

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case Nos.: **00-O-11356** (01-O-00678;
)) 05-O-02471) 06-O-12118 (Cons.)
ALESSANDRO G. ASSANTI,)
) **DECISION AND DISCIPLINE ORDER;**
Member No. 181368,) **ORDER SEALING CERTAIN**
) **DOCUMENTS**
A Member of the State Bar.)

On February 27, 2006, the State Bar of California, Office of the Chief Trial Counsel (State Bar), filed a Notice of Disciplinary Charges (NDC) against respondent **Alessandro G. Assanti** (respondent) in case no. 00-O-11356 (01-O-00678; 05-O-02471).¹

Respondent sought to participate in the State Bar Court’s Alternative Discipline Program (ADP), and on April 21, 2006, this matter was referred to the State Bar Court’s Alternative Discipline Program (ADP).²

On December 1, 2006, respondent submitted a declaration establishing a nexus between his mental health issue and his misconduct.

The parties entered into a Stipulation Re Facts and Conclusions of Law which was received by the State Bar Court on December 6, 2006.

¹ This matter was assigned to the Honorable Richard A. Platel on or about March 3, 2006. On October 5, 2009, it was reassigned to this court.

² This program was earlier referred to by other names.

On April 18, 2007, Judge Platel issued an order formally accepting respondent into the ADP. Judge Platel also lodged on April 18, 2007, his Confidential Statement of Alternative Dispositions and Orders, the Contract and Waiver for Participation in the State Bar Court's ADP (Contract),³ and the parties' Stipulation Re Facts and Conclusions of Law.

On September 15, 2009, Judge Platel issued an order finding that respondent has successfully completed the ADP. Thereafter, on that same date, the parties' Stipulation Re Facts and Conclusions of Law was filed, and this matter was submitted for decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In this proceeding, respondent stipulated to misconduct in two separate matters. In the first matter, respondent solicited employment from an individual who was in the hospital recovering from a gunshot wound. In doing so, respondent willfully violated rule 1-400(C) of the Rules of Professional Conduct of the State Bar of California⁴ by soliciting—for pecuniary gain—a prospective client with whom respondent had neither a family nor prior professional relationship.

In the second matter, respondent placed an advertisement in the classified section of a trade magazine without including his name or identifying it as an advertisement. Respondent stipulated that he willfully violated: (1) rule 1-400(D)(2) by placing an advertisement that was false, deceptive, or which tended to confuse, deceive, or mislead the public; (2) rule 1-400(E) and Standards for Communications, standard (5), by placing an advertisement that did not contain the word “advertisement” or words of similar import in 12 point type; and (3) rule 1-400(E) and Standards for Communications, standard (12), by placing an advertisement that did not contain respondent's name.

³ The Contract was executed by respondent and his counsel on April 18, 2007.

⁴ Unless otherwise indicated, all further references to rule(s) refer to this source.

In aggravation, respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct. In addition, respondent displayed a lack of candor and cooperation with the State Bar during its disciplinary investigation.

In mitigation, respondent had no prior record of discipline over nine years of practice.

The parties' stipulation as to facts and conclusions of law, including Judge Platel's order approving the stipulation, is attached hereto and hereby incorporated by reference, as if fully set forth herein. The stipulation as to facts and conclusions of law set forth the factual findings, legal conclusions, and aggravating and mitigating circumstances in this matter.

Supreme Court and Review Department case law establish that extreme emotional difficulties are a mitigating factor where expert testimony establishes that these emotional difficulties were directly responsible for the misconduct, provided that the attorney has also established, through clear and convincing evidence, that he or she no longer suffers from such difficulties. (*Porter v. State Bar* (1990) 52 Cal.3d 518, 527; *In re Naney* (1990) 51 Cal.3d 186, 197; *In re Lamb* (1989) 49 Cal.3d 239, 246; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 701-702.) However, the Supreme Court has also held that, absent a finding of rehabilitation, emotional problems are not considered a mitigating factor. (*Kaplan v. State Bar* (1991) 52 Cal.3d 1067, 1072-1073; *In re Naney, supra*, 51 Cal.3d at p. 197.)

Respondent successfully completed the ADP. Respondent's successful completion of the ADP, which required his successful participation in the LAP, as well as the Certificate of One Year Participation in the Lawyer Assistance Program – Mental Health, qualify as clear and convincing evidence that respondent no longer suffers from the mental health issue which led to his misconduct. Accordingly, it is appropriate to consider respondent's successful completion of

the ADP as a mitigating circumstance in this matter. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(e)(iv).)

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.)

In January 2007, the parties submitted briefs on the issue of discipline. After considering the parties' briefs, including the case law and standards cited therein, Judge Platel advised the parties of the discipline that would be ordered if respondent successfully completed the ADP and the discipline which would be recommended to the Supreme Court if respondent was terminated from, or failed to successfully complete, the ADP.

After agreeing to Judge Platel's proposed high and low levels of discipline, respondent executed the Contract to participate in the ADP, and respondent's period of participation in the ADP commenced.

Thereafter, respondent successfully participated in the ADP and—as set forth in his September 17, 2009 order—Judge Platel found that respondent successfully completed the ADP. Accordingly, the court orders imposition of the discipline set forth in the Confidential Statement of Alternative Dispositions and Orders relating to a successful completion of the ADP.

DISCIPLINE ORDER

Accordingly, it is ordered that respondent **Alessandro G. Assanti**, State Bar Number 181368, is hereby privately reprovved. Pursuant to the provisions of rule 270(a) of the Rules of Procedure of the State Bar of California, the private reprovval will be effective when this decision becomes final. Furthermore, pursuant to rule 9.19(a) of the California Rules of Court and rule

271 of the Rules of Procedure, the court finds that the interests of respondent and the protection of the public will be served by the following specified conditions being attached to the private reproof imposed in this matter. Failure to comply with any conditions attached to this private reproof may constitute cause for a separate proceeding for willful breach of rule 1-110 of the Rules of Professional Conduct of the State Bar of California. Respondent is hereby ordered to comply with the following conditions attached to his private reproof for a period of 18 months following the effective date of the private reproof imposed in this matter:

1. Respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
2. Within ten (10) days of any change, respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California (Office of Probation), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;
3. Within thirty (30) days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request;
4. 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 respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than thirty (30) days, that report must be submitted on the next quarter date, and cover the extended period;

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of the probation period;

5. 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 respondent personally or in writing relating to whether respondent is complying or has complied with the probation conditions;

6. Within one (1) year of the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, and passage of the test given at the end of that session;
7. Respondent must comply with all provisions and conditions of his Participation Agreement with the Lawyer Assistance Program (LAP). Respondent must immediately report any non-compliance with any provision(s) or condition(s) of his Participation Agreement to the Office of Probation. Respondent must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent's participation in the LAP and his compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. If respondent provides to the Office of Probation satisfactory certification of completion of the LAP, he will be relieved of this condition; and
8. The period during which these conditions are in effect will commence upon the date this decision imposing the private reproof becomes final.

In light of the level of discipline imposed, it is not ordered that respondent take and pass the Multistate Professional Responsibility Examination (MPRE).

DIRECTION RE DECISION AND ORDER SEALING CERTAIN DOCUMENTS

The court directs a court case administrator to file this Decision and Discipline Order; Order 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 are ordered 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: December _____, 2009

PAT McELROY
Judge of the State Bar Court