

Filed September 17, 2024

STATE BAR COURT OF CALIFORNIA
REVIEW DEPARTMENT

In the Matter of) SBC-19-O-30616
)
CHRISTOPHER SALVATORE SCARCELLA,) OPINION
)
State Bar No. 280213.)
_____)

THE COURT:*

In November 2019, the Office of Chief Trial Counsel of the State Bar (OCTC) filed a Notice of Disciplinary Charges (NDC) against Christopher Salvatore Scarcella based on misconduct in two separate client matters. Subsequently, Scarcella filed a timely request for participation in the Alternative Discipline Program (ADP) pursuant to rule 5.381(B) of the Rules of Procedure of the State Bar¹ in December 2019, and the matter was referred to the ADP. The assigned program judge admitted Scarcella into the ADP on November 20, 2020.

On February 6, 2024, the program judge determined that Scarcella successfully completed his participation in the ADP, thus entitling him to receive the lower level of discipline set forth in the Confidential Statement of Alternative Dispositions and Orders (Confidential Statement). She recommended discipline, which included, inter alia, a 30-day actual suspension

* Before Honn, P. J., McGill, J., and Ribas, J.

¹ All further references to rules are to the Rules of Procedure of the State Bar unless otherwise noted.

but also a credit against that suspension for an earlier unrelated administrative suspension from 2019. OCTC appeals, arguing that the judge erred by affording Scarcella credit towards the period of actual suspension based on his administrative suspension. OCTC does not challenge the judge's recommended discipline in this case but requests that we strike the portion of the decision crediting Scarcella's prior administrative suspension.

After independently reviewing the record (Cal. Rules of Court, rule 9.12), we find the program judge erred by altering in her February 6, 2024 Decision and Order Sealing Certain Documents (Decision) the recommended lower level of discipline as set forth in the Confidential Statement. We therefore do not adopt in our recommendations the provision of credit for Scarcella's administrative suspension against the 30-day actual suspension, but we otherwise affirm all other aspects of the judge's Decision.

I. BACKGROUND

Scarcella was admitted to practice law on December 1, 2011. From July 2 to August 14, 2019, he was on an administrative suspension because he failed to pay his 2019 annual licensing fee.

On November 12, 2019, OCTC charged Scarcella with 11 counts of misconduct involving two client matters that occurred from October 2017 through September 2019. After the filing of the NDC, Scarcella filed a response on December 17, 2019, and on the same day he also requested participation in the ADP. The matter was referred to the ADP on January 9, 2020, and he signed a Lawyer Assistance Program (LAP) monitoring plan on January 23.² On February 18, Scarcella submitted a declaration regarding the nexus between the issues that

² Under section 6230 of the Business and Professions Code, the ADP offers a rehabilitative path to be treated and returned to the practice of law for attorneys with substance abuse or mental health disorders affecting competency. Pursuant to section 6233, if an attorney successfully completes the LAP, the attorney is eligible under the ADP for a dismissal of charges or a reduction in discipline.

qualified him for the ADP and the alleged misconduct, which included supporting documentation. In July, the parties signed the Stipulation Re Facts and Conclusions of Law (Stipulation), agreeing to the specific facts of the misconduct, the resulting conclusions of law, and the aggravating and mitigating circumstances.³ On November 16, the program judge approved it, and a few days later the judge issued the Confidential Statement, which incorporated the Stipulation and formally advised the parties of the sanctions the court would recommend if Scarcella successfully completed the ADP as well as if he failed to do so. The Confidential Statement was electronically served on the parties on November 20. Almost three years later, on October 30, 2023, Scarcella received a certificate of successful participation in the LAP. During a status conference on November 13, the judge found that Scarcella successfully completed the ADP, and the matter was submitted that day.

The program judge issued her Decision on February 6, 2024, which recommended that Scarcella be suspended from the practice of law for one year, the execution of that suspension be stayed, and he be placed on probation for one year. The judge also recommended a period of actual suspension for the first 30 days of the probation, which was consistent with the discipline described in the Confidential Statement for successful completion of the ADP. However, the judge awarded Scarcella credit for the period of his 2019 administrative suspension, which was not included in the Confidential Statement. The judge explained her decision to provide the credit: even though the administrative suspension occurred before the NDC was filed, the nexus established between the issues that qualified him for the ADP and the current misconduct also caused his failure to pay his licensing fee.

