

PUBLIC MATTER

FILED

JUL 29 2016



STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES**

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| In the Matter of |) | Case Nos.: 12-C-16728-PEM; 12-C-16729; |
| |) | 12-C-16730; 12-C-16731; |
| OREN MARK ATIAS, |) | 12-C-16735; 12-C-16737; |
| |) | 12-C-16738; 14-C-03722 (Cons.) |
| Member No. 263534, |) | |
| |) | DECISION AND ORDER SEALING |
| A Member of the State Bar. |) | CERTAIN DOCUMENTS |
| |) | |

Introduction¹

In this consolidated conviction referral matter, respondent Oren Mark Atias 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, that he be placed on probation for three years, subject to certain conditions including 18 months of actual suspension (with credit given (1) for the period of interim suspension which commenced on December 7, 2012, and

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

terminated on March 13, 2015, under a court order; and (2) for inactive enrollment, which was effective December 7, 2012, through February 16, 2015, under section 6233).

Significant Procedural History

Interim Suspension (California Rules of Court, rule 9.10(a))

On November 19, 2012, as a result of respondent's multiple felony convictions and a misdemeanor conviction, the State Bar Court Review Department placed respondent on interim suspension from the practice of law effective December 7, 2012, pending final disposition of case Nos. 12-C-16729, 12-C-16731, and 12-C-16735. The court further ordered that respondent comply with rule 9.20 of the California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule. On December 10, 2012, respondent filed his rule 9.20 compliance declaration.

On March 13, 2015, the review department vacated its interim suspension order. (Rules Proc. of State Bar, rule 5.342(D).)

Inactive Enrollment (Bus. & Prof. Code, § 6233)

On August 21, 2013, respondent was placed on inactive enrollment effective December 7, 2012, pursuant to section 6233. On February 13, 2015, this court ordered that respondent's inactive enrollment be terminated.

Conviction Referral Orders

Following respondent's multiple convictions, the review department issued four referral orders to the hearing department, which consisted of eight conviction matters, as follows:

A. Case Nos. 12-C-16728; 12-C-16730; and 12-C-16738

On November 19, 2012, the review department issued a referral order to the hearing department, referring three matters for hearings and decisions recommending the discipline to be imposed if the hearing department finds that the facts and circumstances surrounding

respondent's final misdemeanor convictions involved moral turpitude or other misconduct warranting discipline.

A Notice of Hearing on Conviction (NOH) was filed on November 28, 2012.

B. Case No. 12-C-16735

On December 7, 2012, the review department issued a second referral order to the hearing department for a hearing and decision recommending the discipline to be imposed.

A second NOH was filed on December 12, 2012.

On December 17, 2012, the above four conviction referral matters were consolidated (case Nos. 12-C-16728; 12-C-16730; 12-C-16738; and 12-C-16735).

Respondent filed an answer to the consolidated matter on December 19, 2012.

C. Case Nos. 12-C-16729; 12-C-16731; and 12-C-16737

On January 14, 2013, the review department issued a third referral order to the hearing department, referring another three 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 respondent's final convictions involved moral turpitude or other misconduct warranting discipline.

A third NOH was filed on January 24, 2013. Respondent filed an answer to the NOH on February 6, 2013.

On February 19, 2013, the court consolidated these three conviction referral matters with the previous consolidated four matters.

Respondent requested referral for evaluation of his eligibility for participation in the State Bar Court's ADP. Respondent also contacted the State Bar's Lawyer Assistance Program (LAP) to assist him with his substance abuse issue.

On March 18, 2013, respondent submitted a declaration which established a nexus between respondent's substance abuse issue and his misconduct in this matter.

On August 5, 2013, the State Bar and respondent filed a Stipulation Re Facts and Conclusions of Law (Stipulation) in these seven consolidated matters. The Stipulation sets forth the factual findings, legal conclusion, and mitigating and aggravating circumstances in this consolidated matter.

The court issued a Confidential Statement of Alternative Dispositions and Orders, 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. Agreeing to those alternative possible 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 August 5, 2013.

