

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 05-C-03326-RAP
)	
ROBERT ELMER SCHROTH, JR.,)	DECISION AND DISCIPLINE ORDER;
)	ORDER SEALING DOCUMENTS
Member No. 212936)	
)	
<u>A Member of the State Bar.</u>)	

I. Introduction

In this disciplinary proceeding, respondent **Robert Elmer Schroth, Jr.**, has successfully completed the State Bar Court’s Alternative Discipline Program. (Rules Proc. of State Bar, rules 800-807.) Accordingly, respondent is hereby privately reprovved with conditions for two years.

II. Significant Procedural History

After the transmittal to the State Bar Court of the records of the conviction of respondent, the Review Department of the State Bar Court issued an order on October 31, 2005, referring respondent’s September 9, 2005 non-final misdemeanor conviction for violating Vehicle Code section 23152, subdivision (b) [driving with a blood alcohol level of .08% or higher] and Vehicle Code section 12500, subdivision (a) [driving a motor vehicle without a valid license) to the Hearing Department of the State Bar Court.

A Notice of Hearing on Conviction was filed against respondent on November 14, 2005, and the matter was assigned to the Honorable Richard A. Honn.

On December 9, 2005, notice of the finality of respondent's conviction was transmitted to the State Bar Court.

Respondent filed an answer to the Notice of Hearing on Conviction on December 14, 2005. Shortly thereafter, on December 16, 2005, the Review Department issued an augmented referral order in this matter.

Following a settlement conference with the undersigned judge, held on March 16, 2006, the court filed an order referring this matter to the State Bar Court's Alternative Discipline Program (ADP) with the undersigned judge. The ADP matter was thereafter reassigned to the undersigned judge for all further proceedings.

On March 24, 2006, respondent also sought to participate in the State Bar of California's Lawyer Assistance Program (LAP) to assist him with his substance abuse issue.

On June 8, 2006, respondent submitted a declaration establishing a nexus between his substance abuse issue and his misconduct.

The parties entered into a Stipulation Re Facts and Conclusions of Law in September 2006.

Respondent executed a Participation Plan with the LAP on December 12, 2006.

On January 31, 2007, the court lodged its Confidential Statement of Alternative Dispositions and Orders, the Contract and Waiver for Participation in the State Bar Court's ADP (Contract),¹ and the parties' Stipulation Re Facts and Conclusions of Law. Respondent was accepted into the ADP as of January 31, 2007.

¹ The Contract was executed by respondent on January 31, 2007.

On January 26, 2010, the LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program—Substance Abuse, setting forth that respondent has satisfied all lab testing requirements of the LAP Participation Agreement/Plan for one year prior to January 26, 2010, and that during this time period, there were no unauthorized substances detected; nor was LAP aware of the use of any unauthorized substances.

On April 5, 2010, the court issued an order finding that respondent has successfully completed the ADP; the Stipulation, which had been lodged on January 31, 2007, was filed; and this matter was submitted for decision.

III. Findings of Fact and Conclusions of Law

The Stipulation Re Facts and Conclusions of Law approved by the court and filed on April 5, 2010, is incorporated by reference as if set forth fully herein. The Stipulation sets forth the factual findings, legal conclusions, and certain aggravating and mitigating circumstances in this matter.

Respondent stipulated that, he was stopped on May 18, 2005, by police for having an expired car registration. Respondent exhibited objective signs of being under the influence of an alcohol and did not have a valid driver's license in his possession. He was then arrested. The concentration of alcohol in his blood (BAC) was .19%. A complaint was filed in the San Diego County Superior Court for the May 18, 2005 incident. Respondent ultimately pled guilty to a misdemeanor count of drunk driving with a BAC of .08% or more, enhanced by a prior DUI conviction and to driving without a valid license.

Respondent further stipulated that he had been convicted on two prior occasions. On August 3, 2003, respondent was arrested for resisting arrest. Thereafter, on January 19, 2005, he entered a guilty plea to a misdemeanor count for resisting arrest. The criminal court ordered

respondent on informal probation for three years on conditions that he violate no laws (minor traffic violations excepted). On February 22, 2005, respondent was stopped by police for a driving without his headlights on after dark. Exhibiting signs of intoxication, he was arrested for drunk driving. On March 28, 2005, respondent pled guilty to driving under the influence of alcohol. He was placed on probation for five years on conditions, including, that he violate no laws (minor traffic violations excepted), that he not drive with a measurable amount of alcohol in his system, and that he violate no laws while under the influence of alcohol. Respondent's misconduct on May 18, 2005, which resulted in his September 9, 2005 conviction, was a violation of the court ordered probationary terms of his January 19 and March 28, 2005 convictions.

