

**STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of	)	<b>Case No. 04-C-10493-RAH</b>
<b>JOHN CARMEL NOTTI,</b>	)	<b>DECISION AND ORDER FILING AND</b>
<b>Member No. 109728,</b>	)	<b>SEALING CERTAIN DOCUMENTS</b>
<u>A Member of the State Bar.</u>	)	

**INTRODUCTION**

This disciplinary proceeding arises out of the criminal conviction of respondent John Carmel Notti (“respondent”) on December 17, 2003, of felony violations of Penal Code sections 245, subdivision (a)(1) [assault with a deadly weapon (a vehicle)], 422 [criminal threats], and 69 [resisting executive officer].

After reaching 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 thereafter respondent was accepted as a participant in the State Bar Court’s Alternative Discipline Program (“ADP”).<sup>1</sup>

As set 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 two years and until he provides satisfactory proof to the State Bar Court of his rehabilitation, present fitness to practice law and present learning and ability in the

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

general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct, that execution of such suspension be stayed, and that respondent be placed on probation for a period of three years on certain conditions.

### **SIGNIFICANT PROCEDURAL HISTORY**

In April 2004, respondent contacted the State Bar's Lawyer Assistance Program ("LAP") for assistance with his substance abuse problem.

In light of respondent's conviction of violating Penal Code sections 245, subdivision (a)(1), 422 and 69, all of which are felonies, the Review Department of the State Bar Court filed an order on May 7, 2004, in Case No. 04-C-10493, suspending respondent from the practice of law effective June 7, 2004, pending final disposition of this proceeding.

On June 7, 2004, the Review Department issued an order referring this matter to the Hearing Department for a hearing and decision as to whether the facts and circumstances surrounding the felony violations of Penal Code sections 245, subdivision (a)(1), 422 and 69 of which respondent was convicted involved moral turpitude or other misconduct warranting discipline, and if so found, the discipline to be imposed.

On June 23, 2004, a Notice of Hearing on Conviction ("NOH") and a Notice of Assignment and Notice of Initial Status Conference were filed in this matter. This matter was initially assigned to the Honorable Pat McElroy.

On July 6, 2004, respondent filed a response to the NOH.

On July 16, 2004, respondent filed a motion with the Review Department to vacate his interim suspension. On July 27, 2004, the State Bar filed an opposition to said motion, and on July 29, 2004, the Review Department filed an order denying respondent's motion without prejudice.

At a status conference held on August 2, 2004, this matter was referred to the ADP.

On August 11, 2004, respondent filed a first amended motion to vacate his interim suspension. On August 20, 2004, the State Bar filed its opposition to respondent's first amended motion. On September 3, 2004, the Review Department filed an order denying respondent's renewed motion to vacate his interim suspension.

On September 3, 2004, respondent filed a rule 955 Compliance Declaration as required by the Review Department's May 7, 2004, order of interim suspension.

This matter was reassigned to the undersigned judge in early September 2004.

On September 9, 2004, respondent submitted a declaration regarding the nexus between his substance abuse issue and his misconduct in this matter.

On October 6, 2004, respondent signed a Participation Agreement with the LAP to assist him with his substance abuse problem.

On October 22, 2004, respondent, his counsel, and Deputy Trial Counsel Charles A. Murray of the State Bar of California, Office of the Chief Trial Counsel, executed a Stipulation Re Facts and Conclusions of Law in this matter.

On October 26, 2004, the parties filed a joint brief on the issue of the appropriate levels of discipline in this matter.

On October 29, 2004, the court approved the parties' Stipulation Re Facts and Conclusions of Law submitted by the parties for purposes of respondent's participation in the ADP (Rules Proc. of State Bar, rule 802(a)).

On November 5, 2004, respondent and his counsel executed a Contract and Waiver for Participation in the State Bar Court's Program for Respondent's with Substance Abuse or Mental Health Issues ("ADP contract").

On November 5, 2004, respondent also filed another motion to vacate his interim suspension.

