

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No. 02-C-15713-RMT
)	
JOHN R. DeLORETO,)	DECISION AND ORDER FILING AND
)	SEALING CERTAIN DOCUMENTS
Member No. 118885,)	
)	
A Member of the State Bar.)	

INTRODUCTION

This disciplinary proceeding arises out of the criminal conviction of respondent John R. DeLoreto (“respondent”) on January 15, 2003, of a felony violation of Health and Safety Code section 11355 [delivery of a controlled substance] and of misdemeanor violations of Health and Safety Code section 11550, subdivision (a) [being under the influence of a controlled substance] and Penal Code section 272, subdivision (a)(1) [contributing to the delinquency of a minor].

After respondent reached a stipulation as to facts and conclusions of law with the Office of the Chief Trial Counsel of the State Bar of California (“State Bar”), the court approved the stipulation and accepted respondent as a participant in the State Bar Court’s Alternative Discipline Program (“ADP”).¹ (Rules Proc. of State Bar, rules 800-807.)

¹The ADP was formerly known as the State Bar Court’s Pilot Program for Respondents with Substance Abuse or Mental Health Issues (“Pilot Program”). The court will use ADP throughout this decision to refer to this program.

As set forth below, the court finds that respondent has successfully completed the ADP. Accordingly, pursuant to rule 803 of the Rules of Procedure of the State Bar of California (“Rules of Procedure”), the court hereby recommends that respondent be suspended from the practice of law for a period of one year, that execution of such suspension be stayed, and that respondent be placed on probation for a period of three years, on conditions including that respondent be actually suspended from the practice of law in the State of California for the first six months of the period of probation, provided that respondent will receive credit for the period of his interim suspension, which commenced on March 7, 2003.

SIGNIFICANT PROCEDURAL HISTORY

On February 6, 2003, the State Bar Court Review Department issued an order suspending respondent from the practice of law pending final disposition of this proceeding in light of his felony conviction of Health and Safety Code section 11355 and ordering him to comply with rule 955 of the California Rules of Court. The order was effective March 7, 2003.

On February 26, 2003, respondent signed a participation agreement with the Lawyer Assistance Program (“LAP”) to assist him with his substance abuse problems.

By minute order filed on May 29, 2003, the Review Department referred this disciplinary matter to the Hearing Department, pursuant to rule 951(a) of the California Rules of Court, for a hearing and decision recommending the discipline to be imposed should the Hearing Department find that the facts and circumstances surrounding respondent’s violations of Health and Safety Code sections 11355 and 11550, subdivision (a) and Penal Code section 272, subdivision (a)(1) of which respondent was convicted, involved moral turpitude or other misconduct warranting discipline.

Thereafter, on June 11, 2003, a Notice of Hearing on Conviction (“NOH”) was filed by the State Bar Court and properly served upon respondent on that same date.²

On June 27, 2003, respondent filed his response to the NOH.

On July 14, 2003, the Honorable Richard A. Honn held a telephonic status conference in this matter. On July 16, 2003, Judge Honn issued an Order Pursuant to Telephonic Status Conference which noted that respondent had elected to participate in the LAP and referred the matter to the undersigned judge.

On November 18, 2003, the State Bar lodged with this Court a Brief Re Level of Discipline, setting forth the State Bar's recommended alternative levels of discipline in this proceeding.

On November 23, 2003, respondent submitted a document entitled Respondent's Mitigation With Statement With Nexus, in which respondent joined in the State Bar's disciplinary recommendations, provided character evidence and addressed the nexus between his admitted misconduct and his substance abuse problems.

On November 24, 2003, respondent and the State Bar entered into a Stipulation Re Facts and Conclusions of Law in this matter.

On November 25, 2003, the court received the State Bar's Addendum to Brief re Level of Discipline.

On February 20, 2004, respondent entered into a Contract and Waiver for Participation in the State Bar Court's ADP which was lodged with the court on February 26, 2004.

