

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

In the Matter of	)	Case Nos.: <b>05-C-02197-RAP (05-C-2224</b>
	)	<b>05-C-4112); 05-C-04113</b>
	)	<b>07-C-11224; 07-N-12818</b>
<b>JOHN LELAND DI FIORE ,</b>	)	<b>05-O-03435; 08-C-11192 (Cons.)</b>
	)	
	)	
<b>Member No. 136971,</b>	)	<b>DECISION AND ORDER SEALING</b>
	)	<b>CERTAIN DOCUMENTS.</b>
	)	
<u>A Member of the State Bar.</u>	)	

**INTRODUCTION**

In this disciplinary proceeding, respondent John Leland DiFiore was accepted for participation in the State Bar Court’s Alternative Discipline Program (ADP).<sup>1</sup> As the court has now terminated respondent from the ADP, the court will recommend to the Supreme Court that respondent be suspended from the practice of law in California for three years, that execution of that period of suspension be stayed, and that he be placed on probation for three years subject to certain conditions, including a two-year period of suspension and until he complies with standard 1.4(c)(ii), Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct.<sup>2 3</sup>

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<sup>1</sup> The ADP was formerly known as the (Pilot) Program for respondents with Substance Abuse or Mental Health Issues.

<sup>2</sup> Future references to standard or std. are to this source.

## SIGNIFICANT PROCEDURAL HISTORY

After the transmittal to the State Bar Court of respondent's conviction records, the Review Department issued orders on October 24, 2005, May 3, 2007 and May 8, 2008, referring respondent's final felony and misdemeanor convictions for violating Vehicle Code sections 14601.1(a), 14601.2(a), 20002(a) and 23152(a) and (b) to the Hearing Department for hearing and decision recommending the discipline to be imposed if the Hearing Department found that the facts and circumstances surrounding respondent's criminal violations involved moral turpitude or other misconduct warranting discipline. Notices of hearing on conviction were filed against respondent on November 8, 2005, May 31, 2007 and May 22, 2008.

In addition, in stipulating to three investigation matters<sup>4</sup> that had not yet been transmitted to the Review Department, respondent admitted the facts therein to be true, including the convictions of misdemeanor violations of Vehicle Code sections 14601.1(a), 20002(a) and 23152(a) and (b), 23578 and an infraction of Vehicle Code section 12500(a). The parties agreed that the facts and circumstances surrounding these violations did not constitute acts of moral turpitude but did constitute misconduct warranting discipline.

Notices of Disciplinary Charges were filed in case nos. 07-N-12818 and 05-O-03435 on August 20, 2007 and February 15, 2008, respectively.

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<sup>3</sup> By the Review Department's orders filed on September 29, 2005 and April 11, 2007, respondent was placed on interim suspension effective October 26, 2005 and May 7, 2007, respectively. The interim suspension was terminated by the Review Department's order filed on October 30, 2008. Moreover, respondent was placed on inactive status effective on October 6, 2008, pursuant to Bus. & Prof. Code, section 6233. This status was terminated effective April 17, 2009. Accordingly, if credit toward the period of actual suspension is given for the period of interim suspension and for inactive enrollment pursuant to section 6233 of the Business and Professions Code and respondent does not serve any additional actual suspension, he must still be relieved from actual suspension in a proceeding pursuant to standard 1.4(c)(ii) before being returned to active status. He cannot resume practicing law until then.

<sup>4</sup> These matters are 05-C-02197 (05-C-2224; 05-C-4112).

This matter was referred to the State Bar Court's ADP before the undersigned judge for evaluation of respondent's eligibility for participation in the State Bar Court's ADP.

In furtherance of his participation in the ADP, respondent signed a Participation Agreement with the LAP. Respondent also submitted declarations to the court on July 27 and October 2, 2007 and July 28, 2008, which established a nexus between respondent's substance abuse issues and his misconduct in this matter.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation). The Stipulation sets forth the factual findings, legal conclusions and mitigating and aggravating circumstances in this matter.

Following briefing by the parties, 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 those alternative possible dispositions, respondent and his counsel executed the Contract and Waiver for Participation in the State Bar Court's ADP; the court executed a Confidential Statement of Alternative Dispositions and Orders (Confidential Statement) formally advising the parties in writing of the alternative discipline recommendations in this matter; the court accepted respondent for participation in the ADP; and respondent's period of participation in the ADP began on October 6, 2008.

Respondent thereafter participated in both the LAP and the State Bar Court's ADP. However, due to unexcused absences from group/therapy sessions and missed lab tests, respondent was terminated from the LAP on April 26, 2010. LAP closed the case at respondent's request due to financial reasons on July 26, 2010.

On August 16, 2020, the court filed an order to show cause (OSC) why respondent should not be terminated from ADP since his participation in LAP had been terminated. The OSC was scheduled for September 1, 2010.

On September 1, 2010, the court found respondent not to be in compliance with the conditions of ADP. The court filed an order on September 2, 2010, terminating respondent from the ADP.

