

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case Nos.: 05-C-05323; 08-O-12472 (Cons.)
)	
FRANK EDWARD MAYO,)	DECISION AND ORDER SEALING
)	CERTAIN DOCUMENTS
Member No. 42972,)	
)	
<u>A Member of the State Bar.</u>)	

INTRODUCTION

In this consolidated original disciplinary proceeding and conviction referral proceeding, respondent Frank Edward Mayo (respondent) was accepted for participation in the State Bar Court’s Alternative Discipline Program (ADP).¹ As the court has now found that respondent has successfully completed the ADP, the court will recommend to the Supreme Court that respondent 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 three (3) years subject to certain conditions.

PERTINENT PROCEDURAL HISTORY

After the State Bar of California, Office of the Chief Trial Counsel (State Bar) transmitted to the State Bar Court the records of respondent’s conviction, the Review

¹ The ADP was previously known as the Program for Respondents with Substance Abuse or Mental Health Issues.

Department of the State Bar Court issued an order on June 19, 2006, in case no. 05-C-05323 referring respondent's misdemeanor conviction of violating Revenue and Taxation Code section 19701, subdivision (a) [tax evasion without intent] to the Hearing Department of the State Bar Court for certain action.²

A Notice of Hearing on Conviction was filed against respondent on June 26, 2006, in case no. 05-C-05323, and the matter was originally assigned to the Honorable JoAnn M. Remke.

On August 9, 2006, respondent contacted the State Bar's Lawyer Assistance Program (LAP) to assist him with his mental health issue(s) and signed a long-term LAP Participation Plan on February 7, 2007.

On August 24, 2006, the State Bar transmitted evidence of the finality of respondent's conviction referenced in case no. 05-C-05323 to the court. Thereafter, the Review Department issued an order on August 28, 2006, in case no. 05-C-05323 augmenting its earlier reference to include a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding the offense of which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

Judge Remke issued an order on September 12, 2006, referring this matter to the State Bar Court's ADP before the undersigned judge for evaluation of respondent's eligibility for participation in that program. On November 28, 2006, the undersigned issued an order reassigning case no. 05-C-05323 to the undersigned for all further proceedings.

In furtherance of his participation in the ADP, respondent submitted a declaration to the court in the fall of 2006, which established a nexus between respondent's mental health issue(s) and his misconduct in this matter.

² At the time of the referral, the court had not received evidence that respondent's conviction was final.

The parties entered into a Stipulation Re Facts, Conclusions of Law (Stipulation) in December 2006 in case no. 05-C-05323. The Stipulation sets forth the factual findings, legal conclusions and mitigating and aggravating circumstances in that matter.

Following receipt of the parties' written alternative discipline recommendations, the court advised the parties of (1) the discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP and (2) the discipline which would be recommended if respondent failed to successfully complete, or was terminated from, the ADP. After agreeing to the court's alternative possible dispositions, respondent and his counsel executed the Contract and Waiver for Participation in the State Bar Court's ADP (Contract) in January 2007.

Thereafter, on January 22, 2007: (1) the court issued a Confidential Statement of Alternative Dispositions and Orders (Confidential Statement) formally advising the parties in writing of the alternative discipline recommendations; (2) the court signed an order approving the parties Stipulation in case no. 05-C-05323; (3) the Confidential Statement and Contract were lodged; (4) the court accepted respondent for participation in the ADP; and (5) respondent's period of participation in the ADP began on that date.

On July 16, 2009, the State Bar filed a Notice of Disciplinary Charges against respondent in case no. 08-O-12472.

Case no. 05-C-05323 and case no. 08-O-12472 were consolidated pursuant to an order filed on January 4, 2010, and case no. 08-O-12472 was brought into the ADP.

By January 6, 2010, the parties had entered into a Stipulation as to consolidated case nos. 05-C-05323; 08-O-12472. The court signed an order approving the Stipulation in these consolidated matters on January 25, 2010.

