

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos. 06-O-13474-DFM; 07-H-10270;
)	06-O-10022; 07-O-10422 (Cons.)
EDWIN TOLMAS,)	
)	
Member No. 35726,)	DECISION AND ORDER SEALING
)	DOCUMENTS AND FILING
A Member of the State Bar.)	STIPULATION
_____)	

I. Introduction

In this consolidated disciplinary proceeding, respondent **Edwin Tolmas** stipulated to probation violations and professional misconduct in three client matters, including failing to perform competently, failing to communicate, failing to promptly return client files, failing to return unearned fees, and appearing for party without authority.

Respondent has successfully completed the State Bar Court’s Alternative Discipline Program (ADP). (Rules Proc. of State Bar, rules 800-807.) The court recommends that respondent be suspended from the practice of law for two years, that execution of such suspension be stayed, and that respondent be placed on probation for three years on the condition that he be actually suspended for 75 days, with credit given for inactive enrollment, which was

effective June 11, 2009 through July 10, 2009. (Rules Proc. of State Bar, rule 803; Bus. & Prof. Code, § 6233.)¹

II. Significant Procedural History

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed the following three Notices of Disciplinary Charges (NDCs) against respondent:

- March 7, 2007 (case Nos. 06-O-13474; 07-H-10270);
- April 21, 2008 (case No. 07-O-10422); and
- May 6, 2008 (case No. 06-O-10022).

In 2007 respondent sought to participate in the State Bar's Lawyer Assistance Program (LAP) and, in turn, the Alternative Discipline Program (ADP). On June 2, 2007, respondent executed a Participation Agreement with the LAP.

A. Case Nos. 06-O-13474 and 07-H-10270

In December 2007, respondent submitted a fourth amended nexus declaration to the court which established that, at the time of his misconduct, he was suffering from substance abuse and mental health issues. Respondent also executed a stipulation regarding facts and conclusions of law in the 2007 matter – cases Nos. 06-O-13474 and 07-H-10270. Respondent's declaration and the stipulated facts established a causal connection between the misconduct found in this disciplinary proceeding and respondent's substance abuse and mental health issues. As such, the court found that respondent had adequately established the required nexus.

On March 20, 2008, the court lodged its Confidential Statement of Alternative Dispositions and Orders (2008 Statement), setting forth the recommended discipline if respondent successfully completed or was terminated from the ADP. On that same day,

¹References to rule are to the Rules of Procedure of the State Bar, unless otherwise noted.

respondent entered into a Contract and Waiver for Participation in the ADP; the parties' stipulation was lodged with the court; and respondent was accepted as a participant in the ADP.

The stipulation, lodged on March 20, 2008, will be filed along with this decision.

B. Case Nos. 07-O-10422 and 06-O-10022

In July 2008, respondent submitted additional declarations to the court establishing a nexus between his misconduct in these two 2008 matters – case Nos. 07-O-10422 and 06-O-10022, and his substance abuse and mental health issues.

On October 30, 2008, the court ordered the 2007 and 2008 matters consolidated.

On November 4, 2008, the parties' Stipulation Re Facts and Conclusions of Law in these two 2008 matters were approved and filed. On the same day, the court lodged its Amended Confidential Statement of Alternative Dispositions and Orders (Amended Statement) in the consolidated matter, setting forth the recommended discipline if respondent successfully completed or was terminated from the court's ADP. Respondent also entered into a Superseding Contract and Waiver for Participation in the State Bar Court's Alternative Discipline Program (Superseding Contract).

The court had determined that no additional discipline would be imposed. Thus, the recommended discipline in the Amended Statement remains the same as that of the 2008 Statement.

On February 8, 2010, the LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program – Substance Abuse (certificate), setting forth that respondent has satisfied all lab testing requirements set forth in the LAP Participation Agreement/Plan for one year prior to the date of this certificate, and that during this period, no unauthorized substances were detected and LAP is not aware of the use of any unauthorized substances.

On February 10, 2010, the court found that respondent had successfully completed the ADP and indicated that it would issue this decision recommending to the Supreme Court the imposition of the lower level of discipline reflected in the Amended Statement.

III. Findings of Fact and Conclusions of Law

The two Stipulations Re Facts and Conclusions of Law (stipulations) approved by the court are incorporated by reference as if set forth fully herein. The stipulations set forth the factual findings, conclusions of law and certain aggravating and mitigating circumstances in this matter.

Respondent was culpable of professional misconduct in three client matters, including failing to perform competently, failing to communicate, failing to promptly return client files, failing to return unearned fees, and appearing for party without authority. He also stipulated to probation violations, including failing to timely file quarterly reports, failing to make restitution, failing to attend Ethics School, and failing to contact the Office of Probation.

At the time respondent engaged in the misconduct, respondent was suffering from substance abuse and mental health issues which directly caused the misconduct in this proceeding.

