

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 11-C-13246; 13-O-14539 (Cons.)
)	
WADE A. MILLER,)	DECISION AND DISCIPLINE ORDER;
)	ORDER SEALING CERTAIN
Member No. 208980,)	DOCUMENTS
)	
<u>A Member of the State Bar.</u>)	

Introduction

In this consolidated¹ disciplinary proceeding, involving both a conviction referral proceeding and an original disciplinary matter, respondent Wade A. Miller (respondent)² 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 order that respondent be publicly reprovved with conditions for two years.

Significant Procedural History

Following the transmittal to the State Bar Court of the records of respondent’s May 9, 2011, conviction for violating Vehicle Code section 23152(b) [driving with blood alcohol level

¹ The court orders case Nos. 11-C-13246 and 13-O-14539 consolidated.

² Respondent was admitted to practice law in California on December 1, 2000.

of .08% or more],³ a misdemeanor which may or may not involve moral turpitude, the review department filed an order on September 6, 2011, in case No. 11-C-13246, referring the matter to the hearing department for a hearing and decision recommending the discipline to be imposed in the event the hearing department finds that the facts and circumstances surrounding the violation of which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

A Notice of Hearing on Conviction (NOH) was filed in case No. 11-C-13246 on September 9, 2011. Respondent filed an answer to the NOH on October 11, 2011.

Following a settlement conference with the undersigned judge, case No. 11-C-13246 was referred to the State Bar Court's ADP before the undersigned judge.

On November 9, 2011, respondent submitted to the court his Nexus Statement which established a nexus between his substance abuse issue and his misconduct in case No. 11-C-13246.

The court received the parties' Stipulation Re Facts and Conclusions of Law (Stipulation) in case No. 11-C-13246 on November 10, 2011.

The State Bar submitted a brief on the appropriate levels of discipline in this matter on December 1, 2011.

On March 7, 2102, respondent signed a long-term Participation Plan with the State Bar's Lawyer Assistance Program (LAP) to assist him with his substance abuse issue.

The court advised the parties of (1) the disposition which would be imposed if respondent successfully completed the ADP and (2) the discipline which would be imposed if respondent failed to successfully complete, or was terminated from, the ADP.

³ The State Bar of California, Office of the Chief Trial Counsel, transmitted to the State Bar Court notice of the finality of respondent's conviction on August 11, 2011.

On March 12, 2012, after agreeing to those alternative dispositions, respondent executed the Contract and Waiver for Participation in the State Bar Court's ADP (Contract). Also on that same date, the court executed a Confidential Statement of Alternative Dispositions and Orders (Confidential Statement) formally advising the parties in writing of the alternative dispositions in this matter, and the parties' stipulation was filed. Respondent was accepted for participation in the ADP commencing on March 12, 2012.⁴

On November 13, 2013, the court received from the LAP a certificate dated November 13, 2013, setting forth that for one year prior to November 13, 2013, LAP is not aware of the use of any unauthorized substances by respondent.

On April 22, 2014, a notice of disciplinary charges (NDC) was filed against respondent in case No. 13-O-14539.

On May 12, 2014, respondent submitted an amended nexus statement regarding the misconduct in case No. 13-O-14539.

On June 3, 2014, the parties filed a Stipulation regarding case No. 13-O-14539.

Following briefing by the parties, in light of the addition of case No. 13-O-14539, the court advised the parties of (1) the discipline which would be imposed if respondent successfully completed the ADP and (2) the discipline which would be recommended to the Supreme Court if respondent failed to successfully complete, or was terminated from, the ADP.

After agreeing to those alternative dispositions, the court executed an Amended Confidential Statement on September 9, 2014, formally advising the parties in writing of the alternative discipline to be imposed or recommended for both combined matters. Respondent

⁴ The Confidential Statement and Contract were lodged with the court on March 12, 2012.

and his counsel thereafter executed an Amended ADP Contract in _____, and the parties' Stipulation was filed on _____.⁵

On _____, the court filed an order finding that respondent has successfully completed the ADP, and this matter was submitted for decision on _____.

Findings of Fact and Conclusions of Law

Culpability Findings

The parties' Stipulations filed on January 14, 2013, and _____, 2014, including the court's orders approving the Stipulations, are attached hereto and hereby incorporated by reference, as if fully set forth herein. The Stipulations sets forth the factual findings, legal conclusions, and mitigating and aggravating circumstances in these consolidated matters.

