

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

In the Matter of)	Case Nos.: 00-O-12971-RAH; 00-O-14009
)	01-O-02071; 01-O-02072 (Cons.) &
)	[Investigation case numbers
FRANK GEORGE BRAU,)	02-O-12748; 03-O-02119]
Member No. 117511,)	
)	DECISION & ORDER FILING AND
)	SEALING CERTAIN DOCUMENTS
<u>A Member of the State Bar.</u>)	

INTRODUCTION & PERTINENT PROCEDURAL HISTORY

This consolidated disciplinary matter involving respondent Frank George Brau (respondent) arises out of the following extensive acts of misconduct: repeatedly failing to deposit and maintain client funds in his client trust account; repeatedly failing to payout client funds; repeatedly commingling personal funds with client funds in his client trust account; recklessly failing to competently perform legal services; failing to properly supervise his staff and the operations of his law office; and repeatedly engaging in acts of moral turpitude (i.e., making misrepresentations to a client, repeatedly misappropriating client funds, and recklessly managing his client trust account).

After the filing of formal disciplinary charges by the Office of the Chief Trial Counsel of the State Bar of California (State Bar) and following a voluntary settlement conference,

respondent sought to participate in the State Bar's Lawyer Assistance Program (LAP) and the State Bar Court's Alternative Discipline Program (ADP).¹

Sometime in mid-2002, respondent contacted the LAP to assist him with his substance abuse problems. And, on March 10, 2003, respondent executed a Participation Agreement with the LAP.

On August 25, 2003, respondent submitted a declaration to the court which established that at the time of his misconduct, respondent was suffering from substance abuse problems. The parties thereafter submitted a Stipulation Re Facts and Conclusions of Law, which was received by the court on August 25, 2003, and thereafter approved by the court on December 18, 2003.²

Respondent's declaration and the stipulated facts, as well as the opinion of a medical professional, establish a causal connection between respondent's substance abuse problems, which were addictive in nature, and the misconduct found in this disciplinary proceeding. As such, the court found that respondent had adequately established a nexus between his substance abuse problems and his misconduct in this matter (i.e., that his substance abuse problems directly caused the misconduct set forth in this matter).

After the parties lodged a Joint Brief Re Level of Discipline in this matter with the court on September 5, 2003, the court lodged its Decision Re Alternative Recommendations for Degree of Discipline on December 18, 2003, setting forth the recommended discipline if respondent successfully completed or was terminated from the court's ADP. Also, on December 18, 2003, respondent entered into a Contract and Waiver for Participation in the State Bar

¹ The ADP was formerly known as the State Bar Court's Pilot Program for Respondent's with Substance Abuse or Mental Health Issues and the State Bar Court's Program for Respondents with Substance Abuse or Mental Health Issues.

² As noted *post*, this stipulation (including the order approving it) was eventually filed November 9, 2007.

Court's ADP; respondent executed and lodged with the court a waiver regarding various issues dealing with restitution and the Client Security Fund; and respondent was accepted as a participant in the ADP.

The LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program, which the court received on March 27, 2006. That certificate reflects that respondent has complied with the requirements set forth in the LAP Participation Agreement for at least one year prior to February 16, 2006, and that during this time period, respondent has been substance-free for at least one year prior to February 16, 2006.

On August 27, 2007, the court received a LAP Closed Case statement indicating that a LAP Evaluation Committee determined that respondent had successfully completed his LAP plan. At a November 9, 2007, status conference in this matter, the court found that respondent has successfully completed the ADP, and the parties' Stipulation Re Facts and Conclusions of Law (including the court's order approving it) was filed. (See Status Conference Order filed November 19, 2007.) The court now issues this decision recommending that the Supreme Court 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 is attached hereto and hereby incorporated by reference, as if fully set forth herein. The parties' stipulation sets forth the factual findings, legal conclusions, and certain aggravating and mitigating circumstances in this matter.

Furthermore, at the time respondent engaged in the misconduct for which he has been found culpable, respondent was suffering from substance abuse problems which were addictive in nature, and respondent's substance abuse problems directly caused the misconduct in this proceeding. In accordance with applicable Supreme Court case law, an attorney's rehabilitation from alcoholism or other substance abuse problems can be accorded significant mitigating

weight if it is established that (1) the abuse was addictive in nature; (2) the abuse causally contributed to the misconduct; and (3) the attorney has undergone a meaningful and sustained period of rehabilitation. (*Harford v. State Bar* (1990) 52 Cal.3d 93, 101; *In re Billings* (1990) 50 Cal.3d 358, 367.)

Respondent began participating in the LAP in 2003 and has successfully completed the court's ADP. Respondent's successful completion of the court's ADP, which required his successful participation in the LAP, as well as the Certificate of One Year Participation in the Lawyer Assistance Program from LAP, qualify as clear and convincing evidence that respondent no longer suffers from the substance abuse problems which led to his misconduct. Accordingly, it is appropriate to consider respondent's successful completion of the ADP as a further mitigating circumstance. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e)(iv) [all further references to standards are to this source].)

