

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No. 00-O-13147-PEM
)	(01-O-00099; 01-O-00530;
PHYLLIS DIANNE-LASATER LOYA,)	01-O-01903; 01-O-04020;
)	01-O-04852; and 02-O-11361)
Member No. 111767,)	
)	DECISION AND ORDER SEALING
A Member of the State Bar.)	DOCUMENTS
)	
)	

I. Introduction

In this disciplinary proceeding, respondent **Phyllis Dianne-Lasater Loya** stipulated to multiple acts of professional misconduct involving six client matters, including: (1) failing to render an accounting; (2) failing to communicate; (3) failing to avoid interests adverse to a client; and (4) failing to perform competently.

Respondent has successfully completed the State Bar Court’s Alternative Discipline Program (ADP).¹ (Rules Proc. of State Bar, rules 800-807.) Accordingly, respondent is hereby publicly reprovved with conditions for one year.

¹ The ADP was formerly known as the State Bar Court’s Pilot Program for Respondents with Substance Abuse or Mental Health Issues and the State Bar Court’s Program for Respondents with Substance Abuse or Mental Health Issues.

II. Significant Procedural History

Before any filing of formal disciplinary charges by the Office of the Chief Trial Counsel of the State Bar of California (State Bar), respondent sought to participate in the State Bar's Lawyer Assistance Program (LAP) and the State Bar Court's ADP.

On January 10, 2003, respondent executed a Participation Agreement with the LAP.

Respondent submitted a declaration to the court which established that at the time of her misconduct, she was suffering from mental health issues. Respondent also executed a stipulation regarding facts and conclusions of law in this matter. Respondent's declaration and the stipulated facts, as well as the opinion of a medical professional, establish a causal connection between respondent's mental health issues and the misconduct found in this disciplinary proceeding. As such, the court found that respondent had adequately established a nexus between her mental health issues and her misconduct in this matter, i.e., that her mental health issues directly caused the misconduct set forth in this matter.

On April 10, 2006, the court lodged its Confidential Statement of Alternative Dispositions and Orders (April 2006 Statement), setting forth the recommended discipline if respondent successfully completed or was terminated from the court's ADP. On that same day, respondent entered into a Contract and Waiver for Participation in the State Bar Court's Alternative Discipline Program; the parties' stipulation was lodged with the court; and respondent was accepted as a participant in the ADP.

On August 14, 2008, the LAP issued a Certificate of Completion in the Lawyer Assistance Program (certificate), setting forth that respondent has complied with all of the requirements of the LAP Participation Agreement/Plan and that the certificate recognizes her successful completion of the program.

On October 22, 2008, the court found that respondent successfully completed the ADP and subsequently ordered the stipulation lodged April 10, 2006, be filed. The court also indicated that it would issue this decision imposing the lower level of discipline reflected in the April 2006 Statement.

III. Findings of Fact and Conclusions of Law

The Stipulation Re Facts and Conclusions of Law (stipulation) approved by the court and filed on October 22, 2008, are incorporated by reference as if set forth fully herein. The stipulation sets forth the factual findings, conclusions of law and certain aggravating and mitigating circumstances in this matter.

Pursuant to the stipulation, the court dismissed case No. 01-O-00530 without prejudice in the interests of justice.

Furthermore, at the time respondent engaged in the misconduct for which she has been found culpable, respondent was suffering from mental health issues which directly caused the misconduct in this proceeding. Supreme Court and Review Department case law establish that extreme emotional difficulties are a mitigating factor where expert testimony establishes that those 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 has been participating in the LAP since 2003 and has successfully completed the LAP and ADP. Respondent had satisfied all outstanding restitution obligations pursuant to the stipulation. Respondent's successful completion of the ADP and LAP, as well as the certificate, qualify as clear and convincing evidence that respondent no longer suffers from the mental health issues which led to her misconduct. Accordingly, it is appropriate to consider respondent's successful completion of the ADP and LAP as a further mitigating circumstance. (Standard 1.2(e)(iv).)

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.)

Before respondent was accepted for participation in the ADP, the State Bar submitted a brief to the court on the appropriate discipline in this matter. After reviewing the State Bar's brief and considering the standards and case law cited therein, the parties' stipulation setting forth the facts, conclusions of law and aggravating and mitigating circumstances with respect to these disciplinary proceedings and respondent's declarations regarding the nexus between her mental health issues and her misconduct in this matter, the parties were advised of the discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP and the discipline that would be recommended if respondent was terminated from the ADP. Respondent thereafter entered into a contract to participate in the ADP and was accepted for participation in the ADP.

Thereafter, respondent successfully participated in the ADP and, as set forth in the order filed on October 22, 2008, the court found that respondent successfully completed the ADP. Accordingly, the court will impose the lower level of discipline.

V. Disposition and Discipline

Therefore, respondent **Phyllis Dianne-Lasater Loya** is hereby publicly reprovved with the following conditions for one year:

1. During the reprovval period, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;
2. Within 10 days of any change in the information required to be maintained on the State Bar's membership records pursuant to Business and Professions Code section 6002.1, subdivision (a), including her current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report any such change in writing to the Membership Records Office of the State Bar and to the Office of Probation;
3. Respondent must submit written quarterly probation 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 he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions set forth in this Decision during the preceding calendar quarter. If the first report will cover less than 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 20 days before the last day of the probation and no later than the last day of said period;

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. 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 these probation conditions; and
6. Within one 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 Ethics School, given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015-2299, and passage of the test given at the end of that session. Arrangements to attend Ethics School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education Requirement (MCLE), and respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

Costs are awarded to the State Bar pursuant to Business and Professions Code section 6086.10, and enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

VI. Order Sealing Documents

The court orders this Order Sealing Documents be filed. Thereafter, pursuant to rule 806(c) of the Rules of Procedure, all other documents not previously filed in this matter will be sealed under 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 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: January _____, 2009

PAT McELROY
Judge of the State Bar Court