On February 26, 2004, the court lodged its Decision Re Alternative Recommendations for Degree of Discipline pursuant to rule 803(a) of the Rules of Procedure. On that same date, the court approved the Stipulation Re Facts and Conclusions of Law submitted by the parties for purposes of respondent's participation in

²Pursuant to Evidence Code section 452, subdivision (h), the court takes judicial notice of respondent's official membership records address maintained by the State Bar of California.

the ADP (Rules Proc. of State Bar, rule 802(a)) and accepted respondent into the ADP on February 26, 2004.

On February 8, 2006, nearly two years after being accepted into the ADP, respondent filed a Request for Finding of Successful Completion of ADP. For the reasons set forth below, the court grants respondent's request and finds that respondent has successfully completed the ADP. The court therefore issues this decision as to the lower level of discipline set forth in the February 24, 2004, Decision Re Alternative Recommendations for Degree of Discipline.

FACTS AND CONCLUSIONS OF LAW

The Stipulation Re Facts and Conclusions of Law, approved by the court on February 26, 2004, is incorporated by reference as if set forth fully herein.

A. Jurisdiction

Respondent was admitted to the practice of law in California on June 14, 1985, and has been a member of the State Bar of California at all times since that date.

B. Respondent's Criminal Conviction

On October 23, 2002, the police came upon respondent and his 17-year old son, Robert, at a motel in Goleta, California. The police observed signs of drug intoxication with respect to both respondent and his son. Drug paraphernalia in the form of drug pipes and wire screens commonly used in smoking rock cocaine were found in the motel room.

Respondent and his son were both arrested. Robert explained to the police that his father, while intoxicated, had given him \$300, knowing that he would use the money to buy drugs from a local drug dealer. Robert purchased the drugs and returned to the motel room, where both respondent and Robert smoked rock cocaine and drank alcohol from about 5:00 p.m. on October 22, 2002, until 3:00 a.m. or 4:00 a.m., on October 23, 2002.

Respondent told the police that his life had been going very badly. As a result, he had rented the motel room five days earlier and had started drinking. Respondent was

cooperative with the police and provided a urine sample, which tested positive for cocaine. The police also performed other physical tests on respondent, which showed signs of his usage of both alcohol and cocaine.

In November 2002, respondent was charged in Santa Barbara County Superior Court with a felony violation of Health and Safety Code section 11355 [delivery of a controlled substance] and with misdemeanor violations of Health and Safety Code section 11550, subdivision (a) [being under the influence of a controlled substance] and Penal Code section 272, subdivision (a)(1) [contributing to the delinquency of a minor].

Respondent pleaded *nolo contendere* to all three crimes on January 15, 2003, and was subsequently sentenced to 180 days in jail and three years probation. He was also ordered to pay various fees and fines. Respondent reported his convictions to the State Bar pursuant to Business and Professions Code section 6068, subdivision (o)(5). As a result of his felony conviction, the State Bar Court interimly suspended respondent from the practice of law, effective March 7, 2003. (Bus. & Prof. Code, § 6102, subd. (a).)

Respondent has three prior convictions, at least two of which were related to substance abuse. In April 2002, respondent was convicted of a violation of Penal Code section 594, subdivision (b)(1) [vandalism exceeding \$400]. In addition, respondent was separately convicted in 1994 and 1996 of violations of Vehicle Code section 23152, subdivision (a) [driving under the influence].

Respondent's misdemeanor conviction of Penal Code section 272, subdivision (a)(1) [contributing to the delinquency of a minor] involved moral turpitude. Respondent's convictions of Health and Safety Code sections 11355 [delivery of a controlled substance] and 11550, subdivision (a) [being under the influence of a controlled substance] do not involve moral turpitude but do involve other misconduct warranting discipline.

AGGRAVATION AND MITIGATION

A. Aggravation

The court finds that there are no aggravating circumstances applicable to this proceeding.

B. Mitigation

Respondent has no prior record of discipline since his admission to practice on June 14, 1985. (Standard 1.2(e)(i).)