On November 8, 2004, the court lodged its Statement of Alternative Recommendations for Degree of Discipline pursuant to rule 803(a) of the Rules of Procedure. On that same date, the ADP contract and the parties' Stipulation Re Facts and Conclusions of Law were lodged, and respondent was accepted into the ADP as of November 8, 2004.

On November 15, 2004, the State Bar filed its response to respondent's motion to vacate his interim suspension. On November 24, 2004, the Review Department filed an order granting respondent's motion to terminate his interim suspension, and respondent's interim suspension was terminated on that date.

On July 17, 2006, the court filed an order pursuant to a status conference held on June 30, 2006, setting forth that as respondent had been in the ADP for over 19 months and his LAP Participation Reports had consistently been good, he could file a motion for completion of the ADP. Respondent filed such a motion on October 20, 2006.

On November 16, 2006, the court received a letter to respondent dated November 2, 2006, from Pam Poley, MFT, CADC, Clinical Director, LAP, verifying respondent's participation in LAP since April 20, 2004, and setting forth that respondent has consistently complied with the terms of his Participation Agreement.

On December 18, 2006, the Los Angeles County Superior Court reduced respondent's felony convictions to misdemeanors pursuant to Penal Code section 17, subdivision (b)(4); respondent's probation was terminated pursuant to Penal Code section 1203.4; it was ordered that the plea, verdict or finding of guilt be set aside and vacated and a plea of not guilty entered; and the complaint was dismissed pursuant to Penal Code section 1203.4. Respondent also filed with the court proof of his passage of the Multistate Professional Responsibility Examination given in November 2006.

On December 19, 2006, the court received from the LAP a Certificate of One Year Participation in the LAP dated December 18, 2006.

At an ADP status conference held on March 2, 2007, the court noted the Superior Court action with respect to respondent's criminal conviction and directed respondent's counsel to file the expungement, at which time this matter would be submitted for decision regarding the low level of discipline.

On March 7, 2007, respondent submitted to the court the Superior Court's December 18, 2006 Minute Order in support of his motion for a determination of his successful completion of the ADP, and this matter was submitted for decision.

#### **FACTS AND CONCLUSIONS OF LAW**

The Stipulation Re Facts and Conclusions of Law, lodged with the court on November 8, 2004, is incorporated by reference as if set forth fully herein.

**A. Jurisdiction**

Respondent is a member of the State Bar of California, admitted December 12, 1983.

**B. Facts and Circumstances of Respondent's Criminal Conviction**

On October 19, 2003, Respondent engaged in a dangerous freeway altercation with the driver of another car. Respondent drove his car alongside the other vehicle and made an obscene gesture at the driver. The driver returned the gesture. Respondent then followed the other vehicle, pulled alongside and threw a glass bottle, striking the other car on the passenger side. He then followed the other car and tried to hit the car with his own vehicle. The other car exited the freeway and came to a stop at the bottom of the off-ramp. Respondent pulled alongside the other car and challenged the driver to a fight, saying "If you want to fight, let's fight" and "Let's see how tough you are now." The other car re-entered the freeway with respondent in pursuit. Respondent became more aggressive and again tried to collide with the other car. Respondent then got in front of the other car and forced it to slow down and ultimately come to an abrupt stop. Other cars on the freeway were required to swerve to avoid a collision. Respondent then drove away.

Police officers subsequently came to respondent's residence after determining from the license number and vehicle description that he was the owner of the car involved in the freeway incident. When respondent answered the door, his breath and body smelled strongly of alcohol. At the officers' request, respondent showed them his car, which matched the description given by the driver of the other car and by an eyewitness. Although respondent claimed that he had been home all day, he was unable to explain why the hood of his car was hot to the touch. Respondent and the police officers then moved to the front porch to await the arrival of other officers. However, respondent became impatient and tried to get up. Officer Hill told him to sit down, but respondent became irate and pushed Officer Hill's chest with his right arm. Officer Hill pushed respondent back down onto a bench and the officers then forced him to lie on the ground in a prone position while they awaited the arrival of the other officers. Respondent continued to resist the officers and made several threatening and insulting remarks to them. Three additional police officers arrived and assisted in restraining respondent with handcuffs and leg restraints.

