IN RE: WILLIAM E. SCANNELL

NO. BD-2011-078

S.J.C. Order of Term Suspension entered by Justice Spina on June 26, 2012.[1]

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[1] The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

COMMONWEALTH OF MASSACHUSETTS
BOARD OF BAR OVERSEERS
OF THE SUPREME JUDICIAL COURT

BAR COUNSEL, Petitioner	)
v.	)
WILLIAM E. SCANNELL, ESQ. Respondent	)

HEARING PANEL REPORT

A petition for discipline was filed by bar counsel on August 30, 2011 against the respondent, William E. Scannell, charging that he had been convicted of several crimes between February 1999 and July 2011. The respondent, represented by counsel, filed an answer on October 12, 2011, admitting most of the allegations and alleging facts in mitigation. A hearing was held on December 12, 2011. Fourteen exhibits were admitted into evidence. Three witnesses testified including the respondent. The respondent filed a Memorandum in Support of Suggested Discipline. Bar counsel filed a post-hearing Memorandum in Support of Suspension on December 13, 2011.

I. Findings of Fact

1. The respondent, William E. Scannell, Esq. was admitted to the Massachusetts bar on February 25, 1994. (Ans. ¶ 2)

2. On February 3, 1999, the respondent admitted to sufficient facts in Springfield District Court to the crime of assault and battery, in violation of G.L. c. 265, § 13A(a). The case was continued without a finding until August 3, 1999, on condition that the respondent stay away from Riverside Park. (Ans. ¶ 3; Ex. 1, 2, 3)

3. On August 25, 2003, the respondent admitted to sufficient facts in Plymouth District Court to operating under the influence of liquor, in violation of G.L. c. 90, § 24(1)(a)(1). The case was continued without a finding until August 27, 2004. (Ans. ¶ 4; Ex. 4, 5)

4. On February 1, 2011, the respondent was found guilty after a jury-waived trial in Brockton District Court of operating under the influence of liquor -2nd offense, in violation of G.L. c. 90, § 24(1)(a)(1), and child endangerment while operating under the influence, in violation of G. L. c. 90, § 24V(a). The respondent was sentenced to concurrent terms of 90 days in jail with two days to serve and placed on probation until February 1, 2013, subject to conditions that included completion of a fourteen-day in-patient program. (Ans. ¶ 5; Ex. 7, 8)

5. On July 5, 2011, the respondent pleaded guilty in Wrentham District Court to negligent operation of a motor vehicle, in violation of G. L. c. 90, § 24(2)(a). He was placed on probation concurrent with the sentence imposed in the Brockton District Court, and was ordered to attend three Alcoholics Anonymous meetings each week and to be free of alcohol, subject to testing. (Ans. ¶ 6, Ex. 6)

6. The proceedings in the Brockton District Court and the Wrentham District Court pertain to charges arising from the same incident that occurred on August 20, 2009 at a pre-season game at Gillette Stadium in Foxboro, MA. (Ex. 6, 7)

7. The respondent did not report the 1999 admission to sufficient facts to assault and battery and the 2003 admission to sufficient facts to operating under the influence to bar counsel as required by S.J.C. Rule 4:01, § 12(8).

II. Conclusions of Law

8. S.J.C. Rule 4:01, § 12(1), as amended effective July 1, 1997, defines "conviction" to include "any admission to or finding of sufficient facts ...whether or not sentence has been imposed." Thus, the respondent's admission to sufficient facts in 1999 to assault and battery and his admission to sufficient facts in 2003 to operating under the influence, first offense, constitute convictions for purposes of this rule.

9. The respondent's conduct in committing the above-mentioned crimes violated Mass. R. Prof. C. 8.4(b) and (h).

10. The respondent's conduct in failing to timely report the 1999 and 2003 matters to which he admitted to sufficient facts violated S.J.C. Rule 4:01, § 12(8) and Mass. R. Prof. C. 8.4(d).

III. Factors in Mitigation and Aggravation

Aggravation

11. The respondent was convicted of four criminal matters over the course of twelve years. While none occurred in connection with the practice of law, a factor which would be considered in aggravation, see Matter of Concemi, 422 Mass. 326, 12 Mass. Att'y Disc. R. 63 (1996), they demonstrate a history of criminal wrongdoing.

12. While bar counsel suggests that the respondent may have testified falsely at his trial in Brockton District Court when he testified that he had had only one drink in Gillette Stadium and was not under the influence at the time of the incident, similar to his testimony before this panel, we find no intentionally false testimony. At the time of the incident, the respondent was suffering from alcoholism and was in denial that he suffered from alcoholism. We find that he cannot be relied upon to accurately recount the incident.