Respondent displayed spontaneous candor and cooperation to the police and to the State Bar during their respective investigations and in this proceeding. (Standard 1.2(e)(v).)

Additionally, respondent was suffering from substance abuse problems at the time of his misconduct which were directly responsible for the misconduct, and he has established through clear and convincing evidence that he no longer suffers from such difficulties. (Standard 1.2(e)(iv).)

Respondent's Mitigation With Statement With Nexus and the parties' Stipulation Re Facts and Conclusions of Law establishes that at the time of his misconduct, respondent was suffering from substance abuse problems which were addictive in nature. In addition, Respondent's Mitigation With Statement With Nexus and the stipulated facts also establish a causal connection between respondent's substance abuse problems and the misconduct found in the underlying criminal and disciplinary proceeding. The court therefore finds that respondent has adequately established a nexus between his substance abuse problems and his criminal conduct, i.e., that his substance abuse problems directly caused his criminal conduct.

Furthermore, respondent sought assistance from the LAP in late 2002 to assist him with his substance abuse problems. Respondent agreed to be evaluated by the LAP; he complied with the evaluation requirements; he met with the LAP Evaluation Committee; and, on February 26, 2003, signed a long-term participation agreement with

LAP. Since entering into the LAP, respondent has maintained compliance with the terms of his participation agreement. Furthermore, on August 17, 2005 and February 6, 2006, the LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program indicating that respondent has been substance-free for one year prior to the date of the certificate.

In addition to participating in the LAP, respondent was accepted into the court's ADP on February 26, 2004. Respondent's participation in the ADP allowed the court to monitor respondent's progress in the LAP and his overall efforts at addressing the problems that led to his criminal misconduct. Respondent fully complied with all the terms and conditions of the ADP, including timely appearing for all court ordered events. Respondent was an exemplary participant in the ADP. Based on his dedication to his sobriety and to the ADP and the LAP, the court finds it appropriate to reduce the length of time that respondent is required to participate in the ADP from 36 months to 27 months. (Rules Proc. of State Bar, rule 804.) Accordingly, this court grants respondent's February 8, 2006, request and finds that respondent has successfully completed the ADP.

Respondent is entitled to significant mitigating credit for his participation in the LAP and his successful completion of the court's ADP.

Finally, respondent presented character letters from two attorneys and a client. Each of these individuals indicated their knowledge of respondent's substance abuse problems and the nature of the misconduct that has resulted in this proceeding. The court gives some weight to these character letters as an additional mitigating circumstance. (Standard 1.2(e)(vi).)

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.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline.

Standard 3.2 of the Standards for Attorney Sanctions for Professional Misconduct provides that a member's conviction of a crime involving moral turpitude, either inherently or in the facts and circumstances surrounding the crime, shall result in disbarment unless the most compelling mitigating circumstances clearly predominate, in which case the member shall receive at least a two-year actual suspension.

Standard 3.4 provides that conviction of a crime which does not involve moral turpitude, either inherently or in the facts and circumstances surrounding the commission of the crime, but which does involve other misconduct warranting discipline, must result in a sanction appropriate to the nature and extent of the misconduct.

The standards, however, are only guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) “[E]ach case must be resolved on its own particular facts and not by application of rigid standards.” (*Id.* at p. 251.)

In *In re Fudge* (1989) 49 Cal.3d 643, the respondent attorney was convicted of furnishing marijuana and methaqualone to a minor in violation of Health and Safety Code sections 11361 and 11380, respectively. The Supreme Court found that the facts and circumstances surrounding the respondent's acts involved moral turpitude and imposed an actual suspension of two years, with credit for the period of his interim suspension.