³ We adopt the parties' Stipulation but do not elaborate on them here as they are not germane to the issue raised in this summary review.

On March 5, 2024, OCTC filed a request for summary review of the program judge's Decision pursuant to rule 5.157. OCTC subsequently filed its Opening Memorandum on April 2.⁴ On May 16, we granted Scarcella five days to file his responsive memorandum and he attempted to file it on May 23, but it was rejected due to an improper proof of service. On June 13, we again provided Scarcella an additional five days to file his responsive memorandum and indicated that the court would take the matter under submission without further order on June 24. Scarcella did not file a responsive memorandum and the matter was submitted as ordered. In its Opening Memorandum, OCTC stated it was not requesting oral argument pursuant to rule 5.157(F)(3).

II. ISSUE ON SUMMARY REVIEW

In this summary review proceeding, where the Hearing Department's material findings of fact are final and binding upon the parties pursuant to rule 5.157(B), OCTC contests the program judge's recommendation to credit Scarcella's 2019 administrative suspension against his disciplinary suspension. (See rule 5.157(B)(2) & (3) [matter eligible for summary review where requesting party disagrees with disposition, degree of discipline, or other questions of law].) Upon our independent review of the record, we agree with OCTC that the judge's decision to credit Scarcella's administrative suspension towards his period of actual suspension was improper based on the record in this proceeding. This alteration in discipline was not included or proposed in the judge's Confidential Statement, which pronounced to the parties the

⁴ Pursuant to rule 5.157(F), OCTC attached a redacted copy of the Decision to its Opening Memorandum, which blacked out any reference to Scarcella's issues that qualified him for the ADP, along with the Stipulation and a notice that it had filed on the same day a separate motion to seal two exhibits: (1) the unredacted version of the Decision and the Stipulation, and (2) a copy of the Confidential Statement. Scarcella did not object to OCTC's filings. We granted, inter alia, OCTC's motion on April 19, 2024.

recommended disposition in this matter if Scarcella successfully completed the ADP, as rule 5.384(A)(1) directs.

Regarding OCTC's arguments, it first contends no authority exists where an administrative suspension, which is non-disciplinary, should be credited against a disciplinary suspension. OCTC asserts, *inter alia*, that standard 1.1 of the Standards for Attorney Sanctions for Professional Misconduct⁵ does not apply to "non-disciplinary dispositions," such as "suspensions for nonpayment of State Bar fees." Additionally, it asserts that Scarcella's administrative suspension for his failure to pay his annual licensing fee in 2019 falls outside of the definition of an actual suspension because no probation or accompanying probation conditions were attached to his suspension.⁶

OCTC next argues that Scarcella cannot be given credit for his administrative suspension because it occurred prior to the filing of the NDC. Here, Scarcella's suspension for his failure to pay his annual licensing fee occurred in July 2019 and lasted through mid-August 2019, and the NDC was filed on November 12, 2019—four months after Scarcella's administrative suspension concluded. OCTC analogizes to interim suspensions and contends that inherent in the nature of receiving credit for an interim suspension, such suspension must occur *after* a disciplinary proceeding has been initiated. OCTC asserts that allowing the program judge to award Scarcella credit in this manner would unjustly open the door for any respondent in a disciplinary proceeding to reach back in time to any point in which they were administratively suspended to seek credit for that non-disciplinary suspension.

⁵ All further references to standards are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

⁶ Standard 1.2(c)(1) defines "[a]ctual suspension [as] a disqualification from the practice of law and from holding oneself out as entitled to practice law subject to probation and attached conditions."

