

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of ) Case Nos.: **04-O-11783** (04-O-13755);  
) 05-O-03037; 06-O-12760 (Cons.)  
**MARC AARON GOLDBACH,** )  
) **DECISION AND ORDER SEALING**  
**Member No. 139318,** ) **CERTAIN DOCUMENTS**  
)  
A Member of the State Bar. )

---

On or before October 27, 2004, respondent Marc Aaron Goldbach (respondent) contacted the State Bar’s Lawyer Assistance Program (LAP) to assist him with his substance abuse and mental health issues. Respondent executed a Participation Plan with the LAP on December 29, 2004.

The State Bar of California, Office of the Chief Trial Counsel (State Bar), filed a Notice of Disciplinary Charges (NDC) against respondent on April 22, 2005, in case nos. 04-O-11783 (04-O-13755).

The court filed an order on May 31, 2005, referring case nos. 04-O-11783 (04-O-13755) to the State Bar Court’s Alternative Discipline Program (ADP).

On September 1, 2005, respondent submitted to the court a declaration regarding the nexus between his substance abuse and mental health issues and his misconduct in case nos. 04-O-11783 (04-O-13755).

The State Bar filed a NDC against respondent on March 28, 2006, in case no. 05-O-03037).

On May 24, 2006, the court filed an order consolidating case nos. 04-O-11783 (04-O-13755) and case no. 05-O-03037.<sup>1</sup>

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) in July 2006 in case nos. 04-O-11783 (04-O-13755); 05-O-03037 (Cons.), which was received by the court on July 31, 2006.

On October 23, 2006, the court executed the Confidential Statement of Alternative Dispositions and Orders (Confidential Statement) in case nos. 04-O-11783 (04-O-13755); 05-O-03037 (Cons.) 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. Also on October 23, 2006, respondent and his counsel executed the Contract and Waiver for Participation in the State Bar Court's ADP (Contract) in case nos. 04-O-11783 (04-O-13755); 05-O-03037 (Cons.), and respondent was accepted into the ADP.<sup>2</sup> The parties' Stipulation,<sup>3</sup> the Confidential Statement and the Contract were lodged on October 23, 2006.

On September 11, 2007, the court received an addendum to the parties' Stipulation regarding investigation matter 06-O-12760 (Addendum).<sup>4</sup>

---

<sup>1</sup> The court found a nexus between respondent's misconduct in this matter and his substance abuse and mental health issues.

<sup>2</sup> The court filed an order on October 24, 2006, finding that respondent is accepted into the ADP, and the commencement date of his participation in the ADP is October 23, 2006.

<sup>3</sup> The court executed an order approving the parties' Stipulation on October 23, 2006.

<sup>4</sup> The court found a nexus between respondent's misconduct in this matter and his substance abuse and mental health issues. Although this matter was not formally incorporated into the existing ADP Confidential Statement and Contract, the parties and the court intended that this matter be included in the Alternative Discipline Program. The incorporation of this matter, however, did not affect the alternative levels of discipline previously recommended in this matter.

On May 30, 2009, the court filed an order enrolling respondent as an inactive member of the State Bar of California pursuant to Business and Professions Code section 6233 effective April 1, 2009.<sup>5</sup> Respondent was also ordered to comply with certain requirements set forth in rule 9.20 of the California Rules of Court.

Respondent successfully participated in both the State Bar's LAP and the court's ADP. Thereafter, on December 18, 2009, the court filed an order finding that respondent has successfully completed the ADP; the parties' Stipulation and Addendum were filed; and this matter was submitted for decision on that date.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

In case no. 04-O-11783, respondent was hired by Michael and Rowena Tebaldi to represent them in litigation they anticipated after the death of Michael's aunt (Viola Tebaldi) and for the settlement of her estate. Thereafter, respondent failed to maintain client funds in a trust account in willful violation of rule 4-100(A) of the Rules of Professional Conduct of the State Bar of California;<sup>6</sup> committed acts involving moral turpitude and corruption in violation of section 6106 of the Business and Professions Code by misappropriating approximately \$75,300 belonging to another;<sup>7</sup> willfully disobeyed an order in violation of section 6103; and committed acts of dishonesty in violation of section 6106 by making misrepresentations to the court and to counsel for the estate's administrator.

As to case no. 04-O-13755, respondent stipulated that he committed an act of moral turpitude in violation of section 6106 by issuing a client trust account check when he knew there were insufficient funds in the account.

---

<sup>5</sup> Respondent's inactive enrollment pursuant to Business and Professions Code section 6233 terminated on January 2, 2010.

<sup>6</sup> Unless otherwise indicated, all further references to rule(s) refer to this source.

<sup>7</sup> Unless otherwise indicated, all further references section(s) refers to provisions of the Business and Professions Code.

Regarding case no. 05-O-03037, respondent stipulated that he committed acts involving moral turpitude in violation of section 6106 by issuing two checks drawn on his client trust account when he knew there were insufficient funds in the account to cover and checks and by commingling personal funds in his client trust account.

Finally, in investigation matter 06-O-12760, respondent stipulated that he committed an act involving moral turpitude in violation of section 6106 by issuing a check on his client trust account when he knew there were insufficient funds in the account.

In mitigation, respondent was admitted to the practice of law in California on January 30, 1989, and has no prior record of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e)(i).) In addition, respondent was experiencing family problems around 2003. These problems contributed to his misconduct, as they contributed to respondent's anxiety and associated depression. Respondent was also suffering severe financial stress. (Std. 1.2(e)(iv).)

