

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case Nos.: 03-C-03823-PEM; 04-C-10561-PEM;
)	04-C-15871-PEM; 04-C-15875-PEM;
)	06-O-10118-PEM (Consolidated.)
MICHAEL THOMAS MORRISSEY,)	
Member No. 62195,)	DECISION AND ORDER SEALING
)	CERTAIN DOCUMENTS
)	
<u>A Member of the State Bar.</u>)	

I. INTRODUCTION

In this consolidated, disciplinary proceeding, respondent **Michael Thomas Morrissey**¹ was accepted for participation in the State Bar Court’s Alternative Discipline Program (ADP). Because respondent successfully completed the ADP, the court recommends, *post*, that he be placed on two years’ stayed suspension and three years’ probation on conditions, including a six-month suspension with credit to be given for the two 60-day periods during which he was involuntarily enrolled as an inactive member of the State Bar under Business and Professions Code section 6233.²

¹ Respondent was admitted to the practice of law in this state on December 18, 1974, and has been a member of the State Bar of California since that time. He has three prior records of discipline.

² Except where otherwise indicated, all further statutory references are to the Business and Professions Code.

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II. PERTINENT PROCEDURAL HISTORY

A. Respondent's Acceptance into the ADP

In early October 2004, in case number 03-C-03823, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed a certified copy of the record of respondent's final misdemeanor conviction of failing to stop at the scene of an injury accident ("hit and run") (Veh. Code, § 20001, subd. (a)).

On October 14, 2004, the review department filed an order referring case number 03-C-03823 to the hearing department for a trial on the issues of whether the facts and circumstances surrounding respondent's commission of the crime involved moral turpitude (§§ 6101, 6102) or other misconduct warranting discipline (e.g., *In re Kelley* (1990) 52 Cal.3d 487, 494) and, if so, for a recommendation as to the discipline to be imposed. (Cal. Rules of Court, rule 9.10(a); Rules Proc. of State Bar, rule 320(a); *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483, 491-492.) And, on October 26, 2004, the hearing department filed and served on respondent a notice of hearing on conviction in case number 03-C-03823, and the matter was initially assigned to the Honorable JoAnn M. Remke.

On January 5, 2005, respondent filed his response to the notice of hearing on conviction. At a January 14, 2005 settlement conference, the case was referred to the State Bar Court's ADP for evaluation of respondent's eligibility for participation in that program. (See order regarding settlement conference filed January 18, 2005.)

In furtherance of his participation in the ADP, respondent contacted the State Bar's Lawyer Assistance Program (LAP) on January 14, 2005, to assist him with his mental health and substance abuse issues. Respondent first signed a LAP Participation Agreement on June 3, 2005.

Thereafter, respondent signed a long-term, five-year LAP Participation Plan on February 11, 2006.

On February 8, 2005, this proceeding was reassigned to the undersigned judge for all purposes.

In early February 2005, in case number 04-C-10561-PEM, the State Bar filed a certified copy of the record of respondent's final misdemeanor conviction of driving under the influence of alcohol or drugs (Veh. Code, § 23152, subd. (a)).

Further, in early February 2005, in case number 04-C-15875-PEM, the State Bar filed a certified copy of the record of respondent's final misdemeanor conviction of driving when his license was suspended and revoked for previously driving under the influence of alcohol or drugs (Veh. Code, § 14601.2, subd. (a)).

Further, in early February 2005, in case number 04-C-15903-PEM, the State Bar filed a certified copy of the record of respondent's final infraction conviction of driving without a valid driver's license (Veh. Code, § 12500, subd. (a)).

Then, on February 16, 2005, the review department filed an order in each of the three cases (i.e., case numbers 04-C-10561-PEM; 04-C-15875-PEM; and 04-C-15903-PEM) referring each of the three cases to the hearing department for a trial on the issues of whether the facts and circumstances surrounding respondent's commissions of the crimes involved moral turpitude or other misconduct warranting discipline and, if so, for recommendations as to discipline. (Cal. Rules of Court, rule 9.10(a); Rules Proc. of State Bar, rule 320(a); *In the Matter of Ike, supra*, 3 Cal. State Bar Ct. Rptr. at pp. 491-492.)