We note OCTC concerns but we conclude that they do not sufficiently counterbalance the discretion traditionally afforded to the program judge in matters concerning the ADP. At the start of the ADP process, the judge is afforded broad discretion—rule 5.382(A) provides that an attorney’s acceptance into the ADP is conditioned upon the attorney’s compliance with specific requirements including “any additional conditions that the Program Judge may impose.” (See rule 5.382(A)(4); see also *In the Matter of Geyer* (Review Dept. 2007) 5 Cal State Bar Ct. Rptr. 74, 78 [referencing former rule 807 and concluding that program judges afforded wide discretion in supervision of ADP participant].) When an attorney successfully completes the ADP, the program judge may consider a wide range of dispositions, and, as provided under rule 5.384(B), the disposition “may be as low as dismissal of the charges or proceeding.” This precedent supports the idea here that the judge’s decision to integrate Scarcella’s prior administrative suspension into his disciplinary measures was within her discretionary rights, especially given her finding that the nexus established between the issues that qualified him for the ADP and the current misconduct also caused his failure to pay his licensing fee. Furthermore, OCTC has not cited any authoritative precedents that directly preclude the program judge from crediting an administrative suspension in the same manner it was done here. The judge’s decision to incorporate Scarcella’s previous suspension recognizes the holistic approach of the ADP, aiming to address both the misconduct and its underlying causes comprehensively.⁷ (See Bus. & Prof. Code, § 6230 [intent of Legislature in establishing ADP is to seek ways to rehabilitate attorney so they “may be treated and returned to the practice of law”].)

However, OCTC correctly argues that that the program judge’s February 6, 2024 recommendation to give Scarcella credit for his administrative suspension after he successfully

⁷ Thus, we disagree with OCTC’s argument that the timing of the NDC must determine when credit for an administrative suspension can be considered.

completed the ADP constitutes a fundamental alteration of the proposed lower level of discipline as initially stated in the Confidential Statement. This alteration, according to OCTC, not only violates rule 5.384(A),⁸ which mandates that the program judge provide a written statement of the discipline to be imposed upon successful or unsuccessful completion of the ADP, but also prejudiced OCTC by precluding it from seeking interlocutory review of the decision.⁹ As OCTC points out, the alteration effectively converted the Confidential Statement’s proposed lower level of discipline to a stayed suspension from a 30-day actual suspension. If the judge had included the credit in the Confidential Statement, then OCTC would have had an opportunity to seek interlocutory review—an opportunity crucial for addressing potential procedural or substantive missteps before final decisions or recommendations are made.

III. CONCLUSION

Upon our review of the record, we find that the program judge’s decision to alter the recommended lower level of discipline to be imposed in this matter after issuing the Confidential Statement was made in error. We therefore do not adopt the provision of credit for Scarcella’s administrative suspension against the 30-day actual suspension and, therefore, recommend

⁸ According to rule 5.384(A)(1), the program judge will provide “the disposition that *will* be implemented or recommended . . . if the attorney successfully completes the [ADP].” (Italics added.) Thus, the language of the rule implies that the recommendation stated in the judge’s decision will be in accordance with the disposition prescribed in the Confidential Statement.

⁹ On February 20, 2024, OCTC filed a petition for interlocutory review on the same issues it has raised in this summary review. We denied OCTC’s petition without prejudice on March 5, stating that the interlocutory review process under rule 5.389 did not apply because the proceedings in the Hearing Department were complete, and thus interlocutory review was improper. (See rule 5.150(A) [interlocutory review proper before Hearing Department proceedings are complete where issues are not readily remediable once proceedings are completed].)

Scarcella comply with California Rules of Court, rule 9.20, but otherwise affirm all other aspects of the judge's February 6, 2024 Decision.¹⁰

IV. RECOMMENDATIONS

We recommend that Christopher Salvatore Scarcella, State Bar Number 280213, be suspended from the practice of law for one year, that execution of that suspension be stayed, and Scarcella is placed on probation for one year, with the following conditions:

- 1. Actual Suspension.** Scarcella must be suspended from the practice of law for the first 30 days of the period of his probation.
- 2. Commencement of Probation/Compliance with Probation Conditions.** The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. Scarcella must complete all court-ordered probation conditions as directed by the State Bar's Office of Case Management & Supervision (OCMS) and at Scarcella's expense. At the expiration of the probation period, if Scarcella has complied with all probation conditions, the period of stayed suspension will be satisfied and that suspension will be terminated.
- 3. Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions.** Scarcella must comply with the provisions of the California Rules of Professional Conduct, the State Bar Act (Business and Professions Code sections 6000 et seq.), and all probation conditions.
- 4. Review Rules of Professional Conduct.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Scarcella must read the California Rules of Professional Conduct and Business and Professions Code sections 6067, 6068, and 6103 through 6126. Scarcella must provide a declaration, under penalty of perjury, attesting to Scarcella's compliance with this requirement, to the OCMS no later than the deadline for Scarcella's first quarterly report.
- 5. Complete E-Learning Course Reviewing Rules and Statutes on Professional Conduct.** Within 90 days after the effective date of the Supreme Court order imposing discipline in this matter, Scarcella must complete the e-learning course entitled "California Rules of Professional Conduct and State Bar Act Overview." Scarcella must provide a declaration, under penalty of perjury, attesting to Scarcella's compliance with this requirement, to the

