

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No. 00-C-14169; 01-H-00963 (Cons.)
MONICA MARIE JIMENEZ,)	DECISION AND ORDER FILING AND
Member No. 92740,)	SEALING CERTAIN DOCUMENTS
<u>A Member of the State Bar.</u>)	

I. INTRODUCTION

This consolidated disciplinary proceeding involving respondent Monica Marie Jimenez (“respondent”) arises out of a conviction referral matter and a matter involving respondent’s failure to comply with prior reproof conditions. On November 8, 2002, respondent and the Office of the Chief Trial Counsel of the State Bar of California (“State Bar”) entered into a Stipulation Re Facts and Conclusions of Law (“Stipulation”) in this consolidated proceeding. By separate order signed in December 2002, the court approved the Stipulation and accepted respondent as a participant in the State Bar Court’s Pilot Program for Respondents with Substance Abuse or Mental Health Issues (hereinafter referred to as “Alternative Discipline Program” or “ADP”).¹ (Rules Proc. of State Bar, rules 800-807.)

¹The Pilot Program is now known as the Alternative Discipline Program.

As set forth in greater detail below, respondent was terminated from the State Bar Court's Alternative Discipline Program based upon respondent's termination from the State Bar's Lawyer Assistance Program ("LAP").

In light of respondent's misconduct as set forth herein, the court recommends that respondent be suspended from the practice of law in the State of California for a period of three (3) years and until she shows proof satisfactory to the State Bar Court of her rehabilitation, present fitness to practice law and present learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct; that execution of such suspension be stayed, and that respondent be placed on probation for a period of five (5) years on conditions including that respondent be actually suspended from the practice of law for the first one (1) year of the period of probation.

II. SIGNIFICANT PROCEDURAL HISTORY

Pursuant to a referral order from the Review Department of the State Bar Court, on September 20, 2001, a Notice of Hearing on Conviction was filed against respondent in Case No. 00-C-14169.

On October 31, 2001, a Notice of Disciplinary Charges ("NDC") was filed against respondent in Case No. 01-H-00963.

On November 5, 2001, respondent filed a response to the Notice of Hearing on Conviction.

On November 25, 2001, respondent filed an answer to the NDC in Case No. 01-H-00963.

In or about May 2002, respondent requested an evaluation by the LAP.

On August 26, 2002, the court issued an order referring respondent to the ADP.

In September 2002, respondent entered into a Participation Agreement with the LAP.

On November 8, 2002, respondent and the State Bar entered into a Stipulation Re Facts and Conclusions of Law in Case No. 00-C-14169 and 01-H-00963.

In December 2002, the court approved the Stipulation and provided respondent with its written Decision Re Alternative Recommendations for Degree of Discipline.

Respondent executed the Contract and Waiver for Participation in the State Bar Court's Pilot Program for Respondents with Substance Abuse or Mental Health Issues on December 20, 2002, and the court accepted respondent as a participant in the ADP effective on that date.

For a lengthy period of time, respondent was in compliance with the conditions of the ADP and the LAP. However, in February 2005, the LAP reported to the court that respondent was not in compliance with the terms of her Participation Agreement.

On April 4, 2005, the LAP Evaluation Committee terminated respondent's participation in the LAP.

In paragraph 5 of the ADP Contract signed by respondent on December 20, 2002, respondent confirmed her understanding that, if her participation in the LAP is terminated without her successful completion of the LAP, her participation in the ADP would be terminated. Additionally, in paragraph 4 of the ADP Contract, respondent specifically acknowledged and agreed that the higher level of discipline set forth in the court's Decision Re Alternative Recommendations for Degree of Discipline would be recommended to the Supreme Court in the event the court found, in a written order, that respondent had been terminated from the ADP.

On June 6, 2005, the court filed an Order to Show Cause Why Respondent Should Not Be Terminated from the Alternative Discipline Program ("OSC") in light of the fact that her participation in the LAP was terminated effective April 4, 2005.

On July 26, 2005, the court held the hearing on the OSC. On that same date, the court issued a Status Conference Order noting that respondent was not in compliance with the conditions of the State Bar Court's ADP. However, the court allowed

respondent 30 days in order to attempt to get reinstated with the LAP and/or to obtain a hearing before the Evaluation Committee.