On February 24, 2005, the hearing department filed and served on respondent a notice of hearing on conviction in each of the three case (i.e., case numbers 04-C-10561-PEM; 04-C-15875-PEM; and 04-C-15903-PEM). Thereafter, on March 15, 2005, the court filed an

order (1) consolidating case numbers 04-C-10561-PEM; 04-C-15875-PEM; 04-C-15903-PEM; and 03-C-03823-PEM for all purposes and (2) referring the consolidated proceeding to the ADP for an evaluation of respondent's eligibility for participation in that program.

On March 28, 2005, the court received a copy of a psychologist's psychological evaluation of respondent dated March 6, 2005.

In late January 2006, in case number 04-C-15871-PEM, the State Bar filed a certified copy of the record of respondent's final misdemeanor conviction of driving under the influence of alcohol with a blood alcohol level of .08 percent or more (Veh. Code, § 23152, subd. (b)). And, on February 1, 2006, the review department filed an order referring case number 04-C-15871-PEM to the hearing department for a trial on the issues of whether the facts and circumstances surrounding respondent's commission of crime involved moral turpitude or other misconduct warranting discipline and, if so, for a recommendation as to discipline. (Cal. Rules of Court, rule 9.10(a); Rules Proc. of State Bar, rule 320(a); *In the Matter of Ike, supra*, 3 Cal. State Bar Ct. Rptr. at pp. 491-492.)

On February 28, 2006, the hearing department filed and served on respondent a notice of hearing on conviction in case number 04-C-15871-PEM.

On April 10, 2006, respondent submitted, to the court, a Nexus Statement executed under penalty of perjury. That Nexus Statement and the March 6, 2005 psychological evaluation of respondent, *ante*, established a nexus between respondent's mental health and substance abuse issues and his misconduct in this matter.

On May 31, 2006, the parties submitted, to the court, a Stipulation Re Facts and Conclusions of Law (Stipulation). Then, on June 16, 2006, the parties submitted, to the court, a First Amended Stipulation Re Facts and Conclusions of Law (Amended Stipulation), which sets forth the factual findings, legal conclusions, and mitigating and aggravating circumstances not

only in case numbers 03-C-03823-PEM; 04-C-10561-PEM; 04-C-15875-PEM; and 04-C-15903-PEM, but also in case number 04-O-15823-PEM and 06-O-10118-PEM. In the Stipulation, the parties request that the court dismiss case numbers 04-C-15903-PEM and 04-O-15823-PEM without prejudice upon respondent's enrollment in the ADP.

After the parties filed briefs on the issue of discipline, the court notified the parties of (1) the level of discipline that it would recommend to the Supreme Court if respondent successfully completed the ADP and (2) the level of discipline that it would recommend if respondent did not successfully complete the ADP. On October 2, 2006, after agreeing to those alternative possible dispositions, respondent signed a Contract and Waiver for Participation in the State Bar Court's Alternative Discipline Program (Contract). Also, on October 2, 2006: (1) the court lodged a Confidential Statement of Alternative Dispositions and Orders (Confidential Statement) formally advising the parties in writing of the alternative discipline recommendations; (2) the court signed an order approving the parties' Amended Stipulation;³ (3) the Contract and the Confidential Statement were lodged; (4) the court accepted respondent for participation in the ADP; and (5) respondent's participation in the ADP began. Respondent thereafter participated successfully in both the ADP and the LAP.

On July 20, 2009, the court filed an order amending the Contract to correct a typographical error.

B. Respondent's Completion of the ADP

On August 26, 2009, the court filed an order in which it found that respondent had completed all of the required restitution. Then, on September 9, 2010, the court received, from the LAP, a Certificate of One Year of Participation in the Lawyer Assistance Program –

³ When the court approved the Amended Stipulation, all of the cases numbers listed in the Amended Stipulation's caption were deemed consolidated for all purposes and, in accordance with the parties' request, case numbers 04-C-15903-PEM and 04-O-15823-PEM were dismissed without prejudice.

Substance Abuse, certifying that, for at least the one-year period preceding September 9, 2010, respondent satisfied all lab testing requirements in his LAP Participation Agreement; that no unauthorized substances were detected, and that LAP is not aware of respondent's use of any unauthorized substances during the period.

