

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of)	Case No. 00-O-10746; 00-O-14654;
)	01-O-01709; 02-O-15397
MARK MITCHELL GEYER,)	
)	AMENDED DECISION AND ORDER
Member No. 64122,)	FILING AND SEALING CERTAIN
)	DOCUMENTS
<u>A Member of the State Bar.</u>)	

INTRODUCTION/PERTINENT PROCEDURAL HISTORY

This disciplinary matter involving respondent **Mark Mitchell Geyer** (respondent) arises out of three client matters in which respondent committed violations of the State Bar Act and the Rules of Professional Conduct of the State Bar of California, and respondent's failure to comply with the terms and conditions of his probation in a prior disciplinary matter.

Following the filing of certain formal charges against respondent, respondent contacted the State Bar of California's Lawyer Assistance Program (LAP) in September 2002 for assistance with his mental health issue, and on December 20, 2002, respondent executed a Participation Agreement with the LAP.

On October 21, 2002, the court¹ issued an order referring respondent to the Alternative Discipline Program (ADP)² judge.

¹This matter was originally assigned to the Honorable Robert M. Talcott. In late October 2002, respondent was referred to ADP Judge Paul Bacigalupo. A few months later, the matter was returned to Judge Talcott. This matter remained with Judge Talcott until it was reassigned to the undersigned judge effective November 17, 2006.

²The ADP was formerly known as the State Bar Court's Pilot Program for Respondents with Substance Abuse or Mental Health Issues and the State Bar Court's Program for Respondent's with Substance Abuse or Mental Health Issues. The ADP is also known as the State Bar Court's Program for Respondent's with Substance Abuse and/or Mental Health Issues.

On September 8, 2003, respondent submitted a declaration to the court which established that at the time of his misconduct, respondent was suffering from a mental health issue. The parties also executed a stipulation on September 8, 2003, regarding facts and conclusions of law in Case Nos. 00-O-10746, 00-O-14654, 01-O-01709 and investigation Case No. 02-O-15397. Respondent's declaration and the stipulated facts established a casual connection between respondent's mental health issue and the misconduct set forth in the stipulation.

After the parties submitted to the court their respective briefs on the issue of discipline, the court lodged its Decision Re Alternative Recommendations for Degree of Discipline on November 20, 2003, with respect to in Case Nos. 00-O-10746, 00-O-14654, 01-O-01709 and investigation Case No. 02-O-15397, setting forth the recommended discipline if respondent successfully completed or was terminated from the court's ADP. On that same day: (1) the parties' Stipulation Re Facts and Conclusions of Law regarding Case Nos. 00-O-10746, 00-O-14654, 01-O-01709 and investigation Case No. 02-O-15397 was lodged with the court;³ (2) the Contract and Waiver for Participation in the State Bar Court's ADP (Contract) was executed by respondent and his counsel; and (3) respondent was accepted as a participant in the ADP.

Respondent was in compliance with the conditions of the court's ADP until September 2006.

On January 22, 2007, the court filed an order setting an order to show cause regarding respondent's termination from the ADP for February 28, 2007.

On January 25, 2007, the State Bar filed a motion to terminate respondent from the ADP for violating provisions of his ADP Contract through continued misconduct. Respondent filed an opposition to the State Bar's motion to terminate respondent from the ADP.

After the court held its February 28, 2007, status conference, the court filed an order on March 2, 2007, that the order to show cause regarding respondent's termination from the ADP is based on the State Bar's motion for respondent's termination from the ADP filed on January 25, 2007. The court gave the parties until March 12, 2007, to file a response to the court's order to show

(Rules Proc. of State Bar, rules 800-807.)

³The court executed the order approving the parties' stipulation on November 20, 2003.

cause.

On March 12, 2007, the court received a response from the State Bar to the court's order to show cause with respect to respondent's termination from the ADP.

On April 6, 2007, the court filed an order denying the State Bar's motion to terminate respondent from the ADP.

On April 24, 2007, the State Bar filed a motion for reconsideration of the court's April 6, 2007 order denying the State Bar's motion to terminate respondent from the ADP. In an order filed on May 8, 2007, the court denied the State Bar's motion for reconsideration of the court's April 6, 2007 order.

Thereafter, on May 29, 2007, the State Bar sought interlocutory review of the court's May 8, 2007 order denying the State Bar's motion for reconsideration. On June 26, 2007, the Review Department granted the State Bar's petition for interlocutory review.

On May 29, 2007, the State Bar also filed a motion seeking a stay of these proceedings pending the State Bar Court Review Department's ruling on the State Bar's petition for interlocutory review. On July 12, 2007, the court issued an order granting the stay requested by the State Bar.

Thereafter, on October 10, 2007, the Review Department filed its opinion on interlocutory review. The Review Department reversed the undersigned judge's order of May 8, 2007, and, accordingly, the State Bar's motion to terminate respondent from the ADP was granted. The matter was remanded to the hearing department for further proceedings in accordance with the Review Department's opinion.

On October 31, 2007, the Parties' Stipulation Re Facts and Conclusions of Law, originally executed by the parties on September 8, 2003, was filed with the court, and this matter was submitted for decision on that date.⁴

Accordingly, the court now issues this decision recommending that the Supreme Court

⁴The court originally issued a decision and order in this matter on March 19, 2008. Thereafter, the State Bar sought reconsideration of that decision. An order granting the State Bar's motion for reconsideration is being filed concurrently with this amended decision and order. Because the court granted the State Bar's motion for reconsideration, the court now issues this Amended Decision and Order Filing and Sealing Certain Documents.

impose upon respondent the discipline set forth below in this decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties' Stipulation Re Facts and Conclusions of Law, including the court's order approving the stipulation, is attached hereto and hereby incorporated by reference, as if fully set forth herein. The Stipulation Re Facts and Conclusions of Law sets forth the factual findings, legal conclusions and aggravating and mitigating circumstances in this matter.

