

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 10-C-07037; 10-C-07038;
)	10-C-07163; 11-C-11555;
COREY MARTIN KAGAN,)	11-C-12399 (Cons.)-DFM
)	
Member No. 228318,)	DECISION AND ORDER SEALING
)	CERTAIN DOCUMENTS
A Member of the State Bar.)	
)	

Introduction

In this consolidated conviction referral proceeding, Respondent Corey Martin Kagan (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 three years, that execution of that period of suspension be stayed, and that he be placed on probation for three years subject to certain conditions, including an 18-month period of suspension (with credit given for the period of interim suspension commencing on May 15, 2011, and terminating on June 20, 2013.)¹

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¹ The court takes judicial notice, pursuant to Evidence Code section 452, subdivision (h), of Respondent’s State Bar records which reflect that his interim suspension terminated on June 20, 2013.

Significant Procedural History

After the transmittal to the State Bar Court of the records of Respondent's September 14, 15, and 16, 2010 convictions for violating Health and Safety Code section 11350, subdivision (a) [possession of a controlled substance], felonies which may or may not involve moral turpitude, the Review Department of the State Bar Court issued an order on April 14, 2011, in case Nos. 10-C-07037, 10-C-07038 and 10-C-07163, suspending Respondent from the practice of law pursuant to Business and Professions Code section 6102, effective May 15, 2011, pending final disposition of these proceedings. Respondent was also ordered to comply with California Rules of Court, rule 9.20.²

Following the transmittal to the State Bar Court of the records of Respondent's March 18, 2011 conviction for violating Health and Safety Code section 11350, subdivision (a) [possession of a controlled substance], a felony which may or may not involve moral turpitude, the review department issued an order on May 20, 2011, in case No. 11-C-12399, suspending Respondent from the practice of law pursuant to Business and Professions Code section 6102, effective June 12, 2011, pending final disposition of this proceeding.

Finally, after the transmittal to the State Bar Court of the records of Respondent's October 1, 2010 conviction for violating Health and Safety Code section 11377, subdivision (a) [possession of a controlled substance] and Penal Code section 12020, subdivision (a)(1) [possession of a deadly weapon], felonies which may or may not involve moral turpitude, the review department issued an order on June 1, 2011, in case No. 11-C-11555, suspending Respondent from the practice of law pursuant to Business and Professions Code section 6102, effective June 26, 2011, pending final disposition of this proceeding. The order also referred this matter to the Hearing Department of the State Bar Court for a hearing and decision as to whether

² Respondent filed his Rule 9.20 Compliance Declaration in Case Nos. 10-C-07037, 10-C-07038, and 10-C-07163 on June 10, 2011.

the facts and circumstances surrounding the violations of which Respondent was convicted involved moral turpitude or other misconduct warranting discipline, and if so found, the discipline to be imposed.

A Notice of Hearing on Conviction (NOH) was filed against Respondent on June 14, 2011, in case No. 11-C-11555. This matter was assigned to the Honorable Pat McElroy. Respondent filed his response to the NOH in this matter on June 20, 2011, and on that same date, requested referral for consideration of his candidacy for the ADP.

Following Respondent's waiver of the finality of the convictions in case Nos. 10-C-07037, 10-C-07038, 10-C-07163 and 11-C-12399, on July 1, 2011, the review department referred each of these matters 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 the felony violation of Health and Safety Code section 11350, subdivision (a) [possession of a controlled substance] of which Respondent was convicted involved moral turpitude or other misconduct warranting discipline.

A NOH was filed against Respondent on July 6, 2011, in each of the following matters: case No. 10-C-07037, 10-C-07038, 10-C-07163, and 11-C-12399.³ These matters were also assigned to Judge McElroy. Respondent filed his response to the NOH on each of these cases on July 12, 2011.

On July 19, 2011, Judge McElroy filed an order referring all five matters to the State Bar Court's ADP before the undersigned judge and consolidating all matters for consideration of the ADP.