D. Case No. 14-C-03722

On August 6, 2014, the review department issued a fourth referral order to the hearing department, referring another matter 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 respondent's misdemeanor conviction involved moral turpitude or other misconduct warranting discipline.

A fourth NOH was filed on August 11, 2014. Respondent filed an answer to the NOH on September 26, 2014.

On October 14, 2014, the court consolidated this conviction referral matter with the previous consolidated seven matters.

On November 3, 2014, respondent submitted an amended declaration which established a nexus between respondent's substance abuse issue and his misconduct in this matter. On December 12, 2014, respondent submitted a second amended declaration of nexus statement.

On February 13, 2015, the State Bar and respondent filed a Stipulation Re Facts and Conclusions of Law (Stipulation). The Stipulation sets forth the factual findings, legal conclusion, and mitigating and aggravating circumstances in case No. 14-C-03722.

On March 19, 2015, the court issued an Amended Confidential Statement of Alternative Dispositions and Orders, 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. Agreeing to those alternative possible dispositions, respondent executed the Amended Contract and Waiver for Participation in the State Bar Court's ADP; the court accepted respondent for continued participation in the ADP; and respondent continued to participate in the ADP.

On March 17, 2015, respondent returned to active status and was entitled to resume the practice of law. This court found that he had shown satisfactory proof of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct, and that there was no longer a basis for his inactive enrollment under section 6233.

Respondent participated successfully in both the LAP and the State Bar Court's ADP. After receiving a Certificate of One Year of Participation in the Lawyer Assistance Program – Substance Use, the court found that respondent has successfully completed the ADP at a status conference on May 16, 2016.

This matter was submitted for decision on May 16, 2016.

Findings of Fact and Conclusion of Law

Culpability Findings

The parties' two Stipulations filed on August 5, 2013, and February 13, 2015, respectively, including the court's orders approving the Stipulations, are attached hereto and hereby incorporated by reference, as if fully set forth herein.

August 5, 2013 Stipulation

1. Case No. 12-C-16728

On September 13, 2011, respondent was arrested for driving under the influence (DUI). On September 13, 2012, he pled guilty to violating Vehicle Code section 23152(a), a misdemeanor.

Respondent stipulated that the facts and circumstances surrounding his violation involved other misconduct warranting discipline.

2. Case No. 12-C-16729

On May 8, 2012, respondent was arrested on suspicion of possession of a controlled substance, possession of methamphetamine, possession, control or use of a false compartment for drug storage, and possession of prescription medication without a prescription. On September 13, 2012, he pled guilty and was convicted of felony violations of Health and Safety Code sections 11350(a), 11377, and 11366.8(a), and of a misdemeanor violation of Health & Saf. Code section 11375(b)(2).

Respondent stipulated that the facts and circumstances surrounding his violations involved other misconduct warranting discipline.

3. Case No. 12-C-16730

On September 9, 2011, respondent was arrested for DUI of a controlled substance. On September 13, 2012, he pled guilty to misdemeanor violations of Veh. Code section 23152(a) and Health & Saf. Code section 11550(a).

Respondent stipulated that the facts and circumstances surrounding his violations involved other misconduct warranting discipline.

4. Case No. 12-C-16731

On December 7, 2011, respondent was arrested for DUI. On September 13, 2012, he pled guilty to a felony violation of Veh. Code section 23152(a) (DUI with prior incidents of DUI).

Respondent stipulated that the facts and circumstances surrounding his violation involved other misconduct warranting discipline.

5. Case No. 12-C-16735

On February 1, 2012, respondent was involved in a hit-and-run with property damage at night. Within a few hours, he filed a false police report claiming that his car was stolen. On September 13, 2012, he pled guilty to misdemeanor violations of Veh. Code section 20002(a) and Pen. Code section 148.5.

Respondent stipulated that the facts and circumstances surrounding his violations of Veh. Code section 20002(a) involved misconduct warranting discipline and of Pen. Code section 148.5 involved moral turpitude.

6. Case No. 12-C-16737

On May 7, 2012, respondent was arrested on suspicion of possession of drug paraphernalia and possession of a controlled substance without prescription. On September 13,

2012, he pled guilty and was convicted of misdemeanor violations of Health & Saf. Code sections 11364(a) and Business and Professions Code section 4060.

