

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 05-C-03292
)	
GABRIEL SCOTT GANOR,)	DECISION AND ORDER SEALING
)	CERTAIN DOCUMENTS
Member No. 189905,)	
)	
<u>A Member of the State Bar.</u>)	

After the transmittal to the State Bar Court of the records of the conviction of respondent Gabriel Scott Ganor (respondent), the Review Department of the State Bar Court issued an order on November 28, 2006, referring respondent’s misdemeanor conviction for violating Vehicle Code section 23152, subdivision (b) [driving with a blood alcohol level of .08% or higher] and 14601.5, subdivision (a) [driving with a suspended license] to the Hearing Department of the State Bar Court for certain action.¹

A Notice of Hearing on Conviction was filed against respondent on January 4, 2007, and the matter was assigned to the Honorable Richard A. Platel.

On March 13, 2007, the State Bar of California, Office of the Chief Trial Counsel (State Bar) transmitted evidence of the finality of respondent’s conviction to the court. Thereafter, the

¹ At the time of the referral, the court had not received evidence that respondent’s conviction was final.

Review Department issued an augmented referral order to the Hearing Department on March 16, 2007.

Thereafter, on June 8, 2007, respondent contacted the State Bar of California's Lawyer Assistance Program (LAP) to assist him with his substance abuse issues.

Following a settlement conference with the undersigned judge on June 11, 2007, the court filed an order referring this matter to the State Bar Court's Alternative Discipline Program (ADP) with the undersigned judge. This matter was thereafter reassigned to the undersigned judge for all further proceedings.

Respondent executed a Participation Plan with the LAP on November 13, 2007.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) on December 3, 2007.

On February 25, 2008, respondent submitted an amended declaration establishing a nexus between his substance abuse issues and his misconduct.

Commencing on March 26, 2008, respondent was enrolled as an inactive member of the State Bar of California pursuant to Business and Professions Code section 6233.

On April 18, 2008, 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: (1) an order approving the parties' Stipulation; (2) the Confidential Statement of Alternative Dispositions and Orders (Confidential Statement) setting 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; and (3) an order accepting respondent into the ADP commencing on April 18, 2008. The Contract, Stipulation, and Confidential Statement were lodged on April 21, 2008.

Respondent thereafter participated successfully in both the State Bar's LAP and the court's ADP, and at a status conference held on October 26, 2009, the court found that respondent has successfully completed the ADP. On that same date, the parties' Stipulation was filed, and this matter was submitted for decision.²

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In this matter, respondent drove a vehicle on May 25, 2005, while he was under the influence of alcohol and when he knew that his driver's license was suspended. Respondent also had three prior convictions in the 1990s for driving under the influence. Respondent was convicted of violating Vehicle Code section 14602.1, subdivision (a), a misdemeanor [driving while driving privilege was suspended or revoked] and Vehicle Code section 23152, subdivision (b), a misdemeanor [driving with a blood alcohol concentration of .08 percent or more]. Respondent stipulated that the facts and circumstances surrounding his misdemeanor convictions did not involve moral turpitude but did involve other misconduct warranting discipline.

In mitigation, respondent's misconduct did not harm the courts, the public, or any client. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e)(iii).) In addition, respondent was candid and cooperative with the State Bar during the disciplinary proceeding. (Std. 1.2(e)(v).)

In aggravation, respondent has a record of four prior impositions of discipline. (Std. 1.2(b)(i).) Effective November 30, 2001, respondent received a one-year stayed suspension; two- years' probation; and 30 days' actual suspension for his misdemeanor conviction of violating Penal Code section 166, subdivision (a)(4) [contempt of court order/disobedience of court order] which resulted from respondent's violation of the terms of a restraining order with respect to a neighbor.

² On October 27, 2009, the court filed an order finding that respondent has successfully completed the ADP.

