

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case Nos.: **03-O-00950**; 05-O-04634;
) 06-O-10677; 07-O-12539 (Cons.)
IRA COHEN,)
) **DECISION AND ORDER FILING AND**
Member No. 79888,) **SEALING CERTAIN DOCUMENTS**
)
A Member of the State Bar.)
)

The State Bar of California, Office of the Chief Trial Counsel (State Bar), filed a Notice of Disciplinary Charges (NDC) against respondent Ira Cohen (respondent) on January 27, 2004, in case no. 03-O-00950.

On February 27, 2004, respondent contacted the State Bar of California’s Lawyer Assistance Program (LAP) to assist him with his mental health issues.

On March 9, 2004, the court granted respondent’s request for referral of case no. 03-O-00950 to the State Bar Court’s Alternative Discipline Program (ADP).¹

Respondent submitted a declaration to the court which was received on July 9, 2004, establishing a nexus between his mental health issues and his misconduct in case no. 03-O-00950.

¹ The ADP was previously known as the (Pilot) Program for Respondents with Substance Abuse or Mental Health Issues. The court will refer to the program in this decision by its current name.

Respondent executed a Participation Agreement with the LAP on August 27, 2004.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) in case no. 03-O-00950 in November 2004. The Stipulation was received by the court on November 17, 2004.

On January 21, 2005, 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 in case no. 03-O-00950 and executed a Decision Re Alternative Recommendations for Degree of Discipline (Decision Re Alternative Recommendations) 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. The Contract, Stipulation, and Decision Re Alternative Recommendations were lodged on January 21, 2005.

On January 24, 2005, the court issued an order finding that respondent is accepted into the ADP, and the start date of respondent's participation in the ADP is January 21, 2005.

The State Bar filed a NDC against respondent on May 25, 2006, in case no. 05-O-04634.

In June 2006, the court approved, with certain modifications, the parties' Stipulation for Imposition of Practice Restrictions as Condition of ADP filed in case no. 03-O-00950. These practice restrictions, pursuant to the ADP Contract and Business and Professions Code section 6233, were effective June 19, 2006.

The State Bar filed a NDC against respondent on September 29, 2006, in case no. 06-O-10677.

On December 12, 2007, the court extended respondent's participation in the ADP until further order.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) in case nos. 05-O-04634 and 06-O-10677 on March 14, 2008. The Stipulation was received by the court that same date.

On June 27, 2008, respondent executed a Contract and Wavier for Participation in the State Bar Court's ADP (Contract) with respect to case nos. 03-O-00950; 05-O-04634; 06-O-10677.² On that same date, the court executed an order approving the parties' Stipulation in case nos. 05-O-04634 and 06-O-10677 and executed a Confidential Statement of Alternative Dispositions and Orders (Confidential Statement) in case nos. 03-O-00950; 05-O-04634; 06-O-10677³ 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. The Contract, Stipulation, and Confidential Statement were lodged on June 27, 2008.

On July 21, 2008, the court issued an order consolidating case nos. 03-O-00950; 05-O-04634; 06-O-10766 for all purposes.

In late October 2009, respondent filed a motion to vacate the practice restrictions which were imposed upon him effective June 19, 2006.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) in case no. 07-O-12539 on October 28, 2009.

The court filed an order on November 6, 2009, removing respondent's practice restrictions effective nunc pro tunc as of October 28, 2009.

² This ADP Contract superseded the Contract that respondent entered into and that was lodged in case no. 03-O-00950 on January 21, 2005.

³ The Confidential Statement superseded the Decision Regarding Alternative Recommendations lodged in case no. 03-O-00950 on January 21, 2005.

On December 10, 2009, respondent submitted to the court a declaration establishing a nexus between his mental health issues and his misconduct reflected in case nos. 03-O-00950; 05-O-04634; 06-O-10677 (Cons.) and 07-O-12539.⁴

On December 14, 2009, the court executed an order approving the Stipulation in case no. 07-O-12539, and the Stipulation was filed on December 18, 2009. Also, on that date, the ordered case no. 07-O-12539 consolidated with the other three consolidated matters.⁵

Respondent has now participated in both the State Bar's LAP and the court's ADP for several years, and the court now finds that respondent has successfully completed the ADP. On January 4, 2010, this consolidated matter was submitted for decision after the court's receipt of a Certificate of One Year Participation In the Lawyer Assistance Program –Mental Health from the LAP.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

With respect to case no. 03-O-00950, respondent was retained by Varsenik Doudikian to represent her with respect to an ERISA claim against her employer involving a dispute about a long-term disability matter. With respect to this client matter, respondent admits that he: (1) willfully violated rule 3-110(A) of the Rules of Professional Conduct of the State Bar of California⁶ by failing to file a civil action on Doudikian's behalf or to take other steps to preserve her long-term disability case; failing to notify Doudikian of the long-term disability carrier's denial of her claim; making repeated misrepresentations to Doudikian about the status of her

⁴ Respondent had earlier submitted several other declarations/nexus statements pertaining to his misconduct; however, this declaration covered all the stipulated matters involving misconduct.