On September 14, 2010, the court filed an order finding that respondent successfully completed the Alternative Discipline Program on September 13, 2010,⁴ and ordering that the parties' Amended Stipulation be filed. And, on September 14, 2010, the Amended Stipulation was filed, and court took the consolidated proceeding under submission for decision.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A copy of the parties' Amended Stipulation filed September 14, 2010, including the court's order approving the Amended Stipulations, is attached hereto and are incorporated herein by reference, as if fully set forth herein. In their Amended Stipulations, the parties stipulated to the following findings and conclusions.

A. Case Number 03-C-03823-PEM

On July 31, 2003, respondent was in a traffic collision and left the scene of the accident without exchanging driver's license and insurance information with the other driver. A witness to the accident gave the police respondent's license plate number.

On September 11, 2003, respondent was charged with the following three misdemeanors: (1) failing to stop at the scene of an injury accident (Veh. Code, § 20001, subd. (a)); (2) driving on a suspended license (Veh. Code, § 14601); and (3) giving false information to a peace officer (Veh. Code, § 31).

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⁴ On page 2, lines 14 and 15, of this September 14, 2010 order, the court incorrectly states one of respondent's inactive enrollments began on November 26, 2009. The inactive enrollment actually began one day earlier on November 25, 2009.

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On May 19, 2004, respondent pleaded nolo contendere to the misdemeanor charge of failing to stop at the scene of an injury accident (Veh. Code, § 20001, subd. (a)). Respondent was sentenced to three years of court probation and 40 days in custody.

The parties stipulated that the facts and circumstances surrounding respondent's conviction involved only other misconduct warranting discipline (e.g., *In re Kelley, supra*, 52 Cal.3d at p. 494). Even though the parties stipulated that respondent's conviction did not involve moral turpitude, the parties erroneously stipulated that respondent violated section 6106.

B. Case Number 04-C-10561-PEM

On July 31, 2003, a few hours after the accident, *ante*, respondent was arrested by the police for driving under the influence of alcohol, drugs, or both. On October 14, 2003, Respondent was charged with the following three misdemeanors: (1) driving under the influence of alcohol or drugs (Veh. Code, § 23152, subd. (a)) with two prior convictions of the same offense (on July 12, 2002 and September 10, 2002); (2) driving on a suspended driver's license (Veh. Code, § 14601); (3) public intoxication (Pen. Code, § 647(t)).

On May 24, 2004, respondent pleaded nolo contendere to the misdemeanor violation of driving under the influence of alcohol or drugs (Veh. Code, § 23152, subd. (a)), and the other charges were dismissed. Respondent was sentenced to three years' probation and 4 days in custody.

The parties stipulated that the facts and circumstances surrounding respondent's conviction involved only other misconduct warranting discipline (e.g., *In re Kelley, supra*, 52 Cal.3d at p. 494) and not moral turpitude.

C. Case Number 04-C-15871-PEM

On July 12, 2002, respondent was arrested for driving under the influence of alcohol. On August 19, 2002, respondent was charged with the following two misdemeanors: (1) driving under the influence of alcohol or drugs (Veh. Code, § 23152, subd. (a)); and (2) driving under the influence of alcohol with blood alcohol level of .08 percent or more (Veh. Code, § 23152, subd. (b)).

On December 2, 2002, respondent pleaded nolo contendere to the misdemeanor violation of) driving under the influence of alcohol with blood alcohol level of .08 percent or more (Veh. Code, § 23152, subd. (b)). Respondent was sentenced to three years of court probation and six days in custody. The parties stipulated that the facts and circumstances surrounding respondent's conviction involved only other misconduct warranting discipline (e.g., *In re Kelley, supra*, 52 Cal.3d at p. 494) and not moral turpitude.

D. Case Number 04-C-15875-PEM

On December 1, 2003, respondent drove a vehicle while his driver's license had been suspended. On March 1, 2004, respondent was charged with misdemeanor driving while license suspended for too many points against license (Veh. Code, § 14601).

On October 12, 2004, respondent pleaded nolo contendere to the charged misdemeanor violation. He was sentenced to two years of court probation and 10 days in custody. The parties stipulated that the facts and circumstances surrounding respondent's conviction involved only other misconduct warranting discipline (e.g., *In re Kelley, supra*, 52 Cal.3d at p. 494) and not moral turpitude.