Respondent stipulated that the facts and circumstances surrounding his violations involved other misconduct warranting discipline.

7. Case No. 12-C-16738

On July 17, 2011, respondent was arrested on suspicion of DUI. On September 13, 2012, he pled guilty to violating Veh. Code section 23152(a), a misdemeanor.

Respondent stipulated that the facts and circumstances surrounding his violation involved other misconduct warranting discipline.

February 13, 2015 Stipulation

8. Case No. 14-C-03722

On May 31, 2013, respondent was cited for driving on a suspended license. On June 21, 2013, he pled guilty to violating Veh. Code section 14601.2(a), a misdemeanor.

Respondent stipulated that the facts and circumstances surrounding his violation involved other misconduct warranting discipline.

Aggravation²

Multiple Acts (Std. 1.5(b).)

Respondent's multiple acts of misconduct constitute an aggravating circumstance.

(In the Matter of Conner (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93, 105.)

Mitigation

Other

Respondent's successful completion of the ADP is considered as a mitigating circumstance in this matter.

² 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.

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 2.15 and 2.16 and case law, including *In re Nadrich* (1988) 44 Cal.3d 271 and *In re Leardo* (1991) 53 Cal.3d 1.

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. Also, the court had previously found that respondent had provided satisfactory proof of his rehabilitation, fitness to practice and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

Recommendations

It is hereby recommended that respondent Oren Mark Atias, State Bar Number 263534, 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 three years subject to the following conditions:

1. Respondent Oren Mark Atias is suspended from the practice of law for the first 18 months of probation (with credit given for the period of interim suspension which commenced on December 7, 2012, and for inactive enrollment which was effective December 7, 2012, through February 16, 2015 (Bus. & Prof. Code, § 6233));

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.)

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 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 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.
7. Respondent must fully comply with respondent's Lawyer Assistance Program (LAP) Participation Agreement/Plan. Respondent must provide the LAP with a satisfactory written waiver authorizing the LAP to provide the Office of Probation and the State Bar Court with information regarding the terms and conditions of respondent's participation in the LAP and respondent's compliance or non-compliance with LAP requirements. Revocation of such waiver is a violation of this condition. Respondent will be relieved of this condition upon providing satisfactory certification of completion of the LAP to the Office of Probation.
8. Within one year after the effective date of the discipline herein, respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This

requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

9. Respondent must comply with all conditions of respondent's criminal probation and must so declare under penalty of perjury in any quarterly report required to be filed with the Office of Probation. If respondent has completed probation in the underlying criminal matter, or completes it during the period of his disciplinary probation, respondent must provide to the Office of Probation satisfactory documentary evidence of the successful completion of the criminal probation in the quarterly report due after such completion. If such satisfactory evidence is provided, respondent will be deemed to have fully satisfied this probation condition.

At the expiration of the probation period, if respondent has complied with all conditions of probation, respondent will be relieved of the stayed suspension.

Multistate Professional Responsibility Examination

It is recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order imposing discipline in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

California Rules of Court, Rule 9.20

The court does not recommend that respondent be ordered to comply with California Rules of Court, rule 9.20, because he had previously complied with rule 9.20 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.

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 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: July 29, 2016


PAT McELROY
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on July 29, 2016, I deposited a true copy of the following document(s):

DECISION AND ORDER SEALING CERTAIN DOCUMENTS

in a sealed envelope for collection and mailing on that date as follows:

- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

OREN M. ATIAS
ATIAS LAW GROUP
260 NEWPORT CENTER DR
STE 100
NEWPORT BEACH, CA 92660

- by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

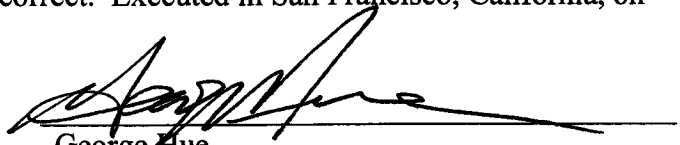
- by overnight mail at , California, addressed as follows:

- By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

William S. Todd, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 29, 2016.


George Hue
Case Administrator
State Bar Court