⁵ As the court found that the inclusion of case no. 07-O-12539 warranted no additional discipline and no additional ADP Contract requirements, no Agreement and Order Amending Contract or Order Amending Confidential Statement was necessary.

⁶ Unless otherwise indicated, all further references to rules are to this source.

claim; and failing to return Doudikian's file to her as requested; (2) committed acts of dishonesty in willful violation of Business and Professions Code section⁷ 6106 by misleading Doudikian about the status of her claim for over one year, including making repeated misrepresentations to her about her deposition; and (3) willfully violated section 6068, subdivision (i) by failing to provide a written response to the State Bar investigator regarding Doudikian's allegations of misconduct and by failing to otherwise cooperate with the State Bar's investigation of Doudikian's complaint.⁸

In aggravation, respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(v).) In addition, respondent's current misconduct evidences multiple acts of wrongdoing. (Standard 1.2(b)(ii).)

In mitigation, respondent had no prior discipline in more than 23 years of practice prior to the commencement of the misconduct underlying this proceeding. (Standard 1.2(e)(i).)

With respect to case no. 05-O-04634, respondent filed a personal injury complaint on behalf of Doris Martin on August 12, 2004, in Riverside County Superior Court. He thereafter failed to appear for several scheduled court matters and was sanctioned monetarily by the court. Respondent stipulated that he: (1) failed to take reasonable steps to avoid reasonably foreseeable prejudice to his client upon termination of employment in willful violation of rule 3-700(A)(2) by failing to inform his client of his intent to cease performing services on behalf of the client or his inability to complete the legal services for which he had been employed, and by failing to

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

⁸ As set forth in the court's Decision Re Alternative Recommendations, pursuant to the stipulation of the parties and in the furtherance of justice pursuant to rule 262(e) of the Rules of Procedure of the State Bar of California, the court dismissed Count Two [Bus. & Prof. Code, § 6068, subd. (m)], Count Four [rule 3-700(D)(1)] and Count Five [rule 3-700(A)(2)] of the NDC in case no. 03-O-00950.

make arrangements for replacement counsel to represent the client; (2) willfully violated section 6068, subdivision (o)(3) by failing to report in writing to the State Bar, within 30 days of having knowledge of the imposition of \$10,000 in judicial sanctions against him which were unrelated to any failure to make discovery; (3) willfully violated section 6103 by failing to comply with court orders requiring him to do an act or acts connected with or in the course of his profession which he ought in good faith to do by failing to pay the sanctions ordered by the superior court; and (4) willfully violated section 6068, subdivision (i) by failing to cooperate in a disciplinary investigation by not providing a written response to the allegations in the client complaint or otherwise cooperating in the State Bar's investigation of the client's complaint.

In case no. 06-O-10677, respondent was employed by Floydell Carter in December 2002 to represent her in a discrimination claim with the Department of Fair Employment and Housing (DFEH) as a prerequisite to filing a lawsuit against her former employer. Respondent thereafter failed to file a claim with DFEH on Carter's behalf and made misrepresentations to her. He also failed to release Carter's file to her subsequent counsel. Respondent stipulated that he: (1) intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) by not filing a preliminary claim with DFEH, by not attempting to obtain a right-to-sue letter from DFEH, and by not prosecuting Carter's claims for employment discrimination and improper denial of benefits; (2) committed acts involving moral turpitude, dishonesty, or corruption in willful violation of section 6106 by informing Carter that he had filed a claim with DFEH on her behalf, that he had obtained a right-to-sue letter from DFEH, that her case against her former employer was proceeding, and that her deposition was scheduled in that case and then rescheduled when he knew that none of those statements were true when they were made; and (3) willfully violated rule 3-700(D)(1) by failing to promptly return to the client

all the client's papers and property upon termination of employment by not releasing Carter's file to either Carter or her subsequent counsel upon request.

In aggravation, respondent engaged in multiple acts of wrongdoing. (Standard 1.2(b)(ii).)

In mitigation, between 1996 and 2004, respondent suffered the loss of several family members. These family problems were compounded by a 2004 remarriage which ended in divorce in February 2006. (Standard 1.2(e)(4).)

With respect to case no. 07-O-12539, respondent was employed by Tiburcio Zavala in May 2004 to defend Zavala in an action brought by a relative of Zavala. Respondent filed an unverified answer to the verified complaint in the Zavala matter. In June 2004, Zavala employed respondent to file an Unlawful Detainer against Natividad Zavala. However, respondent failed to file the complaint for unlawful detainer. He thereafter failed to inform Zavala of several matters in connection with his case and failed to appear on behalf of Zavala at a default hearing in which the court entered judgment after default against his client. Respondent stipulated that he: (1) intentionally, recklessly, or repeatedly failed to perform legal service with competence in willful violation of rule 3-110(A) by failing: to file a verified answer to the complaint in the Zavala matter; to file a complaint for unlawful detainer on Zavala's behalf; to inform Zavala of the opposing party's discovery requests, the motion for sanctions, request for entry of judgment, and the court's judgment after default; and to appear at the default hearing of Zavala's behalf; and (2) willfully failed to keep his client reasonably informed of significant developments in a matter in which he had agreed to provide legal services in violation of section 6068, subdivision (m) by failing to inform Zavala of the opposing party's discovery requests, the motion for sanctions, request for entry of judgment, and the court's judgment after default.