Case No. 11-C-13246

Respondent was convicted of a violation of Vehicle Code section 23152(b) [driving with blood alcohol level of .08% or more] on April 9, 2004.

On February 25, 2011, in Van Nuys, California, respondent was observed making an illegal U-turn by patrol officers. A traffic stop was conducted by the officers. Respondent exhibited objective signs that he was under the influence of intoxicants, including the heavy odor of alcohol and bloodshot/watery eyes. Respondent had an unsteady gait when he exited his vehicle and did not pass field sobriety tests. Respondent was arrested. He submitted to a breath test which registered a blood alcohol content of .14%. Respondent pleaded guilty to driving with a blood alcohol content of .08% or greater and admitted his prior conviction.

Respondent stipulated that the facts and circumstances surrounding his violation did not involve moral turpitude but did involve other misconduct warranting discipline.

⁵ The Amended Confidential Statement and Amended ADP Contract were lodged on _____.

There were no aggravating circumstances surrounding respondent's conduct. In mitigation, respondent displayed spontaneous cooperation and candor to the State Bar during disciplinary investigation and proceedings. In addition, respondent had no prior record of discipline in more than 10 years of practice.

Case No. 13-O-14539

In case No. 13-O-14539, respondent stipulated that he (1) intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) of the State Bar Rules of Professional Conduct by failing to appear at three hearings and failing to oppose a motion for attorney's fees; (2) failed to release promptly to his client, at his client's request, upon termination of his employment, all client papers and property by failing to release his client's complete file in willful violation of rule 3-700(D)(1) of the State Bar Rules of Professional Conduct; and (3) failed to keep his client reasonably informed of significant developments in willful violation of Business and Professions Code section 6068, subdivision (m), by failing to inform his client that he received a motion for attorney's fees and costs and that he was not going to oppose the motion or respond to it.

In aggravation, case No. 11-C-13246 was noted and that respondent was admitted to the ADP in May 2012. In addition, Respondent's actions and his failures to appear resulted in harm to his client by increasing defendant's attorney's fees. The court granted a motion for attorney's fees brought by opposing counsel against respondent's client for a significant sum of fees and costs. Respondent's multiple acts of misconduct were also an aggravating circumstance.

In mitigation, respondent has successfully completed the ADP. 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 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 to impose or recommend if respondent successfully completed the ADP or was terminated from, or failed to successfully complete, the ADP, the court considered the disposition/discipline recommended by the parties, as well as certain standards and case law. In particular, the court considered standards 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 2.5(c), 2.8(c), 2.12(b) and 2.15 and *In re Kelley* (1990) 52 Cal.3d 487; *Chasteen v. State Bar* (1985) 40 Cal.3d 586, and *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.

Because respondent has now successfully completed the ADP, this court, in turn, now imposes the lower level of discipline in the Amended Confidential Statement, set forth more fully below.

Discipline Order

Accordingly, it is ordered that respondent **Wade A. Miller, State Bar Number 208980**, is hereby publicly reprovved. Pursuant to the provisions of rule 5.127 of the Rules of Procedure of the State Bar (Rules of Procedure), the public reprovval will be effective when this decision

becomes final. Furthermore, pursuant to rule 9.19(a) of the California Rules of Court and rule 5.128 of the Rules of Procedure, the court finds that the interest of respondent and the protection of the public will be served by the following specified conditions being attached to the public reproof imposed in this matter. Failure to comply with any condition(s) attached to this public reproof may constitute cause for a separate proceeding for willful breach of rule 1-110 of the State Bar Rules of Professional Conduct. Respondent is hereby ordered to comply with the following conditions attached to his public reproof for two years following the effective date of the public reproof imposed in this matter.

1. During the reproof 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. 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.

3. 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 reproof. 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 reproof, respondent must promptly meet with the probation deputy as directed and upon request.

4. 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 reproof. 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 reproof 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 reproof and no later than the last day of the reproof period.

5. 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 reproof conditions.

6. Within one year after 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.

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.

8. Respondent must comply with all provisions and conditions of his Participation Plan/Agreement 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 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.

Multistate Professional Responsibility Examination

Wade A. Miller must also take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this reproof and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

Costs

Costs are 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 Discipline Order; Order Sealing Certain Documents

The court directs a court case administrator to file this Decision and Discipline Order; Order Sealing Certain Documents. Thereafter, pursuant to rule 5.388(c) of the 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: October _____, 2014

RICHARD A. HONN
Judge of the State Bar Court