

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case No.: <b>08-C-10958-LMA</b>
	)	
<b>MICHAEL J. BARS,</b>	)	<b>DECISION AND ORDER SEALING</b>
	)	<b>CERTAIN DOCUMENTS</b>
<b>Member No. 159970,</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

After the transmittal to the State Bar Court of the records of the conviction of respondent Michael J. Barsi (respondent) in April 2008, the Review Department of the State Bar Court issued an order on April 23, 2008, referring respondent's non-final misdemeanor convictions for violating Penal Code sections 236 (false imprisonment) and 243(e)(1) (spousal battery) to the Hearing Department of the State Bar Court. A few days later, notice of the finality of respondent's conviction was transmitted to the State Bar Court.

A Notice of Hearing on Conviction was filed against respondent on April 30, 2008.

The Review Department issued an augmented referral order in this matter on May 12, 2008.

Thereafter, on June 6, 2008, respondent contacted the State Bar of California's Lawyer Assistance Program (LAP) to assist him with his substance abuse issues.

Respondent also sought to participate in the State Bar Court's Alternative Discipline Program (ADP).<sup>1</sup> Pursuant to an order filed on June 10, 2008, this matter was referred to the ADP.

On July 24, 2008, respondent submitted a declaration establishing a nexus between his substance abuse issues and his misconduct.

The parties entered into a Stipulation Re Facts and Conclusions of Law in September 2008 which was received by the court on September 15, 2008.

Respondent executed a Participation Plan with the LAP on December 12, 2008. On March 30, 2009, the court: (1) lodged its Confidential Statement of Alternative Dispositions and Orders; (2) lodged the Contract and Waiver for Participation in the State Bar Court's ADP (Contract);<sup>2</sup> (3) the parties' Stipulation Re Facts and Conclusions of Law was filed; and (4) respondent's participation in the ADP commenced.<sup>3</sup>

On July 1, 2009, respondent filed a request to be terminated from the court's ADP. Thereafter, on July 21, 2009, the court issued an order terminating respondent from the ADP and noting that respondent had withdrawn from the LAP.<sup>4</sup> This matter was submitted for decision on July 21, 2009.

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

In this matter, respondent stipulated that the facts and circumstances surrounding his violations of California Penal Code sections 236 (false imprisonment) and 243(e)(1) (spousal

---

<sup>1</sup> The State Bar Court's ADP was previously known as the Program for Respondents with Substance Abuse or Mental Health Issues.

<sup>2</sup> The Contract was executed by respondent and his counsel on this date.

<sup>3</sup> On April 1, 2009, the court issued an order finding that respondent is accepted into the ADP, and that participation commenced on March 30, 2009.

<sup>4</sup> Respondent's ADP Contract stated, ". . . if Respondent's participation in the LAP is terminated without successfully completing the LAP, Respondent's participation in the ADP will be terminated and discipline will be imposed or recommended . . . ." (Contract, page 1, ¶ 5.)

battery) involve other misconduct warranting discipline, but do not involve moral turpitude.<sup>5</sup> In mitigation, respondent had no prior record of discipline.<sup>6</sup> No aggravating circumstances were involved.

The parties' stipulation as to facts and conclusions of law, including the court's order approving the stipulation, is attached hereto and hereby incorporated by reference, as if fully set forth herein. The stipulation as to facts and conclusions of law set forth the factual findings, legal conclusions, and mitigating circumstance in this matter.

### **DISCUSSION**

The purpose of State Bar disciplinary proceedings is not to punish the attorney but, rather, to protect the public, to preserve public confidence in the legal profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

After reviewing respondent's brief on the issue of discipline, which was received by the court on January 16, 2009, and the State Bar's brief on the issue of discipline, which was received by the court on January 23, 2009, and considering the Standards for Attorney Sanctions for Professional Misconduct (standard(s)) and case law cited therein, the parties' stipulation setting forth the facts, conclusions of law, and mitigating circumstance in this matter, and respondent's declaration regarding the nexus between his substance abuse issues and his misconduct, the court advised the parties of the disposition which would be imposed if respondent successfully completed the ADP and the discipline which would be imposed if respondent was terminated from, or failed to successfully complete, the ADP.

In determining the appropriate discipline to recommend in this matter if respondent is terminated from, or failed to successfully complete, the ADP, the court considered the discipline

---

<sup>5</sup> The misconduct occurred on January 23, 2008.

<sup>6</sup> Respondent was admitted to the practice of law in California on October 29, 1992.

recommended by the parties, as well as certain standards and case law. The State Bar recommended a 30-day actual suspension. Respondent recommended a private reproof and agreed to comply with any conditions attached to the reproof. Nevertheless, after considering standards 1.2, 1.3, 1.4, 1.5, 1.6, and 3.4 and *In re Hickey* (1990) 50 Cal.3d 571, *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52 and *In re Kelley* (1990) 52 Cal.3d 487, the court determined that the appropriate discipline in this matter if respondent was terminated from, or failed to successfully complete the ADP, should include a period of stayed suspension and probation with conditions attached thereto.

After agreeing to the discipline which the court would impose or recommend if respondent successfully completed or was terminated from, or failed to successfully complete, the ADP, respondent executed the Contract to participate in the ADP; the Contract was lodged with the court; and respondent's period of participation in the ADP commenced.

On July 1, 2009, respondent filed a request to be terminated from the court's ADP. Thereafter, on July 21, 2009, the court issued an order terminating respondent from the ADP and noting that respondent had withdrawn from the LAP.

Accordingly, the court will recommend to the Supreme Court the imposition of the discipline set forth in the court's Confidential Statement of Alternative Dispositions and Orders if respondent was terminated from, or failed to successfully complete, the ADP.

#### **RECOMMENDED DISCIPLINE**

**IT IS HEREBY RECOMMENDED** that respondent **MICHAEL J. BARS**, State Bar Number 159970, be suspended from the practice of law in California for 90 days, that execution

of that period of suspension be stayed, and that he be placed on probation for one (1) year<sup>7</sup> subject to the following conditions:

1. 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;
2. Respondent Michael J. Barsi must also comply with the following additional conditions of probation:
  - a. 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;
  - b. 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;
  - c. 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;
  - d. 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

---

<sup>7</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.)

whether respondent is complying or has complied with the probation conditions;

- e. 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;
- f. 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
- g. Respondent must obtain an examination of his mental and physical condition with respect to his substance abuse issues 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.

3. At the expiration of the period of probation, if Michael J. Barsi has complied with all conditions of probation, the 90-day period of stayed suspension will be satisfied and that suspension will be terminated.

It is also recommended that Michael J. Barsi 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. 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 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: September \_\_\_\_\_, 2009

---

LUCY ARMENDARIZ  
Judge of the State Bar Court