¹⁰ In its Opening Memorandum, OCTC specifically sought an order that we strike the credit for the administrative suspension that the program judge provided against the actual suspension recommendation. In this matter, we decline to issue an order striking but instead simply choose to not adopt the judge's recommendation of the credit in our recommendations. (*In the Matter of Kopinski* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716, 727.)

OCMS no later than the deadline for Scarcella's quarterly report due immediately after the 90-day period for course completion.

- 6. Maintain Valid Official State Bar Record Address and Other Required Contact Information.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Scarcella must make certain that the State Bar Office of Licensee Records and Compliance (LR&C) has Scarcella's (1) current office address and telephone number, or if none, an alternative address and telephone number; and (2) a current email address (unless granted an exemption by the State Bar by using the form approved by LR&C, pursuant to California Rules of Court, rule 9.9(d)), not to be disclosed on the State Bar's website or otherwise to the public without the licensee's consent. Scarcella must report, in writing, any change in the above information to LR&C within 10 days after such change, in the manner required by LR&C.
- 7. Meet and Cooperate with the OCMS.**

 - a. Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Scarcella **must schedule**, with the assigned OCMS Probation Case Coordinator, a meeting or meetings either in-person, by telephone, or by remote video (at the OCMS Probation Case Coordinator's discretion) to review the terms and conditions of probation. The intake **meeting must occur** within 30 days after the effective date of the Supreme Court order imposing discipline in this matter.
 - b. During the period of probation, Scarcella must (1) meet with representatives of the OCMS as directed by the OCMS; (2) subject to the assertion of applicable privileges, fully, promptly, and truthfully answer any inquiries by the OCMS and provide any other information requested by the OCMS; and (3) meaningfully participate in the intake meeting and in the supervision and support process, which may include exploring the circumstances that caused the misconduct and assisting in the identification of resources and interventions to promote an ethical, competent practice.
 - c. If at any time the OCMS determines that additional probation conditions are required, the OCMS may file a motion with the State Bar Court to request that additional conditions be attached pursuant to rule 5.300 of the Rules of Procedure of the State Bar and California Rules of Court, rule 9.10(c).
- 8. State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court.** During the probation period, the State Bar Court retains jurisdiction over Scarcella to address issues concerning compliance with probation conditions. During probation, Scarcella must appear before the State Bar Court as required by the court or by the OCMS after written notice to Scarcella's official State Bar record address and e-mail address (unless granted an exemption from providing one by the State Bar as provided pursuant to condition 6, above). Subject to the assertion of applicable privileges, Scarcella must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

9. Quarterly and Final Reports.

a. Deadlines for Reports.

- i. **Quarterly Reports.** Scarcella must submit quarterly reports to the OCMS no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 45 days, that report must be submitted on the next quarter due date and cover the extended deadline.
- ii. **Final Report.** In addition to all quarterly reports, Scarcella must submit a final report no earlier than 10 days before the last day of the probation period and no later than the last day of probation.

b. Contents of Reports. Scarcella must answer, under penalty of perjury, all inquiries contained in the report form provided by the OCMS, including stating whether Scarcella has complied with the State Bar Act and the California Rules of Professional Conduct during the applicable period. All reports must be: (1) submitted on the written or electronic form provided by the OCMS; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury in a manner that meets the requirements set forth in the Rules of Procedure of the State Bar and the Rules of Practice of the State Bar Court; and (4) submitted to the OCMS on or before each report's due date.

c. Submission of Reports. All reports must be submitted to the OCMS. The preferred method of submission is via the portal on Scarcella's "My State Bar Profile" account that is accessed through the State Bar website. If unable to use the portal, reports may be submitted via (1) email; (2) certified mail, return receipt requested (postmarked on or before the due date); (3) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date); (4) fax; or (5) personal delivery.

d. Proof of Compliance. Scarcella must maintain proof of compliance with the above requirements for each submitted report for a minimum of one year after the probation period has ended. Scarcella is required to present such proof upon request by the State Bar, the OCMS, or the State Bar Court.

