Cal. State Bar Ct. Rptr. 208 - Four drunk driving convictions and long history of alcohol abuse, along with his uncooperative and assaultive behavior during several arrests was not moral turpitude. But the conduct was found to be other conduct warranting discipline and the court imposed a one-year suspension from law practice, with an actual suspension of 60 days.

In re Matter of Carr (Review Dept., 1992) 2 Cal. State Bar Ct. Rptr. 244 - Probation revoked, suspended two years, for failure to declare abstinence.

In re Respondent I (Review Dept., 1993) 2 Cal. State Bar Ct. Rptr. 260 - Discipline charges dismissed and attorney awarded costs for his trouble, saying, "A common thread runs through all the reported DUI cases resulting in similar treatment under the Model Code, the Model Rules and California case law. Lawyers who are convicted simply of a single misdemeanor DUI may receive a reprimand, but for the most part appear to be treated like other citizens who have violated those criminal laws and receive appropriate criminal sanctions designed to discourage repetition of the misconduct. [Footnote] Their suitability to practice law is called into question, however, where the incident is compounded by serious injury or death or is coupled with other aggravating behavior (a high-speed chase, lack of cooperation with police, probation violation, possession of illegal drugs, etc.). . . . The California State Bar itself does not generally consider a single misdemeanor conviction for drunk driving by an active member of the bar to warrant referral for consideration of professional discipline.

In the Matter of Respondent M. (Review Dept., 1993) 2 Cal. State Bar Ct. Rptr. 465 - Interim suspension from practice of law (pending disciplinary hearing), which normally is imposed immediately following conviction of a felony, is not appropriate where the felony was Veh. C. §23153, first offense, which was quickly reduced to a misdemeanor. The interim suspension would last at least seven months, pending hearing, and would likely be more severe than the actual discipline imposed.

In the Matter of Bert B. Babero (Review Dept., March 16, 1993) 2 Cal. State Bar Ct. Rptr. 322 - Conviction of first time drunk driving and carrying a concealed weapon with good reason did not warrant discipline.

In the Matter of Jerry D. Rudman (Review Dept., October 7, 1993) 2 Cal. State Bar Ct. Rptr. 546 - Relatively recent first offense drunk driving conviction with low BAC and evidence that it was an aberration did not prevent reinstatement after a 10 years previous resignation following conviction on counterfeiting charges.

For more information:

Braun, H., and Gerner, M., "Alcohol and the State Bar", *Defending the Drinking Driver Seminar* (Willits, CA: Fast Eddie Publishing Company, 1992) Section VIII - M.C.L.E. Video.

Shesgreen, Deirdre, "ADA: Shield for Errant Lawyers?", *The Recorder*, 120 No. 193, October 4, 1996 (San Francisco: Recorder Publishing Co.) 1 - The Americans With Disabilities Act (42 U.S.C. §§ 12101 et seq.) may require accommodation for alcoholics by professional licensing authorities.

Stretton, S.C., "Social Crimes And A Lawyer's License", *the Champion*, XV No. 2, March 1991 (Washington, D.C.: N.A.C.D.L.) 23.

Tarantino, John A., "Legal Malpractice Claims Against Drunk Driving Defense Lawyers", *DWI Journal*, 9 No. 12, December, 1994 (Fanwood, NJ: Whitaker Newsletters) 1.

8(C) Judges

In *Kennick v. Com'n on Judicial Performance* (1990) 50 C3d 297, 267 CR 293, a judge was removed for dishonest conduct related to a drunk driving arrest, but not for the conviction itself, since it was a nolo plea and the offense itself was not charged as a removal ground.

For more information:

Shesgreen, Deirdre, "ADA: Shield for Errant Lawyers?", *The Recorder*, 120 No. 193, October 4, 1996 (San Francisco: Recorder Publishing Co.) 1 - The Americans With Disabilities Act (42 U.S.C. §§ 12101 et seq.) may require accommodation for alcoholics by professional licensing authorities.