In accordance with applicable Supreme Court case law, an attorney's rehabilitation from substance abuse problems can be accorded significant mitigating weight if it is established that (1) the abuse was addictive in nature; (2) the abuse causally contributed to the misconduct; and (3) the attorney has undergone a meaningful and sustained period of rehabilitation. (*Harford v. State Bar* (1990) 52 Cal.3d 93, 101; *In re Billings* (1990) 50 Cal.3d 358, 367.) The court finds, by clear and convincing evidence, that respondent has satisfied all three conditions necessary to receive significant mitigating weight for his recovery efforts.

Respondent has been participating in the LAP since 2007 and has successfully completed the ADP. Respondent's successful completion of the ADP, as well as the certificate, qualify as clear and convincing evidence that respondent no longer suffers from the mental health and substance abuse issues which led to his misconduct and that respondent has undergone a meaningful and sustained period of rehabilitation. Respondent had also satisfied the restitution requirement by paying his former client, Qu C. Jung. Accordingly, it is appropriate to consider respondent's successful completion of the ADP as a further mitigating circumstance. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,² std. 1.2(e)(iv).)

IV. Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney but 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.)

After reviewing the parties' briefs on discipline and considering the standards and case law cited therein, the parties' stipulations setting forth the facts, conclusions of law and aggravating and mitigating circumstances with respect to this disciplinary proceeding and respondent's declarations regarding the nexus between his substance abuse and mental health issues and his misconduct in this matter, the court advised the parties of the discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP and the discipline that would be recommended if respondent was terminated from the ADP. After agreeing to the recommended discipline, respondent executed the Superseding Contract to participate in the ADP. Thereafter, respondent successfully participated in the ADP and, as set forth in the order filed on February 11, 2010, the court found that respondent successfully

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

completed the ADP. Accordingly, the court will recommend to the Supreme Court the imposition of the discipline set forth in the Amended Statement if respondent successfully completed the ADP.

V. Recommendations

A. Recommended Discipline

The court recommends that respondent **Edwin Tolmas** be suspended from the practice of law for two years, that execution of such suspension be stayed, and that respondent be placed on probation for a period of three years, on the following conditions:³

1. Respondent must be actually suspended from the practice of law for the first 75 days of his probation, with credit given for inactive enrollment, which was effective June 11, 2009, and terminated on July 11, 2009 (Bus. & Prof. Code, § 6233);
2. During the period of probation, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;
3. Within 10 days of any change in the information required to be maintained on the State Bar's membership records pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report any such change in writing to the Membership Records Office of the State Bar and to the Office of Probation;
4. Unless respondent has successfully completed the Lawyer Assistance Program, respondent must comply with all provisions and conditions of his Participation

³ According to the Office of Probation, respondent provided proof of full payment of restitution to Qu C. Jung.

Agreement with the LAP and must execute an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of his 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. If respondent has successfully completed the LAP, respondent must provide the Office of Probation with satisfactory certification of completion of the LAP;

5. Respondent must submit written quarterly probation 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 he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions set forth in this Decision during the preceding calendar quarter. If the first report will cover less than 30 days, that report must be submitted on the reporting due date for the next calendar quarter and must cover the extended period. In addition to all quarterly reports, respondent must submit a final report, containing the same information required by the quarterly reports. The final report must be submitted no earlier than 20 days before the last day of the probation and no later than the last day of said period;
6. Within 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;

7. 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 these probation conditions;
8. Within one year of the effective date of the Supreme Court's final disciplinary order in this proceeding, respondent must provide to the Office of Probation satisfactory proof of his attendance at a session of State Bar Ethics School and of passage of the test given at the end of that session, unless he previously completed the course within the prior two years (Rules Proc. of State Bar, rule 290); and
9. These probation conditions will commence on the effective date of the Supreme Court's final disciplinary order in this proceeding.

B. Multistate Professional Responsibility Exam

It is further recommended that respondent take and pass the Multistate Professional Responsibility Examination within one year. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) Failure to pass the MPRE within the specified time results in actual suspension by the Review Department, without further hearing, until passage. (But see Cal. Rules of Court, rule 951(b), and Rules Proc. of State Bar, rule 3201(a)(1) and (3).)

C. Costs

It is recommended that costs be awarded to the State Bar pursuant to 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.

Finally, it is 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 such payment is enforceable as provided under Business and Professions Code section 6140.5.

VI. Order Sealing Documents and Filing Stipulation

The court orders this Order Sealing Documents and the stipulation lodged March 20, 2008, in case Nos. 06-O-13474 and 07-H-1027 be filed. Thereafter, pursuant to rule 806(c) of the Rules of Procedure, all other documents not previously filed in this matter will be sealed under 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 official duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosure. 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: April _____, 2010

DONALD F. MILES
Judge of the State Bar Court