Effective January 11, 2004, respondent received a five-year stayed suspension; five-years' probation; and three-years' actual suspension and until he demonstrated that he had met the requirements of standard 1.4(c)(ii) (with credit for the period of his interim suspension).³ Discipline was imposed for respondent's felony violation of Penal Code section 4573 [bringing drugs into a jail] which was an act of moral turpitude.

Effective March 27, 2004, respondent's probation in his first disciplinary matter was revoked; the stay of his suspension was lifted; and he was actually suspended for six months for failing to comply with certain terms of his disciplinary probation in his first disciplinary matter.⁴

Effective December 17, 2004, respondent was suspended for two years and until he demonstrated that he had met the requirements of standard 1.4(c)(ii); the execution of the suspension was stayed; and respondent was placed on two-years' probation with an actual suspension for one year for failing to comply with rule 955 (now rule 9.20) of the California Rules of Court.⁵

The parties' stipulation as to facts and conclusions of law, including the court's order approving the stipulation, 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 conclusion, and aggravating and mitigating circumstances in this matter.

Furthermore, at the time respondent engaged in his misconduct, he was suffering from substance abuse issues, and respondent's substance abuse issues directly caused or contributed to the misconduct which forms the basis for this proceeding. Supreme Court case law establishes

³ Pursuant to Evidence Code section 452(h), the court takes judicial notice of respondent's official membership records maintained by the State Bar of California which reflect that respondent was placed on interim suspension on July 12, 2001, as a result of his conviction.

⁴ The aggravating effect of this prior disciplinary matter was diminished, however, as the misconduct occurred during the same time period as the misconduct in respondent's second prior disciplinary matter.

⁵ Respondent was found culpable of violating Business and Professions Code section 6103 and rule 955(c) of the California Rules of Court.

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.)

Respondent executed a Participation Plan with the LAP on November 13, 2007. The LAP issued a certificate on September 9, 2008, and August 18 and October 13, 2009, which reflects that the LAP was not aware of the use of any unauthorized substances by respondent for at least one year prior to the date of each certificate.

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 certificates from the LAP, qualify as clear and convincing evidence that respondent no longer suffers from the substance abuse 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 respondent's briefs on the issue of discipline, which were received by the court on February 25 and March 5, 2008, and the State Bar's brief on the issue of discipline, which was received by the court on February 28, 2008, 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 amended declaration regarding the nexus between his substance abuse 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, 1.7(b), and 3.4 and the case law cited in the parties' discipline briefs, including *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108 and *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208.

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 27, 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 court's Confidential Statement of Alternative Dispositions and Orders if respondent successfully completed the ADP.

RECOMMENDED DISCIPLINE

IT IS HEREBY RECOMMENDED that respondent **GABRIEL SCOTT GANOR**, State Bar Number 189905, be suspended from the practice of law in California for four (4) years,

that execution of that period of suspension be stayed, and that he be placed on probation for a period of four (4) years⁶ subject to the following conditions:

1. Respondent Gabriel Scott Ganor is suspended from the practice of law for a minimum of two years (with credit given for the period of inactive enrollment pursuant to Business and Professions Code section 6233 which commenced on March 26, 2008), and he will remain suspended until he has provided proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)
2. Respondent Gabriel Scott Ganor 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;

⁶ 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.)

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 conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation; and
 - g. 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.⁷
3. At the expiration of the period of probation, if Gabriel Scott Ganor has complied with all conditions of probation, the four (4) year period of stayed suspension will be satisfied and that suspension will be terminated.

It is not recommended that Gabriel Scott Ganor take and pass the Multistate Professional Responsibility Examination (MPRE), as he took and passed the MPRE during the period of his participation in the ADP.

⁷ It is not recommended that respondent provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, and passage of the test given at the end of that session, as respondent successfully completed Ethics School during his period of participation in the ADP.

It is also not recommended that Gabriel Scott Ganor comply with rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule, as he complied with the requirements set forth in rule 9.20 (as modified by the court) shortly after he was placed on inactive enrollment pursuant to Business and Professions Code section 6233.

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: November _____, 2009

DONALD F. MILES
Judge of the State Bar Court