10. State Bar of California Ethics School. Within nine months after the effective date of the Supreme Court order imposing discipline in this matter, Scarcella must submit to the OCMS satisfactory evidence of completion of the State Bar of California 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 Scarcella will not receive MCLE credit for attending Ethics School.

Scarcella is encouraged to register for and complete Ethics School at the earliest opportunity. If Scarcella completed Ethics School during Scarcella's period of participation in the ADP or after the date of the State Bar Court's Opinion in this matter but before the effective date of the Supreme Court order imposing discipline in this matter, then, upon Scarcella providing

satisfactory evidence of said completion, Scarcella will receive credit for completing this condition.

11. Proof of Compliance with Rule 9.20 Obligation. Scarcella is directed to maintain, for a minimum of one year after commencement of probation, proof of compliance with the Supreme Court's order that Scarcella comply with the requirements of California Rules of Court, rule 9.20 (a) and (c), as recommended below. Such proof must include: the name(s) and address(es) of all individuals and entities to whom Scarcella sent notification pursuant to rule 9.20; a copy of each notification letter sent to each recipient; the original receipt or postal authority tracking document for each notification sent; the originals of all returned receipts and notifications of non-delivery; and a copy of the completed compliance affidavit filed by Scarcella with the State Bar Court. Scarcella is required to present such proof upon request by the State Bar, the OCMS, or the State Bar Court.

12. Compliance with Lawyer Assistance Program Monitoring Plan. No later than 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Scarcella must provide to the OCMS the signed OCMS waiver authorizing LAP to provide to the OCMS and the State Bar Court information regarding the terms and conditions of Scarcella's participation in the LAP and Scarcella's compliance or non-compliance with the LAP requirements. Revocation of the OCMS waiver is a violation of this condition.

Scarcella must fully comply with all requirements of the LAP. In each of the quarterly and final reports, Scarcella must report whether Scarcella complied with the LAP requirements. Withdrawal or involuntary termination from the LAP constitutes a violation of this condition. Scarcella will be relieved of this condition upon providing satisfactory certification of successful completion of LAP to the OCMS.

V. MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION

We recommend that Scarcella be ordered to do the following within one year after the effective date of the Supreme Court order imposing discipline in this matter or during the period of Scarcella's actual suspension in this matter, whichever is longer:

1. Take and pass the MPRE administered by the National Conference of Bar Examiners;
2. During registration select California as the jurisdiction to receive Scarcella's score report; and
3. Provide satisfactory proof of such passage directly to the OCMS.

Scarcella is encouraged to register for and pass the MPRE at the earliest opportunity. If Scarcella provides satisfactory evidence Scarcella passed the MPRE prior to the effective date of the Supreme Court order imposing discipline in this matter but after the date this Opinion is

filed, Scarcella will receive credit for completing this requirement. Failure to comply with this requirement may result in suspension. (Cal. Rules of Court, rule 9.10(b).)

VI. CALIFORNIA RULES OF COURT, RULE 9.20

We recommend that Scarcella be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the date the Supreme Court order imposing discipline in this matter is filed.¹¹ (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45 [the operative date for identification of clients being represented in pending matters and others to be notified is the filing date of the Supreme Court order imposing discipline].) Failure to do so may result in disbarment or suspension.

VII. MONETARY SANCTIONS

We do not recommend the imposition of monetary sanctions in this matter as this disciplinary proceeding commenced prior to April 1, 2020. (Rules Proc. of State Bar, rule 5.137(H).)

VIII. COSTS

We recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, which are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment, and may be collected by the State Bar through any means permitted by law. Unless the time for payment of discipline costs is

¹¹ Scarcella is required to file a rule 9.20(c) affidavit even if Scarcella has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).) The court-approved Rule 9.20 Compliance Declaration form is available on the State Bar Court website: <https://www.statebarcourt.ca.gov/Forms>.

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 applying for reinstatement or return to active status.¹²

IX. MONETARY REQUIREMENTS

Any monetary requirements imposed in this matter shall be considered satisfied or waived when authorized by applicable law or orders of any court.

¹² Costs are payable through Scarcella's "My State Bar Profile" account. Further inquiries related to payment of costs should be directed to the State Bar's Division of Regulation.