On September 13, 2005, the court held a status conference in this matter. In a status conference order filed that same date, the court noted that respondent was attempting to be reinstated in the LAP.

On November 21, 2005, respondent contacted the LAP and executed a LAP Evaluation Plan. On November 22, 2005, the court filed an order pursuant to a status conference held on November 21, 2005. In the order, the court noted that respondent had enrolled again in the LAP and would need to be evaluated before being accepted back into the LAP.

However, in January 2006, the court received a report from the LAP of respondent's non-compliance with certain terms and conditions of the LAP Evaluation Plan.

On February 6, 2006, the LAP closed respondent's case, as the Evaluation Committee denied respondent's reacceptance into the LAP.

On February 21, 2006, the court filed an Order to Show Cause Why Respondent Should Not Be Terminated from the Alternative Discipline Program ("OSC") in light of her termination from the LAP.²

On March 20, 2006, the court held the hearing on the OSC. On March 21, 2006, the court issued a Status Conference Order noting that respondent was not in compliance with the conditions of the State Bar Court's ADP. The court ordered respondent terminated from the ADP. The court noted that the Stipulation as to Facts and Conclusions of Law would be filed by the Clerk.³ The court also noted that it would prepare its decision and recommendation regarding the higher level of discipline. This matter was submitted for decision on March 21, 2006.

²The court also notes that respondent failed to be readmitted to the LAP.

³On March 21, 2006, the Stipulation was filed and served on the parties.

III. FACTS AND CONCLUSIONS OF LAW⁴

A. Jurisdiction

Respondent was admitted to the practice of law in the State of California on May 30, 1980, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

B. Case No. 00-C-14169

With respect to Case No. 00-C-14169, respondent stipulated to her conviction on October 16, 2000, of a misdemeanor violation of Penal Code section 647(f) [public intoxication]. The events which culminated in her conviction occurred on June 28, 2000. Respondent further stipulated to her subsequent violation of the conditions of her criminal probation on July 15, 2001, when she testified positive for alcohol. Moreover, it appears from the stipulated facts that the June 28, 2000, incident constituted a violation of probation conditions imposed as the result of an earlier conviction.

Respondent also stipulated that her conduct in Case No. 00-C-14169 constituted violations of Business and Professions Code section 6068, subdivision (a) [duty of a member of the State Bar to support and obey the Constitution and laws of the State of California] and section 6106 [member's commission of an act of moral turpitude, dishonesty or corruption constitutes grounds for suspension or disbarment].⁵

C. Case No. 01-H-00963

With respect to Case No. 01-H-00963, respondent stipulated that she violated numerous conditions attached to a public reproof that was imposed upon her effective September 14, 2000, in *In the Matter of Monica Marie Jimenez*, State Bar Court Case No. 99-C-12275. In particular, respondent stipulated that she (1) failed to timely submit her

⁴The parties' Stipulation is hereby incorporated by reference as if set forth in full herein.

⁵Unless otherwise indicated, all references to sections refer to the California Business and Professions Code.

quarterly probation reports (containing a statement of her compliance with the conditions of her criminal probation) due January 10 and April 2001, and January 10 and April 10, 2002; (2) violated the conditions of probation imposed upon her in the underlying criminal matter, thereby violating a separate condition attached to her prior public reproof; and (3) failed to timely attend and complete State Bar Ethics School and provide proof thereof.

Respondent stipulated that her conduct in Case No. 01-H-00963 constituted wilful violations of rule 1-110 of the Rules of Professional Conduct and section 6103.

IV. AGGRAVATION AND MITIGATION

A. Aggravating Circumstances

In aggravation, respondent has a prior record of discipline. In State Bar Court Case No. 99-C-01275, respondent was found to have violated section 6068, subdivision (a), as a result of a second conviction for DUI. Respondent was publicly reproofed effective September 14, 2000.

The parties also stipulated in aggravation that respondent's misconduct: (1) was surrounded by other violations of the Rules of Professional Conduct or the State Bar Act; (2) significantly harmed the public or the administration of justice; and (3) evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. The parties also stipulated that respondent demonstrated indifference toward rectification of or atonement for the consequences of her misconduct by failing to comply with the conditions of a prior reproof, and that she displayed a lack of cooperation to the State Bar during disciplinary proceedings by failing to comply with discovery requests, forcing motions to compel.