Respondent was originally charged with seven felonies but entered into a plea agreement by which four of the charges were dismissed in exchange for respondent's plea to the remaining three charges, i.e., felony violations of Penal Code sections 245, subdivision (a)(1) [assault with a deadly weapon]; 422 [criminal threats] and 69 [resisting an executive officer by use of force and violence].<sup>2</sup>

Respondent has a previous misdemeanor conviction on October 20, 1987, for a violation of Vehicle Code section 23103 [alcohol-related reckless driving].

The parties contend that the facts and circumstances surrounding respondent's convictions do not involve moral turpitude, but do involve "other misconduct warranting discipline." After careful consideration, the court agrees with the parties' conclusion. This court is deeply concerned about the gravity and recklessness of respondent's conduct. By throwing a bottle at a moving vehicle and by deliberately and repeatedly attempting to collide with another vehicle, respondent demonstrated a flagrant endangerment of and disregard for human life. Likewise, respondent's death threats against the police officers investigating the driving incident are extremely serious. However, it is also apparent that respondent was highly intoxicated during these events. Both the Supreme Court and Review Department have held that conduct which stems in part from the attorney's abuse of alcohol or drugs or from a mental health issue is a circumstance which may influence a finding of moral turpitude. (See *In re Otto* (1989) 48 Cal.3d 970, 971-972; *In the Matter of Frascinella* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 543, 551; see also, *In re Larkin* (1989) 48 Cal.3d 236, 242; *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52, 60.)

### **AGGRAVATION AND MITIGATION**

#### **A. Aggravation**

In aggravation, the parties stipulated that respondent's misconduct significantly harmed

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<sup>2</sup>In its interim suspension order filed May 7, 2004, the State Bar Court Review Department classified respondent's conviction of Penal Code section 422 as a crime "for which there is probable cause to believe that it involves moral turpitude." (See Bus. & Prof. Code, § 6102, subd. (a).)

the public or the administration of justice. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(b)(iv) (“standard”).)

**B. Mitigation**

In mitigation, the parties have stipulated that (a) respondent has no record of prior discipline since his admission to practice law in December 1983, a period of almost 20 years prior to the incident which resulted in his conviction (standard 1.2(e)(i)); and (b) he displayed candor and cooperation to the victims of his misconduct and to the State Bar (standard 1.2(e)(v)).

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

Furthermore, respondent sought assistance from the LAP in April 2004 to assist him with his substance abuse problem. On October 6, 2004, respondent signed a long-term participation agreement with the LAP. Since entering into the LAP, respondent has maintained compliance with the terms of his participation agreement. He has undergone regular random drug testing since 2004, and since that time has complied with all drug testing requirements required by the LAP and his LAP Participation Agreement, a period of about two and one-half years. On November 16, 2006, the court received a letter to respondent dated November 2, 2006, from Pam Poley, MFT, CADC, Clinical Director, LAP, verifying respondent’s participation in the LAP since April 20, 2004, and setting forth that respondent has consistently complied with the terms

of his Participation Agreement. Furthermore, on December 18, 2006, the LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program indicating that respondent has been substance-free for at least one year prior to the date of the certificate as is required for successful completion of the ADP pursuant to rule 804 of the Rules of Procedure.

In addition to participating in the LAP, respondent was accepted into the court's ADP on November 8, 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 problem 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 28 months. (Rules Proc. of State Bar, rule 804.) Accordingly, this court 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.

### **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 3.4 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.

In their Joint Brief Re Level of Discipline, the parties cite several cases that they believe



are sufficiently similar to respondent's misconduct in the current proceeding to warrant comparison for discipline purposes. The court finds that these cases provide guidance in determining the appropriate discipline to recommend in this proceeding.

In *In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406, the Review Department recommended a two year stayed suspension, two years' probation and no additional period of actual suspension<sup>3</sup> for an attorney who had been convicted of a violation of Penal Code section 245, subdivision (a)(2) [assault with a firearm]. The attorney, an off-duty reserve police officer, became involved in a "road rage" incident that resulted in the firing of his service revolver at another car. The bullet fired by the attorney struck the face of a woman in the back seat of the other car.

