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STATE BAR COURT CLERK'S OFFICE
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STATE BAR COURT OF CALIFORNIA STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case Nos. 16-N-13168-MC; 17-C-03665
)	(Consolidated)
ANTHONY EMMANUEL PAGKAS,)	
)	DECISION; ORDER SEALING
A Licensed Attorney of the State Bar,)	DOCUMENTS; AND ORDER OF
No. 186112.)	INVOLUNTARY INACTIVE
)	ENROLLMENT

INTRODUCTION

In this consolidated disciplinary proceeding and conviction referral matter, Respondent Anthony Emmanuel Pagkas was accepted for participation in the State Bar Court's Alternative Discipline Program (ADP). Respondent has been terminated from ADP due to his failure to comply with its requirements. Pursuant to Rules of Procedure of the State Bar, rule 5.384 and in light of his admitted misconduct, the court recommends that Respondent be disbarred from the practice of law.

SIGNIFICANT PROCEDURAL HISTORY

A. Case No. 16-N-13168

The Office of Chief Trial Counsel of the State Bar of California (OCTC) filed a notice of disciplinary charges (NDC) against Respondent on October 17, 2016. Respondent filed a response to the NDC on November 10.



B. Case No. 17-C-03665

On March 14, 2017, Respondent was convicted of violations of Penal Code sections 242-243 (e) (battery - relationship), 591.5 (unlawful interference with wireless communication device with intent to prevent use of device to summon/notify law enforcement), and 166 (c) (contempt of court - violation of protective order). These were misdemeanors which may or may not involve moral turpitude. On September 21, 2017, the records of Respondent's convictions were transmitted to the State Bar Court. On October 11, 2017, the Review Department referred the matter to the hearing department for a hearing and, if the court determined that Respondent's convictions involved moral turpitude or other misconduct, the recommended discipline.

A Notice of Hearing on Conviction was filed on October 12, 2017. On November 20, the court consolidated the two matters, case nos. 16-N-13168 and 17-C-03665.

C. Respondent's Acceptance into the Alternative Discipline Program

Respondent requested a referral by the court to evaluate his eligibility for ADP. Respondent contacted the State Bar's Lawyer Assistance Program (LAP) and signed a LAP Participation Plan on January 10, 2018. Respondent submitted a declaration to the court establishing a nexus between his mental health issues and misconduct in this matter.

On March 19, 2018, OCTC and Respondent filed a Stipulation Re Facts and Conclusions of Law. The court issued a Confidential Statement of Alternative Dispositions and Orders (Statement), formally advising the parties of (1) the discipline which would be recommended to the Supreme Court if Respondent successfully completed ADP and (2) the discipline which would be recommended if Respondent failed to successfully complete, or was terminated from, ADP. After agreeing to those alternative possible dispositions, Respondent executed the Contract and Waiver for Participation in ADP (Contract). The court accepted Respondent for participation in ADP beginning on March 19.

D. Respondent's Termination from the Alternative Discipline Program

On October 22, 2018, the court issued an Order to Show Cause of its intent to terminate Respondent from participation in ADP. A hearing was held on December 18, 2018. On January 25, 2019, the court determined that Respondent was not in compliance with ADP's requirements because he violated the terms of his Contract. The court found that there was additional misconduct which occurred after Respondent was accepted in ADP. Under his agreement with LAP, Respondent was obligated to immediately report any arrest or conviction. There is clear and convincing evidence that:

(1) On August 7, 2018, Respondent reported to LAP that he had a relapse with alcohol but did not disclose that he was arrested on July 26, 2018;

(2) Respondent failed to report his August 27, 2018 convictions of Penal Code sections 647 (a) (engaging in lewd conduct in public) and 415 (2) (disturbing the peace) to LAP; and

(3) Respondent failed to comply with ADP requirements.

On January 25, 2019, Respondent was terminated from ADP based upon his noncompliance with its terms. The court now issues this decision recommending the high level of discipline set forth in the Statement.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties' Stipulation filed on March 19, 2018, including the court's order approving the Stipulation, is attached hereto and hereby incorporated by reference, as if fully set forth herein.¹ Respondent stipulated that he willfully violated California Rules of Court, rule 9.20, by

¹ The court admits into evidence the certified copy of Respondent's two prior records of discipline, which were attached to the Stipulation. (Supreme Court order no. S190341, filed April 14, 2011 [State Bar Court case no. 07-O-13322]; and Supreme Court order no. S230672, filed January 20, 2016 [State Bar Court case no. 14-O-01397].)

failing to timely file a compliant rule 9.20 (c) affidavit, as required by Supreme Court order no. S230672. He also stipulated that, although the facts and circumstances surrounding his misdemeanor criminal convictions did not involve moral turpitude, they did involve other misconduct warranting discipline.

In aggravation, Respondent had two prior records of discipline. In the first record, he was actually suspended for 30 days, with a one-year stayed suspension and two-year probation, effective May 14, 2011. This discipline was for Respondent's failure to perform competently, improper pecuniary interest adverse to client, and failure to report court sanctions.

In the second prior record of discipline, Respondent was suspended for two years, stayed, and placed on probation for two years with a 90-day actual suspension, effective February 19, 2016. This discipline was for Respondent's failures to release client file, to render an accounting, and to communicate. Respondent's failure to comply with his probation conditions, as an uncharged violation, was also an aggravating factor.

In mitigation, Respondent cooperated with OCTC by entering into a pretrial stipulation.

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.)

After considering the Stipulation, scope of Respondent's acts of misconduct, the aggravating circumstances, the standards, the relevant case law, and Respondent's declaration regarding the nexus between his emotional difficulties and his misconduct in this matter, the court had advised Respondent and OCTC of the low and high levels of discipline, depending on whether Respondent successfully completed or was terminated from ADP, which would be

recommended to the Supreme Court. The recommended discipline was set forth in the Statement. Because Respondent was terminated from ADP, the court hereby recommends the high level of discipline to the Supreme Court.

RECOMMENDATIONS

Discipline

It is recommended that Anthony Emmanuel Pagkas, State Bar Number 186112, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

It is further recommended that Respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

It is further 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. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against an attorney who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

It is ordered that Respondent be transferred to involuntary inactive enrollment status pursuant to section 6007, subdivision (c)(4). The inactive enrollment will become effective three

days from the date of service of this order and will terminate upon the effective date of the Supreme Court's order imposing discipline herein or as otherwise ordered by the Supreme Court.

ORDER SEALING DOCUMENTS

The court directs a court specialist to file this Decision, Order of Involuntary Inactive Enrollment and Order Sealing Documents. Thereafter, pursuant to rule 5.388(C) of the Rules of Procedure of the State Bar of California, all other documents not previously filed in this matter are ordered sealed under 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 duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosures. 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: February 21, 2019



Manjari Chawla
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 Court Specialist 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 February 22, 2019, I deposited a true copy of the following document(s):

DECISION; ORDER SEALING DOCUMENTS; AND ORDER OF INVOLUNTARY
INACTIVE ENROLLMENT

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:

ANTHONY E. PAGKAS
1484 POLLARD RD
NO. 251
LOS GATOS, CA 95032 - 1031

- 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 fax transmission, at fax number . No error was reported by the fax machine that I used.

- 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:

Johnna G. Sack, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on February 22, 2019.


George Hue
Court Specialist
State Bar Court

AMENDED CERTIFICATE OF SERVICE

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

I am a Court Specialist 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 February 22, 2019, I deposited a true copy of the following document(s):

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