

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case No.: <b>05-O-02844-PEM</b>
	)	
<b>MATTHEW RICHARD YOUNG,</b>	)	<b>DECISION AND ORDER SEALING</b>
	)	<b>CERTAIN DOCUMENTS</b>
<b>Member No. 215562,</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

**INTRODUCTION**

In this original disciplinary proceeding, respondent Matthew Richard Young (respondent) was accepted for participation in the State Bar Court’s Alternative Discipline Program (ADP). 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 one (1) year, that execution of that period of suspension be stayed, and that he be placed on probation for three (3) years subject to certain conditions, including a 45-day suspension.

**PERTINENT PROCEDURAL HISTORY**

Prior to the filing of formal disciplinary charges in this matter, respondent contacted the State Bar’s Lawyer Assistance Program (LAP) to assist him with his mental health and substance abuse issues and signed a long-term Participation Plan with the LAP on August 15, 2006.

On April 27, 2006, the State Bar of California's Office of the Chief Trial Counsel (State Bar) filed a Notice of Disciplinary Charges (NDC) against respondent in case no. 05-O-02844.

The parties entered into a Stipulation Re Facts, Conclusions of Law (Stipulation) in this matter in early January 2007. The Stipulation sets forth the factual findings, legal conclusions, and mitigating and aggravating circumstances in this matter.

In furtherance of his participation in the ADP, respondent also submitted a declaration to the court on February 9, 2007, which established a nexus between respondent's mental health and substance abuse issues and his misconduct in this matter. A supplement to this document was received by the court on February 21, 2007.

Following receipt of the parties' Stipulation and their written alternative discipline recommendations, the court issued a Confidential Statement of Alternative Dispositions and Orders dated March 19, 2007, 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 the court's alternative possible dispositions, respondent executed the Contract and Waiver for Participation in the State Bar Court's ADP; the court executed the order approving the parties' Stipulation; the court accepted respondent for participation in the ADP; and respondent's period of participation in the ADP began on March 19, 2007.

Respondent thereafter participated successfully in both the LAP and the State Bar Court's ADP. In April 2010, respondent successfully completed the LAP.<sup>1</sup> Thereafter, the court filed an

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<sup>1</sup> The court also received a certificate of one-year participation in the LAP dated July 6, 2010, which reflects that respondent has satisfied the requirements set forth in his LAP Participation Plan for at least one year. The certificate reflects that for at least the period of April 29, 2009, through April 29, 2010, respondent maintained mental health stability and participated successfully in the LAP. The court found this certificate sufficient to fulfill the requirement of a

order on July 13, 2010, finding that respondent has successfully completed the ADP. The parties' Stipulation was filed, and this matter was submitted for decision on July 13, 2010.

### **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. In this original disciplinary matter, respondent stipulated to violating rule 4-100(A) of the Rules of Professional Conduct of the State Bar of California<sup>2</sup> for failing to maintain the balance of funds received for a client's benefit in his client trust account; rule 4-100(B)(1) for failing to promptly notify a client of the receipt of the client's funds; section 6106 of the Business and Professions Code<sup>3</sup> for committing acts involving moral turpitude, dishonesty or corruption by misrepresentation and by signing a client's name on documents without the client's permission; and rule 4-100(B)(4) by failing to promptly pay, as requested by a client, funds in respondent's possession which the client was entitled to receive.

In aggravation, respondent engaged in multiple acts of misconduct. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(ii).)<sup>4</sup>

In mitigation, it is appropriate to consider respondent's successful completion of the ADP and his participation in, and his successful completion of, the LAP as a mitigating circumstance in this matter. (Std. 1.2(e)(iv).)

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recommendation from a mental health professional which is satisfactory to the court which is required by rule 804 of the Rules of Procedure of the State Bar of California for successful completion of the ADP.

<sup>2</sup> Unless otherwise indicated, all further references to rule(s) refer to the Rules of Professional Conduct of the State Bar of California.

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

<sup>4</sup> All further references to standard(s) or std. are to this source.

## **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, 2.2(b), and 2.3 and *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17 and *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113.

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 Matthew Richard Young, State Bar Number 215562, be suspended from the practice of law in California for one (1) year, that execution of that period of suspension be stayed, and that he be placed on probation<sup>5</sup> for a period of three (3) years subject to the following conditions:

1. Respondent Matthew Richard Young is suspended from the practice of law for the first forty-five (45) days of probation.

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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.)

2. Respondent Matthew Richard Young 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. 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 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 State Bar Ethics School, and passage of the test given at the end of that session;

- g. Respondent must abstain from use of any alcoholic beverages, and shall not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription;<sup>6</sup> and
- h. During his period of probation, respondent must make restitution to Joseph Tacl in the amount of \$6,666 plus 10% interest per year from August 1, 2004 (or to the Client Security Fund to the extent of any payment from the fund to Joseph Tacl, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnish satisfactory proof thereof to the State Bar's Office of Probation. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d).

Respondent must make minimum restitution payments of at least \$50 per month to Joseph Tacl by the first day of each month beginning the month following the effective date of the order imposing discipline in this matter. Upon respondent's failure to timely make any installment payment of restitution, the unpaid balance is due and payable immediately unless relief has been granted under the Rules of Procedure of the State Bar of California. (Rules Proc. of State Bar, rule 286.) Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. Not later than 30 days prior to the expiration of the period of probation, respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

To the extent that respondent has paid any restitution prior to the effective date of the Supreme Court's final disciplinary order in this proceeding, respondent will be given credit for such payment(s) provided satisfactory proof of such is or has been shown to the Office of Probation.

At the expiration of the period of probation, if Matthew Richard Young has complied with all conditions of probation, the one (1) year period of stayed suspension will be satisfied and that suspension will be terminated.

### **Multistate Professional Responsibility Examination**

It is further recommended that Matthew Richard Young be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective

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<sup>6</sup> The court will not recommend any medical probation conditions in this matter, as respondent has successfully completed the LAP.

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: September \_\_\_\_\_, 2010

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PAT McELROY  
Judge of the State Bar Court