

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

In the Matter of)	Case Nos.: 06-C-10234-DFM
)	
)	
RICHARD JOHN RUSZAT, II ,)	DECISION AND ORDER SEALING
)	CERTAIN DOCUMENTS.
)	
Member No. 220432,)	
)	
)	
<u>A Member of the State Bar.</u>)	

INTRODUCTION

In this disciplinary proceeding, Respondent Richard John Ruszat, II (Respondent) was previously accepted for participation in the State Bar Court’s Alternative Discipline Program (ADP). 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 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 a six-month period of actual suspension.¹

PERTINENT PROCEDURAL HISTORY

¹ By the Review Department’s order filed on February 14, 2007, Respondent was placed on interim suspension effective March 15, 2007. The interim suspension was terminated by the Review Department’s order filed on November 18, 2008. It is recommended that Respondent be given credit for that interim suspension toward the recommended six-month period of suspension. If such credit is given, Respondent will not serve any additional actual suspension.

After the transmittal to the State Bar Court of Respondent's conviction records, the Review Department issued an order on July 11, 2007, referring Respondent's final felony convictions for violating Penal Code sections 245, subdivision (a)(1) (assault with a deadly weapon not a firearm) and 422 (making criminal threats) to the Hearing Department for a hearing and decision recommending the discipline to be imposed if the Hearing Department finds that the facts and circumstances surrounding Respondent's criminal violations involved moral turpitude or other misconduct warranting discipline.

A notice of hearing on conviction was filed against Respondent on July 26, 2007.

On March 25, 2008, the Honorable Richard A. Honn referred this matter 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 a declaration to the court on June 4 and 5, 2008, which established a nexus between Respondent's substance abuse issues and his misconduct in this matter.

The parties thereafter entered into a Stipulation Re Facts and Conclusions of Law (Stipulation). That 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 30, 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 a missed lab test, Respondent was terminated from the LAP on March 22, 2010, as the LAP Evaluation Committee determined that Respondent was not currently able to benefit from participation in the LAP. However, the door was left open for Respondent's further participation in the LAP upon certain occurrences.

The court conducted a status conference on March 30, 2010, at which time an order to show cause (OSC) why Respondent should not be terminated from ADP since his participation in LAP had been terminated was scheduled for April 29, 2010.

On April 29, 2010, the court found Respondent not to be in compliance with the conditions of ADP. The OSC was continued to May 25 and, later, to June 29, 2010, as Respondent was attempting to gain readmission to LAP. On July 2, 2010, the court filed an order 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 that the facts and circumstances underlying Respondent's convictions, including his wilful violation of Penal Code section 245(a)(1) and 422, a misdemeanor, did not involve moral turpitude, but did involve other misconduct warranting discipline pursuant to Business and Professions Code, sections 6101 and 6102, in wilful violation of section 6068(a).

In aggravation, the parties stipulated that Respondent's misconduct caused harm to 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).)²

No mitigating factors were agreed upon. 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, and 3.4 and *In re Silvertown* (2005) 36 Cal.4th 81; *In re Brown* (1995) 12 Cal.4th 205; *In re Morse* (1995) 11 Cal.4th 184; *Morgan v. State Bar* (1990) 51 Cal.3d 598; *In re Hickey* (1990) 50 Cal.3d 571; *In re Young* (1989) 49 Cal.3d 257; *In re Otto* (1989) 48 Cal.3d 970; *In re Larkin* (1989) 48 Cal.3d 236; *In re Mostman* (1989) 47 Cal.3d 725; and *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52.

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.

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

DISCIPLINE

Recommended Discipline

It is hereby recommended that Respondent **Richard John Ruszat, II**, State Bar Number 220432, 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 probation³ for a period of two years subject to the following conditions:

1. Respondent Richard John Ruszat, II, is suspended from the practice of law for six months (with credit given for the period of interim suspension which commenced on March 15, 2007 and ended on November 18, 2008);

2. Respondent Richard John Ruszat, II 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

³ 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.)

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; and
- g. 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 Richard John Ruszat, II 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 Richard John Ruszat, II 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 not recommended that Respondent Richard John Ruszat, II, be ordered to comply with the requirements of rule 9.20 of the California Rules of Court. If the Supreme Court accepts the recommendation that credit for the period of his interim suspension be given toward the period of actual suspension, he will not serve any additional actual suspension.

Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and be 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

DONALD F. MILES
Judge of the State Bar Court