B. Mitigating Circumstances

There are no mitigating circumstances in this matter.

V. DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

Standard 1.6(b) provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline.

In this case, the standards provide for the imposition of sanctions ranging from suspension to disbarment. (Standards 2.3, 2.6(a), 2.6(b) and 2.9.) In addition, standard 1.6(a) states, in pertinent part, “If two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by these standards for said acts, the sanction imposed shall be the more or most severe of the different applicable sanctions.” In this case, the most severe sanction is set forth in standard 2.3, which provides for actual suspension or disbarment for a violation of section 6106, “depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member’s acts within the practice of law.”

Furthermore, standard 1.7(a) requires that the court recommend greater discipline in this matter than that imposed in respondent’s prior disciplinary proceeding.

In this matter, respondent has stipulated that her conduct violated sections 6068, subdivision (a), 6103, 6106 and rule 1-110 of the Rules of Professional Conduct. No mitigating circumstances have been found; however, several aggravating circumstances have been identified.

In accordance with applicable Supreme Court case law, an attorney’s rehabilitation from alcoholism or other substance abuse problems can be accorded

significant mitigating weight if it is established that (1) the abuse was addictive in nature; (2) the abuse causally contributed to the misconduct; and (3) the attorney has undergone a meaningful and sustained period of rehabilitation. (*Harford v. State Bar* (1990) 52 Cal.3d 93, 101; *In re Billings* (1990) 50 Cal.3d 358, 367.

Respondent has a substance abuse problem which is addictive in nature, and there is a causal connection between the substance abuse problem and the misconduct found in the underlying criminal and disciplinary proceedings. However, as a result of respondent's termination from the ADP because of her termination from the LAP, and the fact that the LAP subsequently denied respondent reacceptance into the LAP, respondent is not found to have undergone a meaningful and sustained period of rehabilitation from her substance abuse problem. Accordingly, the court will not consider respondent's substance abuse problem as a mitigating circumstance in this matter.

In determining the degree of discipline to recommend in this matter, the court concludes that the most relevant cases to be considered are *In re Carr* (1988) 46 Cal.3d 1089 and *In the Matter of Carr* (Review Dept. 1991) 2 Cal State Bar Ct. Rptr. 244.

In *In re Carr, supra*, the Supreme Court placed the respondent attorney on probation for a period of five years, on conditions which included his actual suspension for a period of six months. He had been convicted in 1983 and 1984 of separate violations of Vehicle Code section 23152, subdivision (a). The attorney's 1984 conviction also involved a violation of his criminal probation relating to the 1983 conviction. The Supreme Court found that the attorney's convictions did not involve moral turpitude, but did involve other misconduct warranting discipline.

In *In the Matter of Carr, supra*, the Review Department considered a probation revocation proceeding against the same respondent attorney arising out of his violation of conditions attached to the disciplinary probation imposed following his earlier criminal convictions. As an aggravating factor, the State Bar Court concluded that respondent had also continued to use prohibited substances in violation of his criminal and disciplinary

probation. The Review Department revoked the respondent attorney's probation and imposed an actual suspension of two years.

The State Bar recommended that respondent be actually suspended from the practice of law for one year in the event that she was terminated from the ADP. In light of the stipulated facts and conclusions of law, the aggravating circumstances, the lack of mitigating circumstances, the applicable sanction standards and case law, the court concludes the State Bar's discipline recommendation is reasonable and appropriate in this matter. Accordingly, the court will recommend to the Supreme Court that the following discipline be imposed upon respondent.