Following receipt of the parties' Stipulation, the court advised the parties of the new alternative discipline recommendations in this matter based on both case nos. 05-C-05323 and

08-O-12472 being included in the ADP. After agreeing to the court's alternative possible dispositions, respondent and his counsel executed an Amended Contract and Waiver for Participation in the State Bar Court's ADP (Amended Contract), and the court executed an Amended Confidential Statement of Alternative Dispositions and Orders (Amended Confidential Statement). Both the Amended Contract and Amended Confidential Statement were lodged in this matter.

Respondent participated successfully in both the LAP and the ADP. On May 11, 2010, after receiving a satisfactory recommendation from a mental health professional, the court filed an order finding that respondent has successfully completed the ADP.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties' Stipulations, including the court's orders approving the Stipulations, are attached hereto and hereby incorporated by reference, as if fully set forth herein. In this consolidated original disciplinary matter and conviction referral proceeding, respondent stipulated with respect to case no. 05-C-05323 that the facts and circumstances surrounding his four violations of California Revenue and Taxation Code section 19701, subdivision (a) [tax evasion without intent] for failing to file state income tax returns for four years do not involve moral turpitude, but do involve other misconduct warranting discipline. Respondent also stipulated that by his criminal conduct he willfully violated Business and Professions Code section 6068, subdivision (a)³ [failure to support the laws of California].

As to case no. 08-O-12472, respondent stipulated that he recklessly failed to perform legal service with competence in willful violation of rule 3-110(A) of the Rules of Professional

³ Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

Conduct of the State Bar of California⁴ and failed to respond promptly to reasonable client status inquiries in willful violation of section 6068, subdivision (m).

In aggravation, respondent has a prior record of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i).)⁵ Effective January 19, 2005, respondent was privately reprovved in case no. 03-O-00661 for violations of rule 3-110(A) and section 6068, subdivision (m). The misconduct in this present proceeding, however, predated the imposition of the private reprovval.

As a further aggravating circumstance, respondent's misconduct in the current consolidated proceeding involves multiple acts of wrongdoing. (Std. 1.2(b)(ii).)

In mitigation, respondent was candid and cooperative with the State Bar during its resolution of this matter (std.1.2(e)(v)), and by immediately pleading guilty to the criminal charges, respondent took prompt objective steps demonstrating his remorse (std. 1.2(e)(vii)). Respondent has also engaged in service to the legal community (std. 1.2(e)(vi)); has been in full compliance with his criminal probation since being placed on probation in April 2006; and respondent has participated and been in compliance with the terms of his LAP Participation Plan since his enrollment in the program. In addition, it is appropriate to consider respondent's successful completion of the ADP as a further 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, preserve public confidence in the legal profession, and maintain the

⁴ Unless otherwise indicated, all further references to rule(s) refer to the Rules of Professional Conduct of the State Bar of California.

⁵ All further references to standard(s) or std. are to this source.

highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate alternative discipline recommendations if respondent successfully completed the ADP or was terminated from, or failed to successfully complete, 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(a), 2.4(b), 2.6 and 3.4 and *In re Rohan* (1978) 21 Cal.3d 195; *In re Grimes* (1990) 51 Cal.3d 199; *In re Brown* (1995) 12 Cal.4th 205; and *Morales v. State Bar* (1983) 35 Cal.3d 1. Because respondent has now successfully completed the ADP, this court, in turn, now recommends to the Supreme Court the imposition of the lower level of discipline, set forth more fully below.

DISCIPLINE

Recommended Discipline

It is hereby recommended that respondent Frank Edward Mayo, State Bar Number 42972, 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 probation⁶ for a period of three (3) years subject to the following conditions:

- 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

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.)

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. 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;
- g. 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 submitted to the Office of Probation; and
- h. Respondent must comply with all provisions and conditions of his Participation Agreement/Plan with the Lawyer Assistance Program (LAP) and 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. However, if respondent has successfully completed the LAP, respondent need not comply with this condition.

At the expiration of the period of probation, if Frank Edward Mayo has complied with all conditions of probation, the two (2) year period of stayed suspension will be satisfied and that suspension will be terminated.

Multistate Professional Responsibility Examination

It is further recommended that Frank Edward Mayo 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. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

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 disclosures. 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: July _____, 2010

PAT McELROY
Judge of the State Bar Court