E. Case Number 06-0-10118-PEM

From at least February 1, 2004 until October 1, 2004, respondent was attorney of record for the plaintiffs in a civil lawsuit pending in the United States District Court for the Northern District of California. On February 27, 2004, a magistrate judge issued an order imposing

\$3,840 in sanctions against respondent personally and in favor of the defendant (first federal sanction order). Even though the first federal sanction order became final and even though respondent had notice of the order, respondent failed to pay the sanctions. Respondent, however, paid the \$3,500 in sanctions imposed against him in a second federal sanction order issued on March 1, 2004.

On September 8, 2004, a federal district judge issued an order imposing \$20,000 in sanctions against respondent personally and in favor of the defendant (third federal sanction order). Even though the third federal sanction order became final and even though respondent had notice of the order, respondent failed to pay the sanctions.

From at least May 1, 2004, to May 30, 2004, respondent was the attorney of record for two defendants in a civil lawsuit pending in the Humboldt County Superior Court. On May 6, 2004, a superior court judge issued an order imposing \$2,406.30 in sanctions against respondent personally and in favor of the plaintiff (first superior court sanction order). Even though the first superior court sanction order became final and even though respondent had notice of the order, respondent failed to pay the sanctions.

On May 14, 2004, the superior court judge issued another order imposing \$2,736.30 in sanctions against respondent personally and in favor of three cross-defendants (second superior court sanction order). Even though the second superior court sanction order became final and even though respondent had notice of the order, respondent failed to pay the sanctions.

The parties stipulated that, by failing to comply with the first and third federal sanction orders and with the first and second superior court sanction orders, respondent willfully violated his duty, under section 6103, to comply with court orders.

In aggravation, respondent stipulated that he has three prior records of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i).)⁵

In 1998, in case number S059441, the Supreme Court placed respondent on six months' stayed suspension and one year's probation (but no actual suspension) for the following violations: three counts of failing to perform legal services competently (Rules of Prof. Conduct, rule 3-110(A));⁶ three counts of improper withdrawal from employment (rule 3-700(A)(2)); two counts of failing to return client files (rule 3-700(D)(1)); two counts of failing to refund unearned fees (rule 3-700(D)(2)); two counts of failing to maintain client funds in a trust account (rule 4-100(A)); two counts of failing to account (rule 4-100(B)(3)); and four counts of failing to communicate (§ 6068, subd. (m)).

In 2001, in case number S096353, the Supreme Court placed respondent on two years' stayed suspension and two years' probation on conditions, including a 45-day suspension because respondent willfully violated his duty, under section 6068, subdivision k, to comply with the conditions of his disciplinary probation.

In 2002, in case number S103208, the Supreme Court placed respondent on two years' stayed suspension and two years' probation on conditions, including a 60-day suspension because respondent failed to perform legal services competently (rule 3-110(A)) and improperly withdrawal from employment (rule 3-700(A)(2)).

In additional aggravation, respondent's misconduct involved multiple acts of misconduct (std. 1.2(b)(ii)) and was surrounded by dishonesty and concealment (std. 1.2(b)(iii)) in that, when the police questioned respondent about the July 31, 2003 collision, respondent lied and said his client was driving at the time of the accident.

⁵ All further references to standards are to this source.

⁶ All further references to rules are to these State Bar Rules of Professional Conduct.

In mitigation, the parties stipulated that respondent was candid and cooperative with the State Bar (std. 1.2(e)(v)); that respondent had marital difficulties at the time he engaged in the stipulated misconduct (std. 1.2(b)(iv)); that respondent had financial difficulties; that respondent suffered from severe back problems; that respondent is of good character (Std. 1.2(e)(vi)); that respondent participated in the LAP; and that respondent completed a residential treatment for his chemical dependency.

What is more, respondent is entitled to significant mitigation for successfully completing the ADP. (Std. 1.2(e)(iv); see also § 6233.)

IV. DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but rather to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve confidence in the legal profession. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate alternative discipline recommendations if respondent successfully completed the ADP and if he did not successfully complete the ADP, the court considered the parties' briefs on discipline 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(b), 2.6, and 3.4 and the cases of *In re Carr* (1988) 46 Cal.3d 1089 (two years' stayed suspension and five years' probation on conditions, including six months' suspension) and *Bach v. State Bar* (1987) 43 Cal.3d 848 (one year's stayed suspension and three years' probation on conditions, including sixty days' suspension)..