Similarly, in *Duggan v. State Bar* (1976) 17 Cal.3d 416, the court found that the facts and circumstances surrounding the respondent attorney's conviction of Penal Code section 272 [contributing to the delinquency of a minor] involved moral turpitude. Although the Supreme Court did set forth the facts and circumstances surrounding the respondent's commission of the offense, it stated that “[w]ithout setting forth the unfortunate details, it is enough for us to say that the offense to which petitioner pleaded

guilty evidences the commission of a reprehensible crime, offensive to every conception of morality.” (*In re Duggan, supra*, 17 Cal.3d at pp. 422-423.) The court noted that the respondent had serious psychiatric problems and that, while sympathetic to those problems, the court's greatest concern was for the protection of the public. As a result, the Supreme Court ordered the respondent's disbarment. (*In re Duggan, supra*, 17 Cal.3d at pp. 423-424.)

The State Bar has recommended that if respondent successfully completes the ADP, respondent should be suspended from the practice of law for a period of one year, that execution of the order of suspension should be stayed, and that respondent should be placed on probation for a period of three years on conditions which include his actual suspension for a period of six months. Respondent concurred in the State Bar's discipline recommendation.

Supreme Court case law establishes that an attorney's rehabilitation from alcoholism or other substance abuse problems can be accorded significant 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.)

At the time respondent engaged in his criminal conduct, he was suffering from substance abuse problems which were addictive in nature, and respondent's substance abuse problems directly caused the criminal conduct in this matter. Furthermore, respondent has been participating in the LAP since 2003, and the court finds that respondent has successfully completed the ADP. Respondent's successful completion of the ADP, which required his compliance with all terms and conditions set forth by the LAP, as well as each Certificate of One Year Participation in the Lawyer Assistance Program indicating that respondent has been substance-free for one year prior to the date of each certificate, establishes by clear and convincing evidence that respondent has

undergone a meaningful and sustained period of rehabilitation. (*Harford v. State Bar, supra*, 52 Cal.3d at p. 101; *In re Billings, supra*, 50 Cal.3d at p. 367.)

The court therefore concludes that the parties' joint recommendation for the imposition of discipline in this proceeding if respondent successfully completes the ADP is the appropriate discipline to recommend in this matter. Therefore, the court recommends to the Supreme Court the imposition of the discipline set forth below in this matter.

RECOMMENDED DISCIPLINE

IT IS HEREBY RECOMMENDED that respondent **JOHN ROBERT DeLORETO** be suspended from the practice of law for a period of one year, that execution of such suspension be stayed, and that respondent be placed on probation for a period of three 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 the period of probation, provided that respondent must receive credit for the period of his interim suspension, which commenced on March 7, 2003;

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 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;

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 shall 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, 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;

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 conclusion of that session;

8. The period of probation must commence on the effective date of the Supreme Court's final disciplinary order in this proceeding.

The court also recommends that respondent be required, within one year of 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 above-referenced period.

At the time respondent was placed on interim suspension by the Review Department of the State Bar Court, respondent was ordered to comply with rule 955 of the California Rules of Court (“rule 955”). Pursuant to Evidence Code section 452, subdivision (d), the court takes judicial notice of its records which reflect that respondent timely complied with rule 955 as ordered by the Review Department of the State Bar Court. Pursuant to Evidence Code section 452, subdivision (h), the court also takes judicial notice of the official membership records of the State Bar of California which reflect that respondent has not been entitled to practice law since March 7, 2003, the effective date of his interim suspension. As (1) respondent has not been entitled to practice law since that effective date of the order of the Review Department placing respondent on interim suspension and ordering him to comply with rule 955; (2) respondent timely complied with rule 955 as ordered by the Review Department; and (3) it has been recommended that respondent receive credit for the period of his interim suspension toward the period of actual suspension recommended in this matter, so that respondent will not face any prospective period of actual disciplinary suspension in this matter following the effective date of the Supreme Court’s final disciplinary order in this matter, the court does not recommend that respondent again be ordered to comply with the requirements of rule 955.

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 the Clerk to file the parties' Stipulation Re Facts and Conclusions of Law, as well as this Decision and Order Filing and Sealing Certain Documents. Thereafter, pursuant to rule 806(c) of the 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 SO ORDERED.

Dated: June ____, 2006

ROBERT M. TALCOTT
Judge of the State Bar Court