

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 03-O-04673 (04-O-14516)
)	
PAUL ERIC GOLD,)	DECISION AND ORDER SEALING
)	CERTAIN DOCUMENTS
Member No. 105457,)	
)	
<u>A Member of the State Bar.</u>)	

On or before March 17, 2004, respondent Paul Eric Gold (respondent) contacted the State Bar of California’s Lawyer Assistance Program (LAP) to assist him with his mental health issues, and on June 9, 2004, respondent executed a Participation Agreement with the LAP.¹

The State Bar of California, Office of the Chief Trial Counsel (State Bar), filed a Notice of Disciplinary Charges (NDC) against respondent on February 8, 2006, in case nos. 03-O-04673 (04-O-14516). This matter was initially assigned to the Honorable Robert M. Talcott.

On March 30, 2006, Judge Talcott issued an order referring this matter to the State Bar Court’s Alternative Discipline Program (ADP).

On June 28, 2006, respondent submitted to the court a declaration regarding the nexus between his mental health issues and his misconduct in this matter.

¹ It appears that respondent’s participation agreement with the LAP was amended in May 2007 and January 2009.

Effective November 11, 2006, this matter was reassigned to the Honorable Richard A. Honn.

On March 23, 2007, Judge Honn executed the Confidential Statement of Alternative Dispositions and Orders (Confidential Statement) which set forth 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, or failed to successfully complete, the ADP.

Effective May 21, 2007, this matter was reassigned to the undersigned judge.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) in June 2007, which was received by the court on June 21, 2007.

On September 12, 2007, respondent and his counsel executed the Contract and Wavier for Participation in the State Bar Court's ADP (Contract). On that same date, the court executed an order approving the parties' Stipulation, as modified. The Contract, Confidential Statement and Stipulation were lodged on September 12, 2007.

On September 13, 2007, the court issued an order finding that respondent is accepted into the ADP, and that the start date of respondent's participation in the ADP is September 12, 2007.

Respondent thereafter participated in both the State Bar's LAP and the court's ADP, and on October 1, 2009, the court issued an order finding that respondent has successfully completed the ADP. The Stipulation was thereafter filed, and this matter was submitted for decision on October 1, 2009.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In case no. 03-O-04673, respondent represented a client in a personal injury matter. He repeatedly failed to respond to discovery requests, took no steps to avoid harm and delay to his client, and abandoned his client's case. He also repeatedly failed to respond to his client's

telephone calls; failed to inform his client of his intention to cease working of her matter after early 2003; and failed to inform his client of the status of her matter. Respondent also failed to give due notice to his client of his termination of his employment and failed to take reasonable steps to avoid reasonably foreseeable prejudice to his client upon termination of his employment. Respondent stipulated that his conduct violated rules 3-110(A) and 3-700(A)(2) of the Rules of Professional Conduct of the State Bar of California² and section 6068, subdivision (m) of the Business and Professions Code.³

In case no. 04-O-14516, respondent represented a client in a personal injury matter. He filed a complaint on behalf of the client, but failed to appear at court hearings, which led to the dismissal of his client's matter. Respondent also failed to attempt to set aside the dismissal. Respondent also repeatedly failed to respond to his client's telephone messages seeking status updates, and failed to inform his client that the client's matter had been dismissed. Respondent also failed to inform his client of his intent to withdraw from representation and failed to take steps to avoid reasonably foreseeable prejudice to his client upon termination of his employment. Respondent stipulated that his conduct violated rules 3-110(A) and 3-700(A)(2) and section 6068, subdivision (m).

In mitigation, respondent suffered from marital, financial, physical and psychological difficulties. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e)(iv)), and he was candid and cooperative with the victims of his misconduct and with the State Bar during disciplinary investigation and proceedings (std. 1.2(e)(v)).

In aggravation, respondent has two prior records of discipline. (Std. 1.2(b)(i).) Effective May 11, 1996, respondent was given a private reproof for violating rule 3-110(A) in case no.

² Unless otherwise indicated, all further references to rule(s) refer to the Rules of Professional Conduct of the State Bar of California.

³ Unless otherwise indicated, all further references to section(s) refer to provisions of the California Business and Professions Code.

95-O-14029. Effective February 23, 2003, respondent was given an 18-month stayed suspension and 24 months of probation for violating rule 4-100(B)(4) and section 6068, subdivision (m) in case no. 02-O-10431.⁴ Respondent's indifference toward rectification of or atonement for the consequences of his misconduct is a further aggravating circumstance in this matter. (Std. 1.2(b)(v).)