Mitigation

13. As bar counsel asserted in her post-hearing memorandum in support of sanctions, alcoholism may be weighed in mitigation only where the respondent has provided evidence from which one might conclude that alcoholism contributed to his misconduct. See Matter of Schoepfer, 426 Mass. 183, 188 (1997) (reduction of sanction justified where "disability caused the misconduct"); Matter of Ward, 8 Mass. Att'y Disc. R. 257, 257 (1991) (rejecting evidence of alcoholism for lack of a "causal connection between the alcoholism and the respondent's misconduct"). Here the respondent was convicted twice of operating under the influence. Between the ages of seventeen and approximately thirty-two, he was sober for a total of about eleven years. (Tr. 62) The longest period of sobriety was eight years. (Tr. 62) The respondent

has struggled with alcoholism for many years, even continuing to drink for the seventeen months between the time of the incident in Gillette Stadium in August 2009 and his criminal trial in Brockton District Court, taking his last drink on January 30, 2011. (Tr. 59) The two convictions of driving under the influence, paired with the respondent's testimony regarding his history of drinking, lead us to find that alcoholism substantially contributed to, and in some cases caused, the respondent's criminal conduct.

We find that while the respondent has taken many positive steps toward recovery, there has been an insufficient period of sobriety to allow us to justify more than a moderate reduction in sanction. He has not met the burden of proving that his rehabilitation and treatment have gone on sufficiently long enough that a reoccurrence of the misconduct is unlikely. The ABA Standards support a reduction in the degree of discipline imposed as mitigation due to alcoholism where the respondent has shown a meaningful recovery over a sustained period, and that recurrence of that misconduct is unlikely. See Standards, § 9.32(i)(3) ("the respondent's recovery from the chemical dependency ... is demonstrated by a meaningful and sustained period of successful rehabilitation;... the recovery arrested the misconduct and recurrence of that misconduct is unlikely.") As part of our recommendation for a sanction, we recommend conditions for the respondent to follow for an extensive period to assist him in meeting the goals of recovery and non-recurrence of misconduct.

14. Upon learning that his 1999 and 2003 admissions to sufficient facts in two criminal matters are deemed convictions under S.J.C. Rule 4:01, §12(1) and thus must be reported to bar counsel within ten days, as required by § 12(8), the respondent reported them to bar counsel.

IV. Recommendation for Discipline

The respondent seeks a term suspension of three months, suspended for a year and a day, with the requirement that the respondent abide by appropriate conditions recommended by bar counsel. Bar counsel seeks a suspension for at least six months, or nine months if we find that the respondent testified falsely at his trial in Brockton District Court. Or, if we believe that a portion of the suspension should be suspended, bar counsel recommends a one-year suspension

with three or six months actually suspended until February 1, 2013, the date that the respondent's probation is to terminate.

The respondent was convicted of four different crimes. Two of the crimes, assault and battery (at least where the nature of the crime is relatively minor) and negligent operation of a motor vehicle, taken alone would likely result in a public reprimand. See Matter of Tracia, 26 Mass. Att'y Disc. R. 694 (2010); Matter of Simoni, 25 Mass. Att'y Disc. R. 546 (2009). While there appear to be no Massachusetts attorney discipline cases resulting from a conviction of child endangerment, a New York attorney was publicly censured for her OUI conviction and attempted child endangerment conviction. See Matter of O'Brien, 765 N.Y.S.2d 71 (2d Dept. 2003). With regard to an OUI conviction (first offense), bar counsel admits that there generally is no sanction absent aggravating circumstances. Where there is a second or third offense, the sanction is generally a suspension between six months and two years. See Matter of Tavilla, 26 Mass. Att'y Disc. R. 667 (2010) (two-year suspension with nine months of actual suspension and the remaining term suspended for 3rd offense); Matter of Lawson, 24 Mass. Att'y Disc. R. 423 (2008) (six-month suspension for a 2nd offense); Matter of Pramberg, 24 Mass. Att'y Disc. R. 572 (2008) (six-month suspension for a 3rd offense and leaving the scene of an accident causing property damage); Matter of Ranieri, 24 Mass. Att'y Disc. R. 595 (2008) (one-year suspension for 3rd offense and operating to endanger); Matter of O'Brien, 15 Mass. Att'y Disc. R. 449 (1999) (six-month and a day suspension for 3rd offense and leaving scene of an accident causing property damage).

