

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 09-C-13658-DFM
)	09-C-13659 (Cons.)
MICHAEL L. CHALLGREN,)	
)	DECISION AND ORDER SEALING
Member No. 137072,)	CERTAIN DOCUMENTS
)	
<u>A Member of the State Bar.</u>)	

Introduction¹

In this disciplinary proceeding, Respondent Michael L. Challgren (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 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 suspension.

Pertinent Procedural History

On November 26, 2008, Respondent pled guilty to and was convicted of driving while having a blood-alcohol level of .08% or higher (California Vehicle Code section 23152, subd. (b)).

¹ Unless otherwise indicated, all references to rules refer to the California Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

On May 22, 2009, Respondent pled guilty to and was convicted of driving while his license was suspended because of his DUI (California Vehicle Code section 14601.2, subd. (a)).

On January 28, 2010, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) transmitted a certified copy of Respondent's record of conviction on his DUI, in case no. 09-C-13659, to the State Bar Court pursuant to sections 6101-6102 and California Rules of Court, rule 9.5, et seq.

On February 18, 2010, the Review Department of the State Bar Court issued an order referring case no. 09-C-13659 to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the facts and circumstances surrounding Respondent's conviction are found to involve moral turpitude or other misconduct warranting discipline.

On March 29, 2010, the State Bar transmitted a certified copy of Respondent's record of conviction on his suspended license, in case no. 09-C-13658, to the State Bar Court pursuant to sections 6101-6102 and California Rules of Court, rule 9.5, et seq.

On April 23, 2010, the Review Department of the State Bar Court issued an order referring case no. 09-C-13658 to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the facts and circumstances surrounding Respondent's conviction are found to involve moral turpitude or other misconduct warranting discipline.

Respondent sought to participate in the ADP, and, in April and May 2010, his two conviction matters were referred to the ADP. These matters were subsequently consolidated.

On June 4, 2010, Respondent submitted a nexus statement establishing a nexus between his substance abuse issue and his misconduct. The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) on July 12, 2010. The Stipulation set forth the factual

findings, legal conclusions, and mitigating and aggravating circumstances involved in case nos. 09-C-13658; 09-C-13659 (Cons.).

Following briefing by the parties, the court issued a Confidential Statement of Alternative Dispositions and Orders dated November 22, 2010, 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 dispositions, Respondent 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 November 22, 2010.

On November 22, 2010, the court lodged the Confidential Statement of Alternative Dispositions and Orders and the Contract and Waiver for Participation in the State Bar Court's ADP. That same day, the court filed the Stipulation and its accompanying order.

On November 22, 2010, the court also issued an order enrolling Respondent as an inactive member of the State Bar pursuant to section 6233. This order was effective March 1, 2011. Respondent's period of inactive enrollment was terminated on September 1, 2011.

Respondent participated successfully in the State Bar Court's ADP. On June 4, 2012, after receiving a certificate of one year of participation in the Lawyer Assistance Program (LAP), the court issued an order finding that Respondent successfully completed the ADP. This matter was submitted for decision that same day.

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 the aforementioned matters, Respondent stipulated that although the facts and circumstances surrounding his

criminal convictions do not involve moral turpitude, they do involve other misconduct warranting discipline.

In aggravation, Respondent has been disciplined on three prior occasions. (Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, std. 1.2(b)(i).)² Effective October 21, 2001, in State Bar Court case no. 00-O-12191, Respondent received a private reproof, for failing to deposit client funds in trust, commingling, and reckless driving. Effective July 13, 2006, in Supreme Court case no. S142428, Respondent was suspended from the practice of law for six months, stayed, with three years' probation, for failing to competently perform legal services, failing to keep a client informed of significant developments, and failing to respond to reasonable status inquiries. Effective July 26, 2008, in Supreme Court case no. S162993, Respondent was suspended from the practice of law for one year, stayed, with three years' probation, including a 90-day actual suspension, for issuing checks against insufficient funds and failing to cooperate in a disciplinary investigation.

Additional aggravation included Respondent's demonstrated indifference (std. 1.2(b)(v)). By knowingly driving nine days after his license was suspended for driving under the influence, Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct.

In mitigation, Respondent displayed spontaneous candor and cooperation with the State Bar (std. 1.2(e)(v)). In addition, his successful completion of the ADP qualifies as clear and convincing evidence that he no longer suffers from the substance abuse issues which led to his misconduct. Accordingly, it is appropriate to consider Respondent's successful completion of the ADP as a mitigating circumstance in this matter. (Std. 1.2(e)(iv).)

² 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 1.7(b) and 3.4; and *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108, *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208, and *In re Kelley* (1990) 52 Cal.3d 487.

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 of Alternative Dispositions and Orders.

Recommended Discipline

It is hereby recommended that Respondent **Michael L. Challgren**, State Bar Number 137072, 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 Michael L. Challgren is suspended from the practice of law for six months (with credit given for the period of inactive enrollment pursuant to Business and Professions Code section 6233 which commenced on March 1, 2011, and ended on September 1, 2011).
2. Respondent Michael L. Challgren must also comply with the following additional conditions of probation:

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.)

- 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 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 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 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 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. 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;
- 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;

- h. Respondent must select a licensed medical laboratory approved by the Office of Probation. Respondent must furnish to the laboratory blood and/or urine samples as may be required to show that Respondent has abstained from alcohol and/or drugs. The samples must be furnished to the laboratory in such a manner as may be specified by the laboratory to ensure specimen integrity. Respondent must cause the laboratory to provide to the Office of Probation, at the Respondent's expense, a screening report on or before the tenth day of each month of the probation period, containing an analysis of Respondent's blood and/or urine obtained not more than ten days previously;
- i. Respondent must maintain with the Office of Probation a current address and a current telephone number at which Respondent can be reached. Respondent must return any call from the Office of Probation concerning testing of Respondent's blood or urine within twelve hours. For good cause, the Office of Probation may require Respondent to deliver Respondent's urine and/or blood sample(s) for additional reports to the laboratory described above no later than six hours after actual notice to Respondent that the Office of Probation requires an additional screening report;
- j. Upon the request of the Office of Probation, Respondent must provide the Office of Probation with medical waivers and access to all of Respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are 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; and
- k. Respondent must comply with all provisions and conditions of his Participation Plan/Agreement with the 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 Plan/Agreement 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 Michael L. Challgren 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 not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) as he provided to the court proof of passage of the MPRE during his period of participation in the ADP.

Ethics School

It is also not recommended that Respondent be ordered to complete Ethics School as he provided to the court proof of completion of Ethics School during his period of participation in the ADP.

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 5.388 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 5.12 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: August _____, 2012

DONALD F. MILES
Judge of the State Bar Court