The parties' stipulation as to facts and conclusions of law, including the court's order approving the stipulation as modified, 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.

Furthermore, at the time respondent engaged in his misconduct, he was suffering from mental health issues. 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.)

⁴ The weight to be afforded this second prior disciplinary matter is diminished, as the misconduct in that proceeding overlaps with the misconduct in the instant matter. Therefore, in determining the appropriate discipline to recommend in this current proceeding, the court will consider what the appropriate discipline recommendation should have been if the misconduct in both matters had been brought as one proceeding. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618-619.)

Respondent executed a Participation Agreement with the LAP on June 9, 2004, and on July 30, 2009, the LAP closed respondent's case due to the decision of the LAP Evaluation Committee that respondent had successfully completed the LAP.

Respondent also successfully completed the ADP. Respondent's successful completion of both the ADP and the LAP qualify as clear and convincing evidence that respondent no longer suffers from the mental health issues which led to his misconduct. Accordingly, it is appropriate to consider respondent's successful completion of the ADP and the LAP 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.)

After reviewing respondent's brief on the issue of discipline, which was received by the court on October 13, 2006, and the State Bar's brief on the issue of discipline, which was received by the court on October 19, 2006, and considering the Standards for Attorney Sanctions for Professional Misconduct and case law cited therein, the parties' stipulation setting forth the facts, conclusions of law, and the aggravating and mitigating circumstances in this matter, and respondent's declaration regarding the nexus between his mental health issues and his misconduct, the court advised the parties 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, or failed to successfully complete, the ADP.

In determining the appropriate discipline to recommend in this matter if respondent successfully completed 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, 2.6, 1.7(a), 2.4(b) and 2.10, and the case law cited in the parties' briefs, including *Colangelo v. State Bar* (1991) 53 Cal.3d 1255, *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354, *In the Matter of Sullivan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 608, *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, *Bledsoe v. State Bar* (1991) 52 Cal.3d 1074, *Bernstein v. State Bar* (1990) 50 Cal.3d 221, and *Young v. State Bar* (1990) 50 Cal.3d 1204.

After agreeing to the discipline which the court would recommend to the Supreme Court if respondent successfully completed or was terminated from, or failed to successfully complete, the ADP, respondent executed the Contract to participate in the ADP and began his participation in the ADP.

Thereafter, respondent successfully participated in the ADP and, as set forth in the court's October 1, 2009, order, the court found that respondent has successfully completed the ADP. Accordingly, the court will recommend to the Supreme Court the imposition of the discipline set forth in the Confidential Statement of Alternative Dispositions and Orders if respondent successfully completed the ADP.

RECOMMENDED DISCIPLINE

IT IS HEREBY RECOMMENDED that respondent **PAUL ERIC GOLD**, State Bar Number 105457, be suspended from the practice of law in California for two (2) years, that

execution of that period of suspension be stayed, and that he be placed on probation for a period of two (2) years⁵ subject to the following conditions:

1. Respondent Paul Eric Gold is suspended from the practice of law for the first sixty (60) days of probation.
2. Respondent Paul Eric Gold must also comply with the following additional conditions of probation:
 - a. During the probation period, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
 - b. 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;
 - c. 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;
 - d. 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 The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

- e. 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;
- f. 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 Ethics School, and passage of the test given at the end of that session; and
- g. If respondent leaves his current employment with a law firm to either open his own law practice or to become a principal in another law firm during his period of probation, respondent must notify the Office of Probation within 30-days of the opening of his law office or of his joining another law firm as a principal, and within 120-days of the opening of his law office or of his joining another law firm as a principal, respondent must develop a law office management/organization plan which must be approved by the Office of Probation. This plan must include procedures to: (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to respondent's misconduct in the current proceeding.⁶

3. It is also recommended that, at the expiration of the period of probation, if Paul Eric Gold has complied with all conditions of probation, the two (2) year period of stayed suspension will be satisfied and that suspension will be terminated.

It is further recommended that Paul Eric Gold take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court's disciplinary order in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

⁶ The court will not recommend any standard medical conditions in this matter as respondent has already successfully completed the LAP. Likewise, the court will not recommend payment of restitution in this matter, as respondent completed restitution to Roger A. Marko during his period of participation in the ADP.

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. 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

DONALD F. MILES
Judge of the State Bar Court