In aggravation, respondent's failure to prosecute Zavala's complaint for unlawful detainer caused Zavala to incur approximately \$10,000 in sanctions to set aside the default judgment entered against him. (Standard 1.2(b)(iv).) There were no mitigating circumstances.

The parties' stipulations as to facts and conclusions of law, including the court's orders approving the stipulations, are attached hereto and hereby incorporated by reference, as if fully set forth herein. The stipulations as to facts and conclusions of law set forth the factual findings, legal conclusions, and aggravating and mitigating circumstances in these consolidated matters.

In addition to the mitigating circumstances set forth above, at the time that respondent engaged in misconduct, he was suffering from mental health issues which causally contributed to his misconduct. 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.)

Respondent executed a Participation Agreement with the LAP on August 27, 2004. The LAP issued a certificate of one-year participation in the LAP which reflects that respondent has satisfied the requirements set forth in his LAP Evaluation/Participation (Agreement) Plan for at least one year prior to December 30, 2009, and that for at least one year prior to that date, respondent has maintained mental health stability and has participated successfully in the LAP.

Respondent also successfully participated in the ADP, and the court now finds that respondent has successfully completed the ADP. Respondent's successful completion of the ADP, which required his successful participation in the LAP, as well as the certificate from 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 as a mitigating circumstance in this matter. (Std. 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 the State Bar's revised brief on the issue of discipline which was received by the court on April 25, 2008, and respondent's brief on the issue of discipline which was received by the court on May 21, 2008, and considering the Standards for Attorney Sanctions for Professional Misconduct and case law cited therein, the parties' stipulations setting forth the facts, conclusions of law, and the aggravating and mitigating circumstances in case no. 03-O-00950; 05-O-04634; 06-O-10677, and respondent's declaration regarding the nexus between his mental health issues and his misconduct in all matters, 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.⁹

⁹ As noted earlier, the later addition of case no. 07-O-12539 did not increase or otherwise alter the court's alternative discipline recommendations in this consolidated matter.

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, 2.3, 2.4(b), 2.6, and 2.10, and the case law cited in the parties' briefs, including *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73; *Slavkin v. State Bar* (1989) 49 Cal.3d 894; *Lister v. State Bar* (1990) 51 Cal.3d 1117; and *Carter v. State Bar* (1988) 44 Cal.3d 1091.

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.¹⁰

As noted earlier, respondent successfully participated in both the LAP and the court's ADP. As such, the court finds 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 court's Confidential Statement of Alternative Dispositions and Orders if respondent successfully completed the ADP.¹¹

RECOMMENDED DISCIPLINE

IT IS HEREBY RECOMMENDED that respondent **IRA COHEN**, State Bar Number 79888, be suspended from the practice of law in California for three (3) years, that execution of

¹⁰ Respondent had earlier executed an ADP Contract and began his participation in the ADP after agreeing to the court's alternative discipline recommendations which were based solely on the misconduct set forth in the parties' Stipulation pertaining to case no. 03-O-00950. This original Contract was superseded by the Contract lodged in case nos. 03-O-00950; 05-O-04634; 06-O-10677 lodged on June 27, 2008.

¹¹ The Confidential Statement superseded the Decision Re Alternative Recommendations for Degree of Discipline that was lodged in case no. 03-O-00950 on January 21, 2005.

that period of suspension be stayed, and that he be placed on probation for a period of three (3) years¹² subject to the following conditions:

1. Respondent Ira Cohen is suspended from the practice of law for the first sixty (60) days of probation.
2. Respondent Ira Cohen 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. 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;
 - d. 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;

¹² 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. 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;
 - f. Respondent 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. Respondent must immediately report any non-compliance with any provision(s) or condition(s) of his Participation Agreement/Plan to the Office of Probation. Respondent 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. Respondent will be relieved of this condition upon providing to the Office of Probation satisfactory certification of completion of the LAP.
3. At the expiration of the period of probation, if Ira Cohen has complied with all conditions of probation, the three (3) year period of stayed suspension will be satisfied and that suspension will be terminated.

It is further recommended that Ira Cohen be ordered to 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.

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: (1) the Stipulation lodged in case no. 03-O-00950 on January 21, 2005; (2) the Stipulation lodged on June 27, 2008, in case nos. 05-O-04634; 06-O-10677; and (3) 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: March _____, 2011

RICHARD A. HONN
Judge of the State Bar Court