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

The parties' Stipulation, including the court's order approving the Stipulation, is attached hereto and hereby incorporated by reference, as if fully set forth herein. Respondent stipulated to the following: The facts and circumstances respondent's convictions, including his wilful violation of Vehicle Code sections 23152(a) (seven counts); 23152(b) (seven counts); 20002(a) (four counts); 14601.1(a) (six counts); 14601.2(a) (two counts) and 12500(a), do not involve moral turpitude, but do involve other misconduct warranting discipline. He also wilfully violated rule 4-100(A) of the Rules of Professional Conduct and California Rules of Court, rule 9.20.

In aggravation, the parties stipulated that respondent committed multiple acts of misconduct and also demonstrated a disregard for the law and for public safety.

Mitigating factors included no prior discipline in over 15 years of practice; candor and cooperation; emotional and financial difficulties; and no misconduct toward a client.

As respondent did not successfully complete the ADP, he will not receive mitigating credit for his period of participation in either the ADP or the LAP.

### **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

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, 2.2 and 3.4 and *In re Silverton* (2005) 36 Cal.4th 81; *In re Morse* (1995) 11 Cal.4th 184; *Porter v. State Bar* (1990) 52 Cal.3d 518; *In re Kelley* (1990) 52 Cal.3d 487; *Harford v. State Bar* (1990) 52 Cal.3d 93; *Stanley v. State Bar* (1990) 50 Cal.3d 555; *In re Billings* (1990) 50 Cal.3d 358; *Snyder v. State Bar* (1990) 49 Cal.3d 1302; *In re Young* (1989) 49 Cal.3d 257; *In re Carr* (1988) 46 Cal.3d 1089; *Durbin v. State Bar* (1979) 23 Cal.3d 461; *People v. Forster* (1994) 29 Cal.App.4<sup>th</sup> 1746; *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646; *In the Matter of Respondent M* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 465; *In the Matter of Respondent I* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 260; *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244; *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208; *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108; and *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502.

Because respondent has now been terminated from the ADP, this court, in turn, now recommends to the Supreme Court the imposition of the higher level of discipline, set forth more fully below.

## **DISCIPLINE**

### **Recommended Discipline**

It is hereby recommended that respondent John Leland DiFiore, State Bar Number 136971, be suspended from the practice of law in California for three years, that execution of

that period of suspension be stayed, and that he be placed on probation<sup>5</sup> for a period of three years subject to the following conditions:

1. Respondent John Leland DiFiore is suspended from the practice of law for one year and until he provides proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct (with credit given for the period of interim suspension which commenced on October 26, 2005 and ended on October 30, 2008);

2. Respondent John Leland DiFiore 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

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<sup>5</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.)

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 filed with the Office of Probation; and
- h. Respondent must obtain an examination of his mental and physical condition with respect to his substance abuse issue pursuant to rule 184 of the Rules of Procedure of the State Bar of California from a qualified practitioner approved by the Office of Probation and must comply with any treatment/monitoring plan recommended following such examination. The examination and any further help/treatment/monitoring recommended by the examining practitioner will be at respondent's own expense. The examination must be conducted no later than thirty (30) days after the effective date of the Supreme Court's final disciplinary order in this matter. Help/treatment/monitoring should commence immediately after said examination and, in any event, no later than thirty (30) days after said examination. With each quarterly report, respondent must furnish to the Office of Probation sufficient evidence, as specified by the Office of Probation, that he is so complying with this condition of probation. Treatment/monitoring must continue for the period of probation or until a motion to modify this condition is granted and that ruling becomes final.

If the examining or treating practitioner determines that there has been a substantial change in respondent's condition, respondent or the State Bar's Office of Probation or the Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 550 of the Rules of Procedure. The motion must be supported by a written statement from the examining or

treating practitioner, by affidavit or under penalty of perjury, in support of the proposed modification.

Upon the request of the Office of Probation, respondent must provide the Office of Probation with medical and confidentiality waivers and access to all of respondent's medical records necessary to monitor this probation condition. Revocation of any medical/confidentiality waiver is a violation of this condition. Any medical records obtained by the Office of Probation will be confidential and no information concerning them or their contents will be given to anyone except members of the Office of the Chief Trial Counsel, the Office of Probation, and the State Bar Court, who are directly involved with maintaining, enforcing or adjudicating this condition.

At the expiration of the period of probation, if John Leland DiFiore has complied with all conditions of probation, the two-year period of stayed suspension will be satisfied and that suspension will be terminated.

### **Multistate Professional Responsibility Examination**

It is further recommended that John Leland DiFiore be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) during the period of his suspension 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).)

### **Rule 9.20, California Rules of Court**

It is also recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court order in this matter, and file the affidavit provided for in paragraph (c) within 40 days of the effective date of the order showing his compliance with said order.<sup>6</sup>

### **Costs**

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<sup>6</sup> Failure to comply with former rule 955 of the California Rules of Court (now rule 9.20) could result in disbarment. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Respondent is required to file a rule 955(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

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; Order Re Termination of Involuntary Inactive Enrollment. 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: November 19, 2010.

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RICHARD A. PLATEL  
Judge of the State Bar Court