VI. DISCIPLINE RECOMMENDATION

IT IS HEREBY RECOMMENDED that respondent **MONICA MARIE JIMENEZ** be suspended from the practice of law in the State of California for a period of three (3) years and until she shows proof satisfactory to the State Bar Court of her rehabilitation, present fitness to practice law and present learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct; that execution of such suspension be stayed, and that respondent be placed on probation for a period of five (5) years on the following conditions:

1. Respondent must be actually suspended from the practice of law for the first one (1) year of the period of probation;
2. During the period of probation, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;
3. Within ten (10) days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including her current office address and telephone or, if no office is maintained, the address to be used for State Bar

- purposes, respondent must report such change in writing to the Membership Records Office of the State Bar and to the Office of Probation;
4. Respondent must comply with all conditions of probation imposed in the underlying criminal matter (*People v. Monica Marie Jimenezberquist*, Orange County Superior Court Case No. SH00SM04328);
 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 she has complied with the State Bar Act, the Rules of Professional Conduct and all conditions of probation during the preceding calendar quarter. If the first report will cover less than thirty (30) days, that report must be submitted on the reporting due date for the next calendar quarter and must cover the extended period. In addition to all quarterly reports, respondent must submit a final report, containing the same information required by the quarterly reports. The final report must be submitted no earlier than twenty (20) days before the last day of the probation period and no later than the last day of the probation period;
 6. Respondent must abstain from the use of any alcoholic beverages and shall not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription;
 7. Respondent must attend at least eight (8) meetings per month of Alcoholics Anonymous. As a separate reporting requirement, respondent must provide the Office of Probation with satisfactory proof of her attendance during each month, on or before the tenth (10th) day of the following month, during the probation period;
 8. Respondent must select a licensed medical laboratory approved by the Office of Probation. Respondent must furnish to the laboratory such blood and/or urine samples as may be required to show that respondent has abstained from alcohol

- and/or drugs. The samples shall be furnished to the laboratory in such a manner as may be specified by the laboratory to ensure specimen integrity. Respondent must cause the laboratory to provide to the Office of Probation, at respondent's expense, a screening report on or before the tenth day of each month of the probation period, containing an analysis of respondent's blood and/or urine obtained not more than ten (10) days earlier.
9. Respondent must return any call from the Office of Probation concerning testing of respondent's blood or urine within twelve (12) hours. For good cause, the Office of Probation may require respondent to deliver respondent's blood and/or urine sample(s) for additional reports to the laboratory no later than six (6) hours after actual notice to respondent that the Office of Probation requires an additional screening report;
 10. Upon the request of the Office of Probation, respondent must provide the Office of Probation with medical waivers and access to all of respondent's medical records. Revocation of any medical 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 these conditions;
 11. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully, any inquires of the Office of Probation which are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with these probation conditions;
 12. Within one (1) year after the effective date of the Supreme Court's final disciplinary order in this proceeding, respondent must provide to the Office of

- Probation satisfactory proof of her attendance at a session of State Bar Ethics School and of passage of the test given at the end of that session;
13. The period of probation will commence on the effective date of the Order of the Supreme Court imposing discipline in this proceeding;
 14. At the expiration of the period of this probation, if respondent has complied with all of the terms and conditions of probation, the Order of the Supreme Court suspending respondent from the practice of law for three (3) years and until she shows proof satisfactory to the State Bar Court of her rehabilitation, present fitness to practice law and present learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct will be satisfied and that suspension will be terminated.

It is also recommended that respondent be required to take and pass the Multistate Professional Responsibility Examination (“MPRE”) administered by the National Conference of Bar Examiners, and to provide proof of passage of the MPRE to the Office of Probation, within one (1) year after the effective date of the Supreme Court’s final disciplinary order in this proceeding. Failure to pass the MPRE and to provide proof of passage within the specified time will result in actual suspension by the State Bar Court Review Department, without further hearing, until respondent provides the required proof of passage of the MPRE.

It is further recommended that respondent be ordered to comply with rule 955, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule, within thirty (30) and forty (40) days, respectively, after the effective date of the Supreme Court order imposing discipline herein. **Wilful failure to comply with the provisions of rule 955 may result in revocation of probation; suspension; disbarment; denial of reinstatement; conviction of contempt; or criminal conviction.**

VII. 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.

VIII. ORDER FILING AND SEALING CERTAIN DOCUMENTS

The court orders the Clerk to file this Decision and Order Filing and Sealing Certain Documents. Thereafter, pursuant to rule 806(c) of the Rules of Procedure, all other documents not previously filed in this matter will be sealed pursuant to rule 23 of the Rules of Procedure.

IT IS SO ORDERED.

Dated: April 17, 2006

ROBERT M. TALCOTT
Judge of the State Bar Court