³ The NOH pertaining to case No. 11-C-12399 appears to bear the incorrect case No. 10-C-07163. The NOH which bears the incorrect case No. 10-C-07163 is attached to the Notice of Assignment and Notice of Initial Status Conference in Case No. 11-C-12399 and the review department referral order for case No. 11-C-12399.

In August 2011, Respondent entered into a long-term Participation Plan with the State Bar's Lawyer Assistance Program (LAP) to assist him with his substance abuse issues.

On August 10, 2011, respondent submitted to the court his declaration which established a nexus between his substance abuse issues and his misconduct in this matter.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) in this matter in August 2011. The Stipulation was received by the court on August 11, 2011.

Pursuant to an order filed on August 30, 2011, this consolidated matter was assigned to the undersigned judge for all further proceedings.

On September 20, 2011, the parties submitted a joint brief regarding the recommended level of discipline in this matter.

On September 26, 2011, the court issued its Confidential Statement of Alternative Dispositions and Orders (Confidential Statement) which set forth the discipline the court would recommend if Respondent successfully completed the ADP and the discipline which the court would recommend if Respondent was terminated from, or failed to successfully complete, the ADP. Thereafter, on that same date, Respondent and his attorney executed the Contract and Waiver for Participation in the State Bar Court's ADP (Contract); the parties' Stipulation was filed; and Respondent was accepted into the ADP.

Respondent was enrolled as an inactive member under Business and Professions Code section 6233 from June 28, 2012, through November 15, 2012.

The parties having previously agreed for the court to hear Respondent's standard 1.4(c)(ii)⁴ petition in conjunction with Respondent's graduation from the ADP,⁵ on March 4,

⁴ All further references to standard(s) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

⁵ The recommended discipline set forth in the Confidential Statement if Respondent successfully completed the ADP included a period of actual suspension which would continue until Respondent shows proof satisfactory to the State Bar Court of his rehabilitation, present

2013, Respondent filed his Verified Petition to Demonstrate Rehabilitation, Present Fitness and Learning and Ability in the Law.⁶ On April 29, 2013, the State Bar filed notice of its non-opposition to Respondent's petition.

On April 19, 2013, the parties entered into a stipulation to amend the Confidential Statement which was filed with the court on April 22, 2013. The Confidential Statement was amended to delete the recommendation that, if Respondent successfully completed the ADP, his actual suspension would continue until he satisfied the requirements of standard 1.4(c)(ii). The Confidential Statement was further amended to require that, in order to graduate from the ADP, Respondent demonstrate by clear and convincing evidence his rehabilitation, present fitness to practice, and present learning and ability in the general law as described in standard 1.4(c)(ii) and the case law concerning that standard, in a proceeding before the ADP Program Judge which provides the State Bar certain procedural protections and rights.

The hearing to determine whether Respondent had presented sufficient proof to sustain his petition for a determination regarding his rehabilitation, present fitness, and learning and ability in the general law pursuant to standard 1.4(c)(ii) was held on May 15, 2013. The court found that Respondent had made the requisite showing.

Thereafter, on that same day, a status conference was held, at which the court found, among other things, that Respondent has a pattern of continued compliance and success with his LAP Participation Plan. The State Bar had no objection to Respondent being graduated from the ADP, and on May 16, 2013, the court filed an order finding that Respondent had successfully completed the ADP.

fitness to practice, and present learning and ability in the general law pursuant to standard 1.4(c)(ii).

⁶ On April 23, 2013, Respondent filed a supplemental declaration in support of his present learning and ability in the general law and declarations of the individuals who previously submitted letters in support of Respondent's graduation from the ADP.

This matter was submitted for decision on May 17, 2013.

Findings of Fact and Conclusions of Law

Culpability Findings

The parties' Stipulation filed on September 26, 2011, including the court's order approving the Stipulation, is attached hereto and hereby incorporated by reference, as if fully set forth herein. The Stipulation sets forth the factual findings, legal conclusions, and mitigating and aggravating circumstances in this matter.

