

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 12-O-13114
)	
JOSEPH MICHAEL BIASELLA, JR.,)	DECISION AND ORDER SEALING
)	CERTAIN DOCUMENTS
Member No. 53160,)	
)	
<u>A Member of the State Bar.</u>)	

Introduction

In this original disciplinary proceeding, respondent Joseph Michael Biasella, Jr. (respondent) was accepted for participation in the State Bar Court’s Alternative Discipline Program (ADP). As the court has now terminated respondent from 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 that he be suspended from the practice of law for a minimum of the first two years of his probation and until he shows proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice, and present learning and ability in the general law, pursuant to standard 1.2(c)(1),¹ Standards for Attorney Sanctions for Professional Misconduct.

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¹ Standard 1.2(c)(1) was formerly standard 1.4(c)(ii).

Significant Procedural History

The State Bar of California, Office of the Chief Trial Counsel (State Bar) filed a Notice of Disciplinary Charges (NDC) against respondent on February 7, 2013, in case No.

12-O-13114.² The matter was originally assigned to the Honorable Pat McElroy.

Following an in-person status conference on March 18, 2013, Judge McElroy referred this matter to the court's ADP³ before the undersigned judge for evaluation of respondent's eligibility for participation in the court's ADP.

Respondent contacted the State Bar's Lawyer Assistance Program (LAP) in early April 2013 for assistance with his mental health issue.

On May 31, 2013, respondent submitted an amended nexus statement to the court which established a nexus between respondent's mental health issue and his misconduct in this matter.

In furtherance of his participation in the ADP, respondent signed a long-term Participation Plan with the LAP on June 5, 2013.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) in this matter in July 2013. The Stipulation sets forth the factual findings, legal conclusions, and mitigating and aggravating circumstances in this matter. The Stipulation was received by the court on July 18, 2013.

Following briefing by the parties in August 2013, the court executed a Confidential Statement of Alternative Dispositions and Orders (Confidential Statement) setting forth the discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP and the discipline which would be recommended if respondent failed to successfully complete, or was terminated from, the ADP.

² Respondent filed his answer to the NDC on March 22, 2013.

³ The ADP was formerly known as the Program for Respondents with Substance Abuse or Mental Health Issues.

After agreeing to those alternative possible discipline recommendations, respondent executed the Contract and Waiver for Participation in the State Bar Court's ADP (ADP Contract);⁴ the parties' Stipulation was filed; and the court accepted respondent for participation in the ADP commencing on September 23, 2013. The court also filed an order on September 23, 2013, enrolling respondent inactive pursuant to Business and Professions Code section 6233 effective that date and ordering him to comply with certain requirements set forth in California Rules of Court, rule 9.20, as modified by this court.⁵

Thereafter, respondent participated in both the LAP and the court's ADP. Respondent was in compliance with the terms of his LAP Participation Plan until at least January 30, 2014. However, on April 29, 2014, the court received a report from the LAP of respondent's non-compliance. Respondent was in compliance with the conditions of the court's ADP until at least May 5, 2014.

On June 27, 2014, the court received a letter from respondent⁶ setting forth that he was experiencing severe problems affecting his ability to comply and keep in compliance with the terms of the ADP.

On July 30, 2014, the court received another report from LAP dated July 29, 2014, indicating that respondent was not in compliance with the terms of his Participation Plan. On July 30, 2014, the LAP closed respondent's case, thereby effectively terminating respondent from the LAP, as respondent had discontinued contact with the LAP. Accordingly, as

⁴ In entering into the ADP Contract, respondent acknowledged that his eligibility for participation in the ADP was contingent upon his acceptance *and participation* in the State Bar's LAP.

⁵ Respondent's rule 9.20 compliance declaration as received by the court on October 30, 2013.

⁶ The letter reflected that the deputy trial counsel assigned to this matter and respondent's LAP case manager were copied with the letter.

respondent was not in compliance with the conditions of the court's ADP, the court filed an order on August 4, 2014, terminating respondent from the ADP.

Findings of Fact and Conclusions of Law

I. Culpability Findings

Case No. 12-O-13114 (Miller/Hockman Matter)

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.

