

FILED JUNE 28, 2010

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos. 05-O-00235-DFM (05-O-00784;
)	05-O-01109; 05-O-02728)
DAVID DINOSIGLIA MORIEL,)	
)	DECISION AND ORDER SEALING
Member No. 164875,)	CERTAIN DOCUMENTS
)	
A Member of the State Bar.)	
)	

INTRODUCTION

In this original disciplinary proceeding, Respondent **David DiNosiglia Moriel** (Respondent) was accepted for participation in the State Bar Court's Alternative Discipline Program (ADP). Because 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 years, that execution of that period of suspension be stayed, and that he be placed on probation for two years subject to certain conditions, including an actual suspension of 30 days, with credit given for his prior inactive enrollment, from November 28, 2008 through December 27, 2008, during his participation in the program. (Rules Proc. of State Bar, rule 803; Bus. & Prof. Code, § 6233.)

PERTINENT PROCEDURAL HISTORY

Following the filing of a Notice of Disciplinary Charges (NDC) against Respondent by the State Bar of California's Office of the Chief Trial Counsel (State Bar) on November 30, 2007, Respondent requested referral for evaluation of his eligibility for participation in the State Bar Court's ADP. There being no opposition by the State Bar, the court granted Respondent's request.

In furtherance of his participation in the ADP, Respondent contacted the State Bar's Lawyer Assistance Program (LAP) to assist with his substance abuse and mental health issues and signed a LAP Participation Plan on May 7, 2008. Respondent also submitted a declaration to the court on March 14, 2008, which established a nexus between Respondent's substance abuse and mental health issues and his misconduct in this matter.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation). The Stipulation, filed October 16, 2008, sets forth the factual findings, legal conclusions, and mitigating and aggravating circumstances in this matter.

The court issued a Confidential Statement of Alternative Dispositions and Orders, dated October 16, 2008, formally advising 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 accepted Respondent for participation in the ADP; and Respondent's period of participation in the ADP began on October 16, 2008.

Respondent thereafter participated successfully in both the LAP and the State Bar Court's ADP. On April 9, 2010, after receiving a Certificate of One Year of Participation in the Lawyer

Assistance Program - Substance Abuse, the court filed an order finding that Respondent has successfully completed 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 willfully violating in four client matters: (1) Rule 3-110(A) of the Rules of Professional Conduct of the State Bar of California by failing to perform services competently; and (2) Business and Professions Code section 6068, subdivision (m), by failing to communicate with clients. He also stipulated to failing to refund promptly unearned fees in one matter, in willful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

In aggravation, Respondent's misconduct harmed significantly a client, the public or the administration of justice. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(iv).)¹ His misconduct also evidenced multiple acts of wrongdoing. (Std. 1.2(e)(ii))

In mitigation, Respondent has no prior disciplinary record (std. 1.2(e)(i)); he displayed spontaneous cooperation and candor with the State Bar during the disciplinary investigation and proceedings (std. 1.2(e)(v)); and he demonstrated remorse (std. 1.2(e)(vii)). 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

¹ 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, 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, 2.4, 2.6 and 2.10, and *King v. State Bar* (1990) 52 Cal.3d 307 and *In the Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831.

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, contained in the Confidential Statement. According to the Office of Probation, as of April 7, 2009, Respondent has resolved all restitution/fee arbitration issues with Alicia Saavedra (\$2,000) and Jose Bugarin (\$1,000). Thus, Respondent's restitution requirements have been fully satisfied, and therefore no restitution obligation is now recommended by the court.

RECOMMENDATION

Recommended Discipline

It is hereby recommended that Respondent **David DiNosiglia Moriel**, State Bar Number 164875, be suspended from the practice of law in California for two years, that execution of that period of suspension be stayed, and that he be placed on probation² for a period of two years subject to the following conditions:

- a. Respondent must be actually suspended from the practice of law for the first 30 days of his probation, with credit given for inactive enrollment, which was effective November 28, 2008, and terminated on December 28, 2008 (Bus. & Prof. Code, § 6233);

² 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.)

- b. 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;
- c. 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;
- d. 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;
- e. 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;

- f. 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;
- g. 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;³ and

- h. 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.

At the expiration of the period of probation, if Respondent 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 Respondent 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.⁴ Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

³ If Respondent provides proof to the Office of Probation that he completed this condition during his period of participation in the ADP, Respondent need not again comply with this condition.

⁴ The Confidential Statement permitted Respondent to complete this condition during his period of participation in the ADP. The court's records do not indicate that Respondent completed this condition during his period of participation in the ADP. If this is inaccurate, Respondent should promptly file a motion for reconsideration.

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. It is further recommended that Respondent be ordered to reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and that such payment obligation be enforceable as provided for under Business and Professions Code section 6140.5.

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

DONALD F. MILES
Judge of the State Bar Court