

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 05-O-03627-RAP
)	(06-O-10464)
JOSEPH ROSSETTI,)	
)	DECISION AND ORDER SEALING
Member No. 90051,)	CERTAIN DOCUMENTS
)	
<u>A Member of the State Bar.</u>)	

On April 26, 2006, the State Bar of California, Office of the Chief Trial Counsel (“State Bar”), filed a Notice of Disciplinary Charges (“NDC”) against respondent **Joseph Rossetti** (“respondent”) in case nos. 05-O-03627 (06-O-10464).

Respondent sought to participate in the State Bar Court’s Alternative Discipline Program (“ADP”), and on November 21, 2006, this matter was referred to the ADP.¹

On December 21, 2006, respondent submitted a declaration establishing a nexus between his mental health issue and his misconduct. The parties entered into a Stipulation Re Facts and Conclusions of Law which was received by the State Bar Court on February 27, 2007.

On July 2, 2007, the court issued an order formally accepting respondent into the ADP. On July 2, 2007, the court also lodged the Confidential Statement of Alternative Dispositions and

¹ Respondent was originally referred to ADP on August 15, 2006, but was subsequently removed due to his failure to file a nexus statement and appear at a scheduled status conference.

Orders, the Contract and Waiver for Participation in the State Bar Court's ADP (Contract), and the parties' Stipulation Re Facts and Conclusions of Law.

On January 27, 2010, the court issued an order finding that respondent has successfully completed the ADP. Thereafter, on that same date, the parties' Stipulation Re Facts and Conclusions of Law was filed, and this matter was submitted for decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Stipulation Re Facts and Conclusions of Law, including the court's order approving the Stipulation Re Facts and Conclusions of Law, is attached hereto and hereby incorporated by reference, as if fully set forth herein. The Stipulation Re Facts and Conclusions of Law sets forth the factual findings, legal conclusions, and aggravating and mitigating circumstances in this matter. Below is an abbreviated summary of the stipulated facts and conclusions of law.

In Case No. 05-O-03627, respondent was retained by a client to prepare documents to split the assets of a trust. In this matter, respondent willfully violated: (1) rule 3-110(A) of the Rules of Professional Conduct,² by intentionally, recklessly, or repeatedly failing to perform legal services with competence; (2) Business and Professions Code³ section 6068, subdivision (m), by failing to respond to his client's reasonable status inquiries; (3) rule 3-700(D)(1) by failing to release his client's file; and (4) rule 3-700(D)(2) by failing to promptly refund unearned advanced fees to his client.

In Case No. 06-O-10464, respondent failed to file quarterly reports and submit proof of restitution as required by the Supreme Court's order in Case No. S129996. In doing so, respondent willfully violated section 6068, subdivision (k), by failing to comply with terms and conditions attached to a disciplinary probation.

² All further references to rule(s) are to this source unless otherwise indicated.

³ Future references to section(s) are to this source.

In mitigation, respondent displayed candor and cooperation with the State Bar, he promptly took objective steps spontaneously demonstrating remorse and recognition of wrongdoing, he was suffering from severe financial stress at the time of the misconduct, and his good character was attested to by a wide range of references. In aggravation, respondent had a prior record of discipline.

Supreme Court and Review Department case law establish that extreme emotional difficulties are a mitigating factor where expert testimony establishes that these emotional difficulties were directly responsible for the misconduct, provided that the attorney has also established, through clear and convincing evidence, that he or she no longer suffers from such difficulties. (*Porter v. State Bar* (1990) 52 Cal.3d 518, 527; *In re Naney* (1990) 51 Cal.3d 186, 197; *In re Lamb* (1989) 49 Cal.3d 239, 246; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 701-702.) However, the Supreme Court has also held that, absent a finding of rehabilitation, emotional problems are not considered a mitigating factor. (*Kaplan v. State Bar* (1991) 52 Cal.3d 1067, 1072-1073; *In re Naney, supra*, 51 Cal.3d at p. 197.)

Respondent successfully completed the ADP. Respondent's successful completion of the ADP, which required his successful participation in the LAP, as well as the Certificate of One Year Participation in the Lawyer Assistance Program – Mental Health, qualify as clear and convincing evidence that respondent no longer suffers from the mental health issue 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. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(e)(iv).)

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.)

The parties submitted briefs on the issue of discipline. After considering the parties' briefs, including the case law and standards cited therein, the court advised the parties of the discipline that would be ordered if respondent successfully completed the ADP and the discipline which would be recommended to the Supreme Court if respondent was terminated from or failed to successfully complete the ADP.

In determining the appropriate discipline to recommend in this matter if respondent successfully completed the ADP, the court considered the discipline recommended by the parties, as well as standards 1.3, 1.4, 1.6, 1.7(a), 2.4(b), 2.6(a), and 2.10. The court also considered and distinguished *In the Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831; *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366; *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631; *In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567; *In the Matter of Broderick* (Review Dept. 1994) 3 Cal State Bar Ct. Rptr. 138; and *In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302.

After agreeing to the court's proposed high and low levels of discipline, respondent executed the Contract to participate in the ADP, and respondent's period of participation in the ADP commenced. Thereafter, respondent successfully participated in the ADP and—as set forth in the court's January 27, 2010 order—successfully completed the ADP. Accordingly, the court recommends imposition of the discipline set forth in the Statement on Alternative Dispositions and Orders relating to a successful completion of the ADP.

DISCIPLINE ORDER

It is recommended that respondent **Joseph Rossetti** be suspended from the practice of law for two years, that execution of that period of suspension be stayed, and that respondent be placed on probation for three years, subject to the following conditions:

1. During the probation period, respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct;
2. 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;
3. 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;
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 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;

5. 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;
6. 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;

7. Respondent must comply with all provisions and conditions of his Participation 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 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; and
9. At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for two years will be satisfied and that suspension will be terminated.

It is further recommended that respondent take and pass the Multistate Professional Responsibility Examination (“MPRE”) administered by the National Conference of Bar Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243 (telephone 319-337-1287), and provide proof of passage to the Office of Probation within one year after the effective date of the discipline herein.

COSTS

It is recommended that costs be awarded to the State Bar pursuant to Business and Professions Code section 6086.10, and such costs 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: March 23, 2010.

RICHARD A. PLATEL
Judge of the State Bar Court