Respondent stipulated that the facts and circumstances surrounding his September 9, 2005 convictions did not involve moral turpitude, but did involve other misconduct warranting discipline. Respondent also stipulated that his misconduct on May 18, 2005, violated both the January 19, 2005 and March 28, 2005 court orders imposing conditions of probation, in willful violation of section 6103 of the Business and Professions Code.

In mitigation respondent displayed spontaneous candor and cooperation with the State Bar during the disciplinary investigation and proceedings. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e)(iv).)² No aggravating circumstances were involved. (Std. 1.2(b).)

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

² All further references to standard(s) or std. are to this source.

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 December 12, 2006. Thereafter, the LAP issued a Certificate of One Year Participation In the Lawyer Assistance Program – Substance Use, dated January 26, 2010, which reflects, in pertinent part, that LAP is not aware of the use of any unauthorized substances by respondent for at least one year prior to this date.

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 Lawyer Assistance Program, qualify as clear and convincing evidence that respondent no longer suffers from the substance abuse issue which led to his misconduct. Accordingly, it is appropriate to consider respondent's successful completion of the ADP as a further mitigating circumstance in this matter. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(e)(iv).)

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 the relevant case law, the standards, 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 substance abuse issue and his misconduct, the court advised the parties of the disposition of this matter if respondent successfully completed the ADP and the discipline which would be recommended to the Supreme Court if respondent were 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 and 3.4, and *In re Kelley* (1990) 52 Cal.3d 487; *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208; and *In the Matter of Respondent I* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 260.

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; the Contract was lodged with the court; and respondent's period of participation in the ADP commenced.

Thereafter, respondent successfully participated in the ADP and, on April 5, 2010, the court found that respondent successfully completed the ADP. Accordingly, the court will impose the discipline set forth in the court's Confidential Statement of Alternative Dispositions and Orders if respondent successfully completed the ADP.

V. Discipline Order

Accordingly, it is ordered that respondent **Robert Elmer Schroth, Jr.**, is hereby privately reprovod. Pursuant to the provisions of rule 270(a) of the Rules of Procedure of the State Bar of California (Rules of Procedure), the private reprovod will be effective when this decision becomes final. Furthermore, pursuant to rule 9.19(a) of the California Rules of Court and rule 271 of the Rules of Procedure, the court finds that the interest of respondent and the protection of the public will be served by the following specified conditions being attached to the private reprovod imposed in this matter. Failure to comply with any condition(s) attached to this private reprovod may constitute cause for a separate proceeding for willful breach of rule 1-110 of the Rules of Professional Conduct of the State Bar of California. Respondent is hereby ordered to comply with the following conditions attached to his private reprovod for a period of two years following the effective date of the private reprovod imposed in this matter (reprovod period):

1. During the reprovod period, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;
2. Within ten 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;
3. Within thirty 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 reprovod. 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 reprovod, respondent must promptly meet with the probation deputy as directed and upon request;
4. 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 reprovod. 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 reprobation 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 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 days before the last day of the period of reprobation and no later than the last day of the reprobation period;

5. Subject to assertion of applicable privileges, respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to respondent personally or in writing relating to whether respondent is complying or has complied with the reprobation conditions;
6. Within one year after 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;
7. 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;
8. Respondent must comply with all provisions and conditions of his Participation Agreement with the Lawyer Assistance Program (LAP) and must provide the Office of Probation with certificate of completion of the LAP. Respondent must immediately report any non-compliance with any provision(s) or condition(s) of his Participation Agreement 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 the Office of Probation satisfactory certification of completion of the LAP.

Respondent must take and pass the Multistate Professional Responsibility Examination (MPRE) within one year of the effective date of the disciplinary order in this matter and provide proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

VI. Costs

Costs are 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.

VII. Direction Re Decision And Order Sealing Certain Documents

The court directs a court case administrator to file this Decision and Discipline Order; 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: June 28, 2010.

RICHARD A. PLATEL
Judge of the State Bar Court