Respondent stipulated to (1) committing acts involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code section 6106 by borrowing funds from a conservatorship without the ability to repay the funds, placing the conservatee at risk and making the conservators liable for his misconduct, and by failing to explain this liability to the conservators; (2) failing to support the Constitution and laws of the United States and California in willful violation of Business and Professions Code section 6068, subdivision (a) by inducing one of the conservators to release funds from the conservatorship and failing to seek court approval for the release of those funds, thereby violating multiple sections of the Probate Code; and (3) entered into an improper business transaction with a client in willful violation of rule 3-300 of the State Bar Rules of Professional Conduct.

II. Aggravation⁷

Multiple Acts (Std. 1.5(b).)⁸

In a single client matter, respondent committed multiple violations.

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⁷ All further references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

⁸ Standard 1.5(b) is formerly standard 1.2(b)(ii).

III. Mitigation

Candor/Cooperation (Std. 1.6(e).)⁹

Respondent cooperated with the State Bar and did not contest culpability in this matter. In addition, respondent submitted a declaration to the Santa Clara Superior Court, thereby admitting his misconduct, without threat of criminal or civil action.

Other - Severe Financial Stress

Beginning in 2010, respondent suffered from multiple medical problems and experienced unforeseen and financial distress and medical expenses prior to and about the time of his misconduct. In June 2012, respondent was evicted from his home. He took loans from the conservatorship to help address his financial and medical distress. Respondent was able to repay the loans after he received an inheritance.

Other – No Prior Discipline

The parties stipulated that respondent is entitled to limited mitigation for his 39 years of discipline-free practice, as his present misconduct is serious in nature.

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 certain former standards¹⁰ and case law. In particular, the court

⁹ Standard 1.6(e) is formerly standard 1.2(e)(v).

¹⁰ The Standards were revised effective January 1, 2014. However, as the Confidential Statement was executed prior to the effective date of the revised standards, the recommended

considered former standards 1.2, 1.3, 1.4, 1.5, 1.6, 1.7(a) and 2.6 and *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63 and *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138.

Because respondent has now been terminated from the ADP, this court, in turn, now recommends to the Supreme Court the imposition of the higher level of discipline, set forth more fully below.

Recommendations

It is hereby recommended that respondent Joseph Michael Biasella, Jr., State Bar Number 53160, 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 probation¹¹ for a period of three years subject to the following conditions:

1. Respondent is suspended from the practice of law for a minimum of the first two years of probation and he will remain suspended until he shows proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice, and present learning and ability in the general law, pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.
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 (Office of Probation), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by Business and Professions Code section 6002.1.
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

levels of discipline were based on the standards as they existed at the time respondent was accepted for participation in the ADP.

¹¹ 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.)

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. 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.
8. If respondent has not been terminated from the Lawyer Assistance Program (LAP), 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.

If respondent has been terminated from the LAP prior to his successful completion of the LAP, respondent must obtain an examination of his mental and physical condition with respect to his mental health issue pursuant to rule 5.68 of the Rules of Procedure of the State Bar of California from a qualified practitioner approved by the Office of Probation¹² 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

¹² Approval may not be unreasonably denied.

respondent's own expense. The examination must be conducted no later than 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 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 may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 5.300 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.

At the expiration of the period of probation, if Joseph Michael Biasella, Jr. has complied with all conditions of probation, the three-year period of stayed suspension will be satisfied and that suspension will be terminated.

Multistate Professional Responsibility Examination

It is further recommended that Joseph Michael Biasella, Jr. be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) during the period of his suspension and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).)

California Rules of Court, Rule 9.20

It is further recommended that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of

that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's order in this matter.¹³

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(C) of the Rules of Procedure of the State Bar (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

LUCY ARMENDARIZ
Judge of the State Bar Court

¹³ If ordered by the Supreme Court to comply with California Rules of Court, rule 9.20, respondent must do so even if he complied with certain requirements set forth in rule 9.20, as modified by the court, in connection with his inactive enrollment under Business and Professions Code section 6233.