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney but, rather, to protect the public, to preserve public confidence in the legal profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

Prior to being accepted for participation in the ADP, the parties submitted briefs to the court on the appropriate discipline in this matter. After reviewing the parties' briefs and considering the standards and case law cited therein, the parties' stipulation setting forth the facts, conclusions of law, and the aggravating and mitigating circumstances with respect to Case Nos. 00-O-10746; 00-O-14654; 01-O-1709 and 02-O-15397 (Inv.), and respondent's declaration regarding the nexus between his mental health issue and his misconduct in these matters, the parties were advised of the discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP and the discipline which would be recommended if respondent was terminated from the ADP. The parties then executed the Contract to participate in the ADP and respondent was accepted for participation in the ADP effective November 20, 2003.

After being accepted into the ADP, respondent was in compliance with the conditions of the court's ADP until September 2006. Thereafter, on January 25, 2007, the State Bar filed a motion to terminate respondent from the ADP for violating provisions of his ADP Contract through continued misconduct. The court denied the State Bar's motion. The State Bar sought reconsideration of the order denying the motion to terminate respondent from the ADP. The State Bar's motion for reconsideration was also denied by the court. The State Bar thereafter sought interlocutory review of the court's order denying the State Bar's motion for reconsideration. The

Review Department granted the State Bar's petition for interlocutory review. Thereafter, the Review Department issued an opinion reversing the undersigned judge's May 8, 2007 order denying the State Bar's motion for reconsideration. Accordingly, the State Bar's motion to terminate respondent from the ADP was granted, and the matter was remanded to the hearing department for further proceedings in accordance with the Review Department's opinion.

As such, it cannot be found that respondent no longer suffers from, or that he is rehabilitated from, his mental health issue. Accordingly, the court will recommend to the Supreme Court the imposition of the discipline set forth in the court's Decision Re Alternative Recommendations for Degree of Discipline in the event respondent was terminated from the ADP.

RECOMMENDED DISCIPLINE

IT IS HEREBY RECOMMENDED that respondent **MARK MITCHELL GEYER** be suspended from the practice of law for a period of three (3) years and until he provides satisfactory proof to the State Bar Court of his rehabilitation, present fitness to practice law and present learning and ability in the general law pursuant to Standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct, that execution of such suspension be stayed, and that respondent be placed on probation for a period of five (5) years, on the following conditions:

1. Respondent must be actually suspended from the practice of law for the first nine (9) months of the period of probation;
2. Respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;
3. Within ten (10) calendar days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone number, respondent must report such change in writing to both the Office of Probation and to the Membership Records Office of the State Bar;
4. Respondent must comply with all provisions and conditions of his Participation Agreement with the Lawyer Assistance Program (LAP) and must provide an appropriate written waiver authorizing the LAP to provide the Office of Probation with information regarding the terms

and conditions of respondent's participation in the LAP and his compliance or non-compliance with the LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition;

5. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of probation. Under penalty of perjury, respondent must state whether he has complied with the State Bar Act, the Rules of Professional Conduct and all conditions of probation during the preceding calendar quarter. If the first report will cover less than thirty (30) calendar days, that report must be submitted on the reporting date for the next calendar quarter and must cover the extended period. In addition to all quarterly reports, respondent must submit a final report, containing the same information required by the quarterly reports. The final report must be submitted no earlier than twenty (20) calendar days before the last day of the probation period and no later than the last day of the probation period;
6. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully, any inquiries of the Office of Probation which are directed to him personally or in writing, relating to whether respondent is complying or has complied with these probation conditions;
7. Within one year after the effective date of the Supreme Court's final disciplinary order in this proceeding, respondent must provide the Office of Probation with satisfactory proof of his attendance at a session of State Bar Ethics School and of his passage of the test given at the end of that session;
8. The period of probation will commence on the effective date of the Supreme Court's final disciplinary order in this proceeding.

It is recommended that respondent be required, within one year after the effective date of the Supreme Court's final disciplinary order in this proceeding, to take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners, and that he be ordered to provide satisfactory proof of his passage of the MPRE to the Office of Probation within the one-year period.

It is further recommended that respondent be ordered to comply with the requirements of rule 9.20 (formerly rule 955) of the California Rules of Court, and that he be ordered to perform the acts specified in subdivisions (a) and (c) of that rule within thirty (30) and forty (40) calendar days, respectively, after the effective date of the Supreme Court's final disciplinary order in this proceeding.

COSTS

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER FILING AND SEALING CERTAIN DOCUMENTS

The court orders a Case Administrator to: (1) lodge the Contract and Waiver for Participation in the State Bar Court's ADP, which was executed by respondent and his counsel on November 20, 2003, if it has not already been lodged; and (2) file this Amended Decision and Order Filing and Sealing Certain Documents. Thereafter, pursuant to rule 806(c) of the Rules of Procedure of the State Bar of California (Rules of Procedure), all other documents not previously filed in this matter will be sealed pursuant to rule 23 of the Rules of Procedure.

It is further ordered that protected and sealed material will only be disclosed to: (1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosure. All persons to whom protected material is disclosed will be given a copy of this order sealing the documents by the person making the disclosure. **IT IS SO ORDERED.**

Dated: June 10, 2008

RICHARD A. PLATEL
Judge of the State Bar Court