Case No. 10-C-07038 – Possession of a Controlled Substance

In this conviction referral matter, Respondent entered a plea of nolo contendere to one count of violating Health and Safety Code section 11350, subdivision (a) [possession of a controlled substance], a felony. On November 17, 2009, Respondent was found by police officers in a motel room with a woman. In a dresser drawer in the motel room was a bag containing several pieces of a brown substance later determined to be .2 grams of a mixture of cocaine, heroin, and methamphetamine; a bag containing 4.62 grams of heroin; and a loaded hypodermic syringe containing approximately .6 milliliters of a liquid mixture of cocaine and heroin. Respondent stipulated that the facts and circumstances surrounding his conviction do not involve moral turpitude but do involve other misconduct warranting discipline.

Case No. 10-C-07163 – Possession of a Controlled Substance

In this conviction referral matter, Respondent entered a plea of nolo contendere to two counts of violating Health and Safety Code section 11350, subdivision (a) [possession of a controlled substance], a felony. On January 30, 2010, a police officer was dispatched to Santa Monica Medical Center at the request of nursing staff and security, because they believed that Respondent was under the influence of a narcotic and that he also could be in possession of drugs. Respondent had been admitted to the hospital for treatment of numerous abscesses on

both of his arms from constantly injecting himself with drugs. It was confirmed that Respondent possessed various drugs and drug paraphernalia, including 1 gram of rock cocaine; .5 grams of crystal methamphetamine; two grams of cocaine; 2.3 grams of heroin; 5.3 grams of cocaine; a syringe; a glass crack cocaine pipe; and a spoon with drug residue and burn marks on the bottom. The officer also recovered a digital scale and several syringes. Respondent admitted that the drugs and paraphernalia belonged to him. Respondent stipulated that the facts and circumstances surrounding his conviction do not involve moral turpitude but do involve other misconduct warranting discipline.

Case No. 11-C-12399 – Possession of a Controlled Substance

In this conviction referral matter, Respondent entered a plea of nolo contendere to one count of violating Health and Safety Code section 11350, subdivision (a) [possession of a controlled substance], a felony. On April 26, 2010, a police officer initiated a traffic stop after Respondent was observed stopped in his vehicle in traffic and impeding other traffic. Despite a green light, Respondent was stopped and appeared to be texting. The officer honked his horn twice and gestured twice for Respondent to proceed before Respondent finally moved.

Respondent did not have paperwork for the vehicle and informed the officer that there may be warrants out on him. When Respondent exited the vehicle, the officer observed several open sores and major scars on Respondent's legs and arms, consistent with frequent drug use. A search of the vehicle resulted in 9.13 grams of heroin; a syringe loaded with heroin; and drug paraphernalia. Respondent stipulated that the facts and circumstances surrounding his conviction do not involve moral turpitude but do involve other misconduct warranting discipline.

Case No. 10-C-07037 – Possession of a Controlled Substance

In this conviction referral matter, Respondent entered a plea of guilty to one count of violating Health and Safety Code section 11350, subdivision (a) [possession of a controlled

substance], a felony. On July 5, 2010, Respondent was called by his fiancé to pick up her vehicle after she had been stopped by the police due to a missing front license plate and was cited for driving on a suspended license. When Respondent arrived on the scene, the officer ran Respondent's license and discovered an outstanding felony warrant for drug possession. A search revealed that Respondent was in possession of 1.53 grams of heroin and .88 grams of cocaine. Respondent stipulated that the facts and circumstances surrounding his conviction do not involve moral turpitude but do involve other misconduct warranting discipline.

