

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA HEARING DEPARTMENT – LOS ANGELES

FILED

JUN 01 2010

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

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In the Matter of)	Case Nos.: 02-O-13095 (03-O-00379;
)	03-O-00938); 02-O-14643
)	(02-O-14842; 02-O-15152;
WILLIAM JOHN SALICA,)	02-O-15449); 03-O-03509;
)	04-O-10511; 04-O-12346;
)	03-N-03692 (Cons.)-RAH
Member No. 92896,)	
)	DECISION AND ORDER SEALING
)	CERTAIN DOCUMENTS; ORDER OF
A Member of the State Bar.)	INVOLUNTARY INACTIVE
)	ENROLLMENT

INTRODUCTION

In this consolidated disciplinary proceeding, respondent William John Salica (respondent) was accepted for participation in the State Bar Court's Alternative Discipline Program (ADP). As the court has now terminated respondent from the ADP, the court will recommend to the Supreme Court that respondent be disbarred from the practice of law in California and that he be ordered to comply with certain other requirements.

PERTINENT PROCEDURAL HISTORY

Following the filing of five Notices of Disciplinary Charges (NDC) against respondent by the State Bar of California's Office of the Chief Trial Counsel (State Bar),¹ on November 16,

¹ A NDC was filed against respondent on: (1) October 14, 2003, in case no. 03-N-03692; (2) March 15, 2004, in case no. 04-O-10511; (3) June 9, 2004, in case nos. 02-O-14643 (02-O-

2004, the Hon. Pat McElroy filed an order consolidating case no. 03-N-03692 with case nos. 02-O-13095; 02-O-14643; 04-O-10511; and 04-O-12346, and referring this matter for evaluation of respondent's eligibility for participation in the State Bar Court's ADP² by the undersigned judge.³

In furtherance of his participation in the ADP, respondent contacted the State Bar of California's Lawyer Assistance Program (LAP) on December 3, 2004, to assist him with his substance abuse issue and signed a LAP Participation Plan on April 29, 2005.⁴ On August 1, 2007, respondent also submitted a declaration, which met with the approval of the court, which established a nexus between respondent's substance abuse issue and his misconduct in this matter.

Thereafter, the parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) in February 2008⁵ in case nos. 02-O-13095 (03-O-00379; 03-O-00938); 02-O-14643 (02-O-14842; 02-O-15152; 02-O-15449); 04-O-10511; 04-O-12346; 03-N-03692 and investigation matter 03-O-03509. The Stipulation sets forth the factual findings, legal conclusions and mitigating and aggravating circumstances in this matter.

14842; 02-O-15152; 02-O-15449); (4) July 14, 2004, in case nos. 02-O-13095 (03-O-00379; 03-O-00938); and (5) August 31, 2004, in case no. 04-O-12346. All matters were originally assigned to the Honorable Pat McElroy. Case no. 04-O-10511 was consolidated with case no. 03-N-03692 pursuant to an order filed on May 18, 2004. Case nos. 02-O-13095; 02-O-14643; 04-O-10511 and 04-O-12346 were consolidated for trial pursuant to an order filed on September 20, 2004.

² The ADP was earlier known as the Program for Respondents with Substance Abuse or Metal Health Issues.

³ On May 26, 2005, the undersigned judge filed an order returning this matter to the Hon. Pat McElroy for standard processing, as respondent failed to appear at two ADP conferences. Thereafter, the Hon. Pat McElroy filed an order on June 6, 2005, referring this consolidated matter back to the ADP before the undersigned judge.

⁴ Respondent executed an amendment to his LAP Participation Plan on January 31, 2008, and October 15, 2009.

⁵ An earlier stipulation received on May 18, 2007, was not approved by the court.

Following briefing by the parties, the court advised the parties of (1) the discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP and (2) the discipline which would be recommended if respondent failed to successfully complete, or was terminated from, the ADP. After agreeing to those alternative possible dispositions, the court received an executed Contract and Waiver for Participation in the State Bar Court's ADP.

On February 21, 2008: (1) the court executed a Confidential Statement of Alternative Dispositions and Orders (Confidential Statement) formally advising the parties in writing of the alternative discipline recommendations in this matter; (2) the court accepted respondent for participation in the ADP; (3) respondent's period of participation in the ADP began on February 21, 2008; and (4) the court issued an order pursuant to Business and Professions Code section 6233 enrolling respondent as an inactive member of the State Bar of California effective February 26, 2008, and until further order of the court.

Respondent thereafter participated in both the LAP and the State Bar Court's ADP. However, on December 2, 2009, the court filed an Order to Show Cause Re: Termination from ADP (OSC) in which the court ordered respondent to show cause, in writing, on or before January 29, 2010, why he should not be terminated from the ADP in light of the fact that he has failed to comply with the conditions of his participation in the ADP and the LAP; and further to show cause why the high level of discipline set forth in the Confidential Statement should not be imposed. Respondent did not timely reply to the OSC, and the court received notification that respondent withdrew from the LAP on February 25, 2010. Thereafter, the court received a status report from respondent in which he stipulated to his termination from the ADP. As such, the court filed an order on March 5, 2010, finding that respondent is not in compliance with the conditions of the State Bar Court's ADP and terminating respondent from the ADP.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties' Stipulation, including the court's order approving the Stipulation, is attached hereto and hereby incorporated by reference, as if fully set forth herein. In this matter involving 11 consolidated matters, respondent stipulated to the following willful violations:

1. Rule 3-700(D)(1) of the Rules of Professional Conduct of the State Bar of California⁶ in two matters [failing to promptly release client papers upon client's request upon termination of employment];
2. Rule 3-110(A) in two matters [failing to perform legal services with competence];
3. Section 6068, subdivision (m) of the Business and Professions Code⁷ in two matters [failing to respond to reasonable client status inquiries];
4. Rule 3-700(D)(2) in two matters [failing to refund unearned fees];
5. Rule 3-700(A)(2) in one matter [failing to take reasonable steps to avoid reasonably foreseeable prejudice to his client];
6. Sections 6125, 6126 and 6068, subdivision (a) in four matters [engaging in the unauthorized practice of law];
7. Section 6106 in two matters [committing act(s) involving moral turpitude, dishonesty or corruption];⁸
8. Rule 4-100(B)(4) in one matter [failing to promptly pay client funds as requested by a client];
9. Section 6103 in one matter [failing to comply with court order];⁹

⁶ Unless otherwise indicated, all further references to rule(s) refer to the Rules of Professional Conduct of the State Bar of California.

⁷ Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

⁸ In one matter, respondent made misrepresentations to a judge. In another matter, respondent willfully misappropriated \$12,607 in client settlement funds.

10. Section 6068, subdivision (k) in one matter [failing to comply with conditions attached to disciplinary probation]; and

11. Rule 4-200(A) in one matter [entering into an agreement for, charging and collecting an illegal fee].

In aggravation, respondent has a prior record of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i).)¹⁰ Effective August 1, 2003, respondent, among other things, was actually suspended for six months and until he paid restitution¹¹ in case nos. 99-O-12420, etc. Discipline was imposed for respondent's violations of rules 3-110(A), 4-100(A), 3-700, and sections 6106, 6103, 6068, subdivision (i), and 6068, subdivision (m). As further aggravating circumstances, respondent's misconduct significantly harmed his clients, the public, or the administration of justice (std. 1.2(b)); the current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct (std. 1.2(b)(ii)); and trust property or funds were involved, and respondent was unable or refused to account to the client or person who was the object of the misconduct for improper conduct toward the property or funds (std. 1.2(b)(iii)).

In mitigation, respondent displayed spontaneous cooperation and candor with the victims of his misconduct and to the State Bar during the disciplinary investigation and proceedings. (Std. 1.2(e)(v).) As respondent failed to successfully complete the ADP, he receives no mitigation credit for his participation in either the ADP or the LAP.

⁹ Respondent failed to file an affidavit of compliance in conformity with a Supreme Court order which required that respondent comply with rule 955 (since renumbered rule 9.20) of the California Rules of Court and subdivision (c) of rule 955.

¹⁰ All further references to standard(s) or std. are to this source.

¹¹ If respondent's actual suspension continued for two years or more, he was also ordered to demonstrate the requirements set forth in std. 1.4(c)(ii).

DISCUSSION

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

In determining the appropriate alternative discipline recommendations if respondent successfully completed the ADP or was terminated from, or failed to successfully complete, the ADP, the court considered the discipline recommended by the parties, as well as certain standards and case law. In particular, the court considered standards 1.2, 1.3, 1.4, 1.5, 1.6, 1.7(a), 2.2(a), 2.3, 2.4(b), 2.6 and 2.10 and *In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439.

Because respondent has now been terminated from the ADP, this court, in turn, now recommends to the Supreme Court the imposition of the higher level of discipline, set forth more fully below.

DISCIPLINE

Recommended Discipline

It is hereby recommended that respondent **William John Salica**, State Bar Number 92896, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

It is further recommended that respondent William John Salica be ordered to make restitution to the following individuals of the amounts set forth below, plus 10 percent (10%) interest per year accruing from the date specified below (or to the Client Security Fund to the extent of any payment from the fund to any such individual(s), plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnish satisfactory proof

thereof to the State Bar's Office of Probation. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d). To the extent the Client Security Fund has paid only principal amounts, respondent will still be liable for interest payments to said individual(s), as set forth above.

<u>Party Owed</u>	<u>Principal Amount</u>	<u>Interest Accrual Date</u>
Forbert Candiff	\$ 1,500.00	April 18, 2001
Jennifer DiGiulio	\$12,607.00	September 27, 2002
Otis Smith	\$ 200.00	December 6, 2002

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 will be given credit for such payments provided satisfactory proof of such is or has been shown to the State Bar's Office of Probation.

Rule 9.20, California Rules of Court

It is further recommended that respondent William John Salica be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and 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 matter.

Order of Involuntary Inactive Enrollment

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Said inactive enrollment will be effective upon the filing of this decision and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 490(b) of the Rules of Procedure of

the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.¹²

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.

DIRECTION RE DECISION AND ORDER SEALING CERTAIN DOCUMENTS

The court directs a court case administrator to file this Decision and Order Sealing Certain Documents; Order of Involuntary Inactive Enrollment. 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 disclosures. 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 1, 2010



RICHARD A. HONN
Judge of the State Bar Court

¹² The court also orders that respondent's inactive enrollment pursuant to Business and Professions Code section 6233 be terminated upon the filing of this decision.