In aggravation, respondent's misconduct significantly harmed a client, the public, or the administration of justice. (Std. 1.2(b)(iv).) As a further aggravating circumstance, respondent's misconduct in the present matter evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. (Std. 1.2(b)(ii).)

The parties' stipulation as to facts and conclusions of law pertaining to case nos. 04-O-11783 (04-O-13755); 05-O-03037 (Cons.), including the court's order approving the stipulation, and the parties' addendum regarding investigation matter 06-O-12760, are attached hereto and hereby incorporated by reference, as if fully set forth herein. The Stipulation and Addendum 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 substance abuse and mental health issues, and respondent's substance abuse and mental health issues directly caused or contributed to the misconduct which forms the basis for this proceeding. 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.)

In addition, 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 Plan with the LAP on December 29, 2004. The LAP issued a Certificate of One Year of Participation In the Lawyer Assistance Program – Substance Use – dated December 3, 2009, which reflects that the LAP is not aware of the use of any unauthorized substances by respondent for at least one year prior to this date. Furthermore, the undersigned judge was presented with satisfactory evidence from a mental health professional as to respondent's mental health stability.

Respondent also successfully completed the ADP. Respondent's successful completion of the ADP, which required his successful participation in the LAP, as well as the certificate of one-year participation in the LAP and the satisfactory evidence presented to the undersigned judge of respondent's mental health stability, qualify as clear and convincing evidence that respondent no longer suffers from the substance abuse and 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 and considering: (1) briefs by both respondent and the State Bar on the issue of discipline; (2) the Standards for Attorney Sanctions for Professional Misconduct and case law cited in the parties' briefs; (3) the parties' Stipulation and Addendum setting forth the facts, conclusions of law, and the aggravating and mitigating circumstances in this matter; and (4) the nexus between respondent's substance abuse and 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, 2.2(a), 2.2(b), 2.3, and 2.6, and the case law cited in the parties' briefs,

including *In the Matter of Lilly* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185; *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652; *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583; *Kaplan v. State Bar, supra*, 52 Cal.3d 1067; *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357; *McKnight v. State Bar* (1991) 53 Cal.3d 1025; *Murray v. State Bar* (1985) 40 Cal.3d 575; and *Greenbaum v. State Bar* (1976) 15 Cal.3d 893.

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 period of participation in the ADP.

Respondent thereafter successfully participated in the ADP, and on December 18, 2009, the court filed an order finding 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 **MARC AARON GOLDBACH**, State Bar Number 139318, 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 three (3) years<sup>8</sup> subject to the following conditions:

1. Respondent Marc Aaron Goldbach is suspended from the practice of law for the first nine (9) months of probation (with credit given for the period of inactive enrollment pursuant to Business and Professions Code section 6233 which commenced on April 1, 2009 and ended on January 2, 2010).

---

<sup>8</sup> 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.)

2. Respondent Marc Aaron Goldbach 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;

- 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. 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; and

- g. If respondent possesses client funds at any time during the period covered by a required quarterly report, respondent must submit with each required report a certificate from a certified public accountant or other financial professional approved by the Office of Probation (accountant's certificate), certifying that: respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Client's Funds Account"; and respondent has kept and maintained the following:
- (a) a written ledger for each client on whose behalf funds are held that sets forth:
    - 1. the name of such client,
    - 2. the date, amount, and source of all funds received on behalf of such client,
    - 3. the date, amount, payee, and purpose of each disbursement made on behalf of such client, and
    - 4. The current balance for such client;
  - (b) a written journal for each client trust fund account that sets forth:
    - 1. the name of such account,
    - 2. the date, amount, and client affected by each debit and credit, and
    - 3. the current balance in such account;
  - (c) all bank statements and cancelled checks for each client trust account; and
  - (d) each monthly reconciliation (balancing) of (a), (b), and (c) above, and if there are any differences between the monthly total balances reflected in (a), (b), and (c) above, the reason for the differences, and that respondent has maintained a written journal of securities or other properties held for a client that specifies:

1. each item of security and property held,
2. the person on whose behalf the security or property is held,
3. the date of receipt of the security or property,
4. the date of distribution of the security or property, and
5. the person to whom the security or property was distributed.

If respondent does not possess any client funds, property or securities during the entire period covered by a report, respondent must so state under penalty of perjury in the report submitted to the Office of Probation for that reporting period. In this circumstance, respondent need not submit the accountant's certificate described above.

The requirements of this condition are in addition to those set forth in rule 4-100 of the Rules of Professional Conduct of the State Bar of California.<sup>9</sup>

3. It is also recommended that, at the expiration of the period of probation, if Marc Aaron Goldbach 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 Marc Aaron Goldbach 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).)<sup>10</sup>

### **COSTS**

---

<sup>9</sup> As respondent successfully completed Ethics School and Client Trust Accounting School during his period of participation in the ADP, the court will not recommend that respondent again comply with these conditions during his period of probation.

<sup>10</sup> It is recommended that respondent receive credit for the period of his inactive enrollment under section 6233 toward his period of suspension imposed in this matter. If such recommendation is adopted by the Supreme Court, respondent will therefore not serve any period of suspension after the effective date of the Supreme Court's order imposing discipline in this matter. It is therefore not recommended that respondent be ordered to comply with rule 9.20 of the California Rules of Court.

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;**

**FURTHER ORDER**

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: February 22, 2010

---

RICHARD A. PLATEL  
Judge of the State Bar Court