Case No. 11-C-11555 – Possession of a Controlled Substance & a Deadly Weapon

In this conviction referral matter, Respondent entered a plea of nolo contendere and was convicted on two counts for violating Health and Safety Code section 11377, subdivision (a) [possession of a controlled substance] and Penal Code section 12020, subdivision (a)(1) [possession of a deadly weapon], both felonies. On August 27, 2010, a California Highway Patrol officer initiated a stop after observing Respondent's vehicle license with expired registration. Respondent was unable to produce proof of insurance or a driver's license, but gave the officer his name, date of birth, and drivers' license number. When the officer ran that information, it was discovered that Respondent had an outstanding felony warrant for drug possession. A search of both the vehicle and Respondent resulted in the discovery of 2.6 grams of heroin; 1.9 grams of methamphetamine; a pair of brass knuckles; syringes; two digital scales; unused small plastic bags; latex rubber bands; and a large metal spoon with brown residue. Respondent stipulated that the facts and circumstances surrounding his conviction do not involve moral turpitude but do involve other misconduct warranting discipline.

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Aggravation

Multiple Acts/Pattern of Misconduct (Standard 1.2(b)(ii).)

Respondent's misconduct evidences both multiple acts of wrongdoing and demonstrates a pattern of misconduct.

Mitigation

Candor/Cooperation (Standard 1.2(e)(v).)

Respondent displayed spontaneous cooperation and candor with the victims of his misconduct and to the State Bar during disciplinary investigation and proceedings.

Other

Respondent has no record of prior discipline over almost six years of practice.

In accordance with Supreme Court case law, an attorney's rehabilitation from alcoholism or other 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.) Respondent's abuse was clearly addictive in nature; causally contributed to his misconduct; and Respondent has successfully participated in the LAP and has successfully completed ADP. It is therefore also appropriate to consider Respondent's successful completion of the ADP as a further mitigating circumstance.

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, and 3.4 and *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552; *In re Leardo* (1991) 53 Cal.3d 1; *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208; *In re Nadrich* (1988) 44 Cal.3d 271; *In re Cohen* (1974) 11 Cal.3d 416; *In the Matter of Passenheim* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 62; *In re Kraemer* (1975) 14 Cal.3d 524; *In re Possino* (1984) 37 Cal.3d 163; *In re Scott* (1991) 52 Cal.3d 968; and *Twohy v. State Bar* (1989) 48 Cal.3d 502.

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.

Recommendations

It is hereby recommended that Respondent Corey Martin Kagan, State Bar Number 228318, be suspended from the practice of law in California for three years, that execution of that period of suspension be stayed, and that he be placed on probation⁷ for a period of three years subject to the following conditions:

1. Respondent is suspended from the practice of law in the State of California for the first 18 months of his probation (with credit given for the period of interim suspension which commenced on May 15, 2011, and terminated on June 20, 2013);
2. 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;
3. 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

⁷ 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.)

(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;

4. 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;
5. 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;

6. 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;
7. 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
8. Respondent must comply with all provisions and conditions of his Participation Agreement/Plan with the Lawyer Assistance Program (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 Agreement/Plan 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.⁸

Multistate Professional Responsibility Examination

It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE), as Respondent took and passed the March 2012 MPRE during his period of participation in the ADP.

California Rules of Court, Rule 9.20

It is also not recommended that Respondent be ordered to comply with California Rules of Court, rule 9.20, as he is being given credit for his period of interim suspension and therefore will not serve any period of prospective suspension after the effective date of the Supreme Court order in this matter. Respondent complied with California Rules of Court, rule 9.20, as ordered by the Review Department in connection with his interim suspension.

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. It is further recommended that costs be paid with Respondent's membership fees for the year 2015. If Respondent fails to pay costs as described above, or as may be modified by the State Bar Court, costs are due and payable immediately.

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(c) of the Rules of Procedure of the State

⁸ The court will not recommend that Respondent attend State Bar Ethics School, as Respondent successfully completed Ethics School on August 23, 2012, during his period of participation in the ADP.

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 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: August _____, 2013

DONALD F. MILES
Judge of the State Bar Court