In *In re Larkin, supra*, 48 Cal.3d 236, the attorney was convicted of assault and conspiracy to commit assault (Pen. Code, §§ 245, subd. (a)(1) and 182) for enlisting a client to attack and beat up a man who was dating the attorney's ex-wife. The attorney asserted that his alcohol and drug abuse had contributed to his misconduct. The Supreme Court suspended the attorney from practice for three years, stayed execution of the suspension and placed him on probation for three years on conditions which included his actual suspension for one year.

In *In re Otto, supra*, 48 Cal.3d 970, the attorney was convicted of felony assault and spousal abuse (Pen. Code, §§, 245, subd. (a) and 273.5). The attorney's conduct was affected by his abuse of alcohol. The Supreme Court imposed a two year stayed suspension, two years' probation and an actual suspension of six months.

Finally, in *In the Matter of Stewart, supra*, 3 Cal. State Bar Ct. Rptr. 52, the attorney was convicted of misdemeanor battery on a police officer (Pen. Code, § 243, subd. (c)) as a result of a scuffle between the attorney and the police officer, who had arrived at the scene to deal with a domestic violence incident between the attorney and his estranged wife. The attorney had been drinking at the time of the incident. The Review Department recommended that the attorney be

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<sup>3</sup>The attorney had already been on interim suspension pursuant to Business and Professions Code section 6102, subdivision (a) for about ten months.

given a two-year stayed suspension, two years' probation and a 60-day actual suspension.

On October 26, 2004, the parties lodged a Joint Brief Re Level of Discipline in which the parties recommended that, if respondent successfully completes the ADP, he should be suspended from the practice of law for two years, execution of the order of suspension should be stayed, and he should be placed on probation for three years, with no further period of actual suspension.<sup>4</sup>

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 this criminal conduct, he was suffering from a substance abuse problem which was addictive in nature, and respondent's substance abuse problem directly caused the criminal conduct in this matter. Furthermore, respondent has been participating in the LAP since 2004, 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 the letter from Pam Poley, Clinical Director, LAP, and the Certificate of One Year Participation in the Lawyer Assistance Program indicating that respondent has been substance-free for at least one year prior to the date of the 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.)

In light of all the circumstances, and after considering the standards and case law discussed above, the court concludes that the discipline recommended by the parties is

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<sup>4</sup>At the time the parties lodged their Joint Brief Re Level of Discipline, respondent was still on interim suspension from the practice of law pursuant to Business and Professions Code section 6102, subdivision (a). Respondent was placed on interim suspension effective June 7, 2004, and remained on interim suspension until November 24, 2004.

appropriate. Therefore, the court hereby recommends that the following discipline be imposed in this matter.

**RECOMMENDED DISCIPLINE**

IT IS RECOMMENDED that respondent **JOHN CARMEL NOTTI** be suspended from the practice of law for a period of two years and until he provides satisfactory proof to the State Bar Court of his rehabilitation, present fitness to practice law and present learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct. The court further recommends 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 comply with the provisions of the State Bar Act and of the Rules of Professional Conduct of the State Bar of California;
2. 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;
3. 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 with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition;
4. Respondent must comply with all terms and conditions of his probation in the underlying criminal proceeding;
5. Respondent must submit written quarterly reports to the Office of Probation no later than each January 10, April 10, July 10 and October 10 of the period during which these probation conditions are in effect. 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 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 must be submitted no earlier than twenty (20) calendar days before the last day of the period of probation and no later than the last day of that 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 the conditions of his probation;
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. These probation conditions will commence on the effective date of the Supreme Court's final disciplinary order in this proceeding.

It is not recommended that respondent be required to take and pass the Multistate Professional Responsibility Examination ("MPRE"), as he took and passed said examination given in November 2006.

#### **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: April \_\_, 2007

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RICHARD A. HONN  
Judge of the State Bar Court