Because respondent successfully completed the ADP, this court will recommend that the Supreme Court impose, on respondent, the lower level of discipline as set forth *post* and in the Confidential Statement.

V. DISCIPLINE RECOMMENDATION

THE COURT HEREBY RECOMMENDS that respondent **MICHAEL THOMAS MORRISSEY**, State Bar number 62195, be suspended from the practice of law in California for two years, that execution of the two-year suspension be stayed, and that Morrissey be placed on probation for three years subject to the following conditions:

1. Morrissey is suspended from the practice of law for the first six months of probation (with credit given for inactive enrollment, which was effective November 25, 2009, through January 26, 2010, and which was effective July 13, 2010, through September 13, 2010 (Bus. & Prof. Code, § 6233)).
2. Morrissey must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California.
3. Within 10 days of any change, Morrissey must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar (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.
4. Within 30 days after the effective date of discipline, Morrissey must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss these terms and conditions of probation. At the direction of the Office of Probation, Morrissey must meet with the probation deputy either in person or by telephone. Morrissey must promptly meet with the probation deputy as directed and requested.
5. Morrissey must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10. Under penalty of perjury, Morrissey 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. Morrissey 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 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 20 days before the last day of the period of probation and no later than the last day of the probation period.

6. Subject to the assertion of applicable privileges, Morrissey 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 he is complying or has complied with the probation conditions.

7. Within one year after the effective date of the discipline herein, Morrissey must provide to the Office of Probation satisfactory proof of his attendance at a session of the State Bar's Ethics School and of his passage of the test given at the end of that session. The school is offered periodically at 180 Howard Street, San Francisco, California 94105-1639 and at 1149 South Hill Street, Los Angeles, California 90015-2299. Arrangements to attend the school must be made in advance by calling (213) 765-1287 and by paying the required fee. This condition of probation is separate and apart from Morrissey's California Minimum Continuing Legal Education (MCLE) requirements; accordingly, he is ordered not to claim any MCLE credit for attending and completing this school. (Accord, Rules Proc. of State Bar of Cal., rule 3201.)
8. Morrissey must comply with all provisions and conditions of his Participation Agreement/Plan with the Lawyer Assistance Program (LAP) and must provide the Office of Probation with certification of completion of the LAP. Morrissey must immediately report any non-compliance with any provision(s) or condition(s) of his Participation Agreement/Plan to the Office of Probation. Morrissey 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 Morrissey'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. Morrissey will be relieved of this condition after he provides the Office of Probation with satisfactory certification of his successful completion of the LAP.
9. The three-year probation will begin on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.) And, at the expiration of the period of probation, if Morrissey has complied with all the terms of probation, the order of the Supreme Court suspending him from the practice of law for two years will be satisfied and that suspension will be terminated.

VI. PROFESSIONAL RESPONSIBILITY EXAMINATION

The Court further recommends that **MICHAEL THOMAS MORRISSEY** be ordered to take and pass the Multistate Professional Responsibility Examination within one year after the effective date of the Supreme Court's disciplinary order in this matter and to provide satisfactory proof of his passage to the State Bar's Office of Probation in Los Angeles within the same time period. Failure to pass the examination within the specified time results in actual suspension until passage, without further hearing. (*Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8; but see Cal. Rules of Court, rule 9.10(b); Rules Proc. of State Bar, rule 321(a)(1)&(3).)

VII. CALIFORNIA RULES OF COURT, RULE 9.20

The court further recommends that **MICHAEL THOMAS MORRISSEY** be ordered to comply with California Rules of Court, rule 9.20 and 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 order in this matter.

VIII. COSTS

Finally, the court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that those costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

IX. DIRECTION RE DECISION AND ORDER SEALING CERTAIN DOCUMENTS

The court directs one of its case administrators to file this Decision and 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.

The court further orders that protected and sealed material be disclosed to only: (1) the parties to the proceeding and their 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 must be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosures. Each person to whom protected material is disclosed must be given a copy of this sealing order by the person making the disclosure.

IT IS SO ORDERED.

Dated: December 13, 2010.

PAT McELROY
Judge of the State Bar Court