Taken together, the respondent's convictions that spanned a period of twelve years warrant a suspension. Since achieving his current state of sobriety, the respondent has followed diligently all of the conditions of his probation. He completed a fourteen-day residential treatment program. (Ex. 9) On March 10, 2011, he presented himself for an initial evaluation at Lawyers Concerned for Lawyers (LCL). (Ex. 11) He attends the Second Offender Alcohol Program for weekly group work where he is an active participant. (Tr. 80, Ex. 12) He regularly submits to urine or breathalyzer tests for alcohol use proving that he is not consuming alcohol.

(Tr. 91-92, Ex. 12) He attends AA meetings every day. (Tr. 60, Ex. 14) He has a positive relationship with his former wife with whom he shares custody of their two sons ages thirteen and sixteen. (Tr. 92) He proudly shares in his sons' academic and athletic achievements. (Tr. 92) His former wife provides administrative assistance in his law office and is very supportive of his efforts to maintain sobriety. (Tr. 93, 100) Because the respondent's driver's license has been revoked until 2015, he has hired a driver who takes him to AA meetings and also takes him and his sons out to the movies and other activities. (Tr. 61, 93)

Two witnesses testified on behalf of the respondent. One witness, Robert Kelly, an attorney from Quincy who is an alcoholic and has been sober since July 1985, testified that he first met the respondent in March of 2011 at an LCL meeting, and that he continues to see him at monthly LCL meetings. (Tr. 21, 22, Ex. 13) While Attorney Kelley offered compassionate testimony regarding the respondent's current sobriety and his serious efforts at rehabilitation, he was unfamiliar with the respondent's conduct or circumstances that resulted in his convictions. He, therefore, was unable to provide convincing testimony regarding whether he believes that the respondent would have a reoccurrence of misconduct similar to that for which he was convicted.

The second witness, Fawn Sances, also an alcoholic, testified that she met the respondent in May of 2011 and has seen him regularly at AA meetings. (Tr. 41) Like Attorney Kelly, Ms. Sansis spoke earnestly about the respondent's efforts to date to maintain sobriety, but was not able to provide testimony regarding whether the respondent has had sufficient treatment and rehabilitation to prevent a reoccurrence of his misconduct.

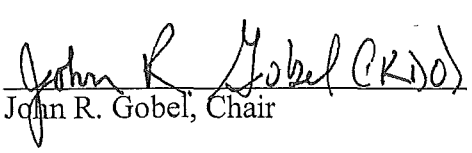
Recognizing the respondent's convictions, his long struggle with alcoholism, and his recent sobriety, we recommend that the respondent be suspended for a year and one day, with the execution of all but three months to be stayed and suspended for two years subject to conditions. These conditions include continued sobriety, attendance at AA meetings consistent with his criminal probation requirements, obtaining an LCL evaluation, and entering into a monitoring agreement with LCL. We recognize that the respondent's term of criminal probation is to terminate February 1, 2013. Our recommendation is that the respondent's suspended suspension

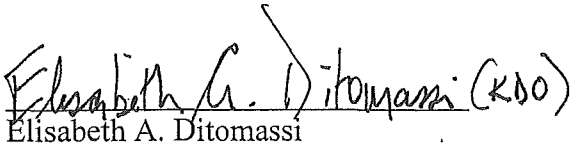
exceed his criminal probation by one year and thus provide him with an extra inducement to continue his recovery as he has been doing since January 2011. Any material breach of these conditions would result in the imposition of a year and a day suspension and a surrender of the right to automatic reinstatement under S.J.C. Rule 4:01, § 18(1)(a). In our view, if the respondent is successful in maintaining sobriety, further misconduct is unlikely to occur.

V. Conclusion

For all of the foregoing reasons, we recommend that the respondent, William E. Scannell, be suspended for a year and one day, with the execution of all but three months to be stayed and suspended for two years subject to the above-described conditions.

Respectfully submitted,
By the Hearing Panel,


John R. Gobel, Chair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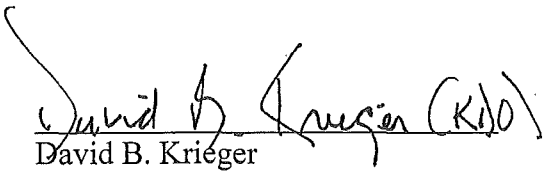
David B. Krieger

Filed: January 9, 2012