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 respondent being accepted for participation in the ADP, the parties lodged their Joint Brief Re Level of Discipline. After reviewing that brief and considering the standards and case law cited therein, the parties' stipulation setting forth the facts, conclusions of law and aggravating and mitigating circumstances with respect to this consolidated disciplinary proceeding, and respondent's declaration regarding the nexus between his substance abuse problems and his misconduct in this matter, 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.

Respondent thereafter entered into a contract to participate in the ADP and was accepted for participation in the ADP.

Respondent successfully participated in the ADP and, as set forth in the Status Conference Order filed November 19, 2007, the court found that respondent successfully completed the ADP. 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 if respondent successfully completed the ADP.

RECOMMENDED DISCIPLINE

IT IS HEREBY RECOMMENDED that respondent FRANK GEORGE BRAU be suspended from the practice of law in the State of California for a period of two years and until he (1) 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 and (2) provides satisfactory proof to the State Bar's Office of Probation that he has made restitution to the below-named individuals and entities in the indicated amounts with interest. It is further recommended that execution of this two-year suspension be stayed and that respondent be placed on probation for a period of five years on the following conditions:

1. Respondent must be actually suspended from the practice of law in the State of California for the first six months of his probation and until he provides satisfactory proof to the State Bar's Office of Probation that he has made restitution to: (1) Miguel and Juan Lopez jointly in the total amount of \$1,040 together with interest thereon at the rate of 10 percent per annum from March 13, 2000, until paid; (2) Michelle Kim in the amount of \$1,200 together with interest thereon at the rate of 10 percent per annum from March 31, 2000, until paid; (3) Noriega Chiropractic Clinic (on behalf of Karine Kakoyan) in the amount of \$2,358 together with interest thereon at the rate of 10 percent per annum from March 1, 2001, until paid; (4) Noriega Chiropractic Clinic (on behalf of Hmayak Kakoyan) in the amount of \$2,358 together with interest thereon at the rate of 10 percent per annum from March 1, 2001, until paid; (5) Nak Jung in the amount of \$17,500 together with interest thereon at the rate of 10 percent per annum from January 1, 1999, until paid; (6) Permanent General Assurance Corporation in the amount of \$1,334 together with interest thereon at the rate of 10 percent per annum from February 1, 2002, until paid; and (7) Seong Park in the amount of \$3,399.36 together with interest thereon

at the rate of 10 percent per annum from February 1, 2002, until paid (or to the Client Security Fund to the extent of any payment from the fund to Miguel and Juan Lopez, Michelle Kim, Noriega Chiropractic Clinic, Karine Kakoyan, Hmayak Kakoyan, Nak Jung, Permanent General Assurance Corporation, or Seong Park plus interest and costs, in accordance with Business and Professions Code section 6140.5. Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d). To the extent that respondent has paid any restitution prior to the effective date of the Supreme Court's final disciplinary order in this proceeding, respondent is to be given credit for such payments provided satisfactory proof of such is or has been shown to the State Bar's Office of Probation.

2. If respondent's actual suspension extends for two or more years, he is to remain on actual suspension 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.
3. Respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct.
4. Within 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.
5. Respondent must comply with all provisions and conditions of his Participation Agreement with the Lawyer Assistance Program ("LAP") and 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 probation condition.
6. 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 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 20 calendar days before the last day of the probation period and no later than the last day of the probation period.
7. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully, all 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.

8. 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 conclusion of that session.
9. The period of probation will begin on the effective date of the Supreme Court's final disciplinary order in this proceeding.

The court further recommends that respondent be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within the greater of one year after the effective date of the Supreme Court order in this matter or the period of his actual suspension and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same time period.

The Court also recommends that respondent be ordered to comply with the requirements of rule 9.20 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 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's final disciplinary order in this proceeding.³

Finally, the court recommends 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 California Business and Professions Code section 6140.7 and as a money judgment.

ORDER FILING AND SEALING CERTAIN DOCUMENTS

As noted *ante*, the parties' Stipulation Re Facts and Conclusions of Law (including the court's order approving that stipulation) was filed in this proceeding on November 9, 2007. The court now orders the Case Administrator to file this Decision and Order Filing and Sealing

³ For some unexplained reason, respondent prematurely filed a rule 9.20 compliance declaration in this proceeding (case number 00-O-12971-RAH) on November 16, 2007. If the Supreme Court adopts this court's recommendation that respondent be ordered to comply with rule 9.20, respondent must perform the acts specified in rule 9.20(a) and file the rule 9.20(c) compliance declaration within 30 and 40 calendar days, respectively, *after* the effective date of the Supreme Court's disciplinary order in this proceeding. In other words, respondent's November 16, 2007, rule 9.20 compliance declaration will not satisfy the Supreme Court's final

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 to 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.

Dated: January ____, 2008.

RICHARD A. HONN
Judge of the State Bar Court

disciplinary order in this proceeding.