

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case No. 21-01
)
ATHUL K. ACHARYA,)
)
Respondent.)

Counsel for the Bar: Susan R. Cournoyer

Counsel for the Respondent: Amber L. Bevacqua-Lynott

Disciplinary Board: None

Disposition: Violation of RPC 8.4(a)(2). Reciprocal Discipline. Public reprimand.

Effective Date of Order: May 8, 2021

ORDER GRANTING BR 3.5 PETITION FOR RECIPROCAL DISCIPLINE

This matter is before me on the Oregon State Bar's (Bar) Petition for Reciprocal Discipline pursuant to BR 3.5. Respondent answered the petition, objecting to the imposition of reciprocal discipline, and asserting the defenses set forth in BR 3.5(c). The Bar was allowed to file a reply in support of the petition. I have considered the record and, as explained below, conclude that there is no need to appoint a trial panel to hear testimony, and Respondent should be disciplined in Oregon by the issuance of a public reprimand.

DISCUSSION

Respondent pleaded guilty to misdemeanor battery in California arising from a drunken encounter with law enforcement officers after a Stanford football game in October 2017. Respondent was charged with Battery on a Police Officer Engaged in the Performance of Duties and Resisting, Delaying, or Obstructing an Officer, both misdemeanors under California law. He pleaded no contest to an amended charge of Battery and the above counts were dismissed. The court placed Respondent on a two-year probation. He was ordered to stay away from Stanford football games, attend 40 AA meetings, and perform 220 hours of community service through non-profit or pro bono legal work. The court ordered that the probation could be terminated after one year if Respondent completed the terms and conditions.

Respondent's conviction was expunged pursuant to a California Penal Code section that allows for expungement when all probation conditions are completed and probation is successfully terminated. The conviction was not expunged for California State Bar purposes.

The crime was not one involving moral turpitude, but California will impose discipline based on case law for other misconduct warranting discipline. The California State Bar Court initiated a proceeding. Respondent stipulated to the charge and to a sanction of a private reproof with conditions. A private reproof imposed after initiation of a proceeding in California is part of the respondent's official state bar record, disclosed in response to public inquiries, and is reported as a record of public discipline on the California State Bar's web page.

The conditions imposed with the private reproof required Respondent to meet with the Office of Probation, file quarterly written reports with that office for one year, attend State Bar Ethics School, and pass an Ethics School exam.

The Oregon State Bar asks that Respondent be publicly reprimanded for the conduct resulting in discipline in California.

BR 3.5(d) provides that the Adjudicator, in his or her discretion, may decide the question of imposition of reciprocal discipline on the record submitted, or may take testimony on the defenses asserted, in which case a trial panel is appointed. BR 3.5(f). In this case, the record is sufficient to address the defenses asserted and there is no need for additional testimony.

Respondent asserts the following three defenses set forth in BR 3.5(c) to the Bar's petition:

"I. Mr. Acharya would be deprived of due process if found, on this record, to be in violation of the charge sought by the Oregon State Bar. Although Mr. Acharya does not contest that the procedure afforded to him in the State Bar of California proceeding on the charge to which he stipulated in that jurisdiction provided him with sufficient due process, Mr. Acharya was not provided an opportunity to address the facts or allegations requisite to the charge sought in this Oregon State Bar reciprocal proceeding.

II. The submitted record regarding Mr. Acharya's discipline in California is not sufficient to establish a violation of Oregon RPC 8.4(a)(2).

III. Oregon disciplinary procedures contain no sanction equivalent to the sanction imposed in California, and Mr. Acharya believes that his contest of the charge sought by the Oregon Bar in an original proceeding would result in a dismissal." *Answer to OSB's BR 3.5 Petition* at p. 1. (underlining in original.)

Respondent acknowledges that the procedures employed in California provided him with due process. He argues that he would be deprived of due process here because he was not able to address "the facts or allegations requisite to the charge sought in this Oregon State Bar

reciprocal proceeding.” Respondent says this is so because Oregon does not have the non-statutory California rule prohibiting misconduct not involving moral turpitude but involving other misconduct warranting discipline. Respondent says the closest rule “in language and intent is ORS 9.527(2),” (*Answer* at p. 4), which requires a conviction for a felony or misdemeanor involving moral turpitude, and Respondent did not plead to such a crime.

What is at issue here is not the rule Respondent violated under California law, but the conduct for which Respondent was disciplined, and whether that conduct would be misconduct under Oregon’s rules. In making that determination, we look at the facts of the case as they were found by the other jurisdiction, not the particular rule involved. Respondent may not use a BR 3.5 proceeding to challenge the factual basis for the California discipline if it was determined in a fashion that provided him with due process. Moreover, the facts in the record here were stipulated to by Respondent.

The Bar does not contend that Respondent should be disciplined under ORS 9.527(2). It argues that Respondent’s actions violated RPC 8.4(a)(2) in that the criminal act reflects adversely on Respondent’s fitness as a lawyer. Even though Respondent pleaded guilty to a charge of simple battery, he stipulated to the fact that he committed a battery on a police officer by biting him, and otherwise resisted the authority of the officers he encountered. *Petition, Exhibit 1* at p. 10. The Oregon Supreme Court has made clear that this type of conduct runs afoul of the rule, and that the submitted record is sufficient to establish such a violation.

In *In re Jaffee*, 331 Or 398, 15 P3d 533 (2000), the court analyzed an attorney’s confrontation with a law enforcement officer under the predecessor to RPC 8.4(a)(2), DR 1-102(A)(2). The court stated:

“Although the fact and circumstances of the criminal act are proven, the question remains whether that act is of the sort that reflects adversely on the accused’s “fitness to practice law.” Not every criminal act reflects adversely on a lawyer’s “fitness to practice law” within the meaning of DR 1-102(A)(2). As this court noted in *In re White*, 311 Or. 573, 589, 815 P.2d 1257 (1991), “[t]here must be some rational connection other than the criminality of the act between the conduct and the actor’s fitness to practice law.” *White* identified a number of “pertinent considerations” with respect to whether a criminal act adversely reflects on a lawyer’s fitness to practice law:

‘[T]he lawyer’s mental state; the extent to which the act demonstrates disrespect for the law or law enforcement; the presence or absence of a victim; the extent of actual or potential injury to a victim; and the presence or absence of a pattern of criminal conduct.’ *Id.* Applying those factors, the accused certainly demonstrated a “disrespect for * * * law enforcement.” The accused’s physical intrusion into Pemberton’s arrest also threatened to turn an unpleasant but peaceful act of law enforcement into a violent confrontation, with the officers as potential victims. There was no actual physical injury, and no pattern of criminal conduct, but **lawyers are supposed to respect and vindicate the traditional**

process of reviewing the propriety of police actions in court, not attempt to circumvent those processes by initiating confrontations in the street. The accused's acts reflect directly on his fitness to practice law. We find that he violated DR 1-102(A)(2)." 331 Or at 404-05 (emphasis added.)

Respondent's actions here are of the same kind and violated RPC 8.4(a)(2).

As to the sanction question, the public nature of a private reproof under California's disciplinary system establishes that a public reprimand in Oregon is substantially equivalent for our purposes. Given the extra conditions imposed in California, the public reprimand sought here may actually be a lesser sanction than that imposed in California. The imposition of a public reprimand does not result in grave injustice, nor is it offensive to public policy.

Accordingly,

IT IS HEREBY ORDERED that the Petition for Reciprocal Discipline is GRANTED and Respondent is PUBLICLY REPRIMANDED.

DATED this 7th day of April, 2021.

/s/ Mark A. Turner

Mark A. Turner, Adjudicator