

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case Nos. 00-O-13808-PEM; 02-O-10066;
)	02-O-10552; 02-O-11173;
LELAND DALE STEPHENSON,)	02-O-15318; 03-O-00046;
)	03-O-03926; 04-O-11553
Member No. 37713,)	
)	DECISION AND ORDER SEALING
A Member of the State Bar.)	DOCUMENTS
)	
_____)	

I. Introduction

In this disciplinary proceeding, respondent **Leland Dale Stephenson** stipulated to 13 counts of misconduct in seven matters, including failing to perform services, failing to communicate with clients, failing to return unearned fees and files, failing to maintain client funds, engaging in the unauthorized practice of law, and failing to obey a court order.

In January 2005, this court accepted respondent as a participant in the State Bar Court's Alternative Discipline Program (ADP).¹ (Rules Proc. of State Bar, rules 800-807.)²

Respondent, however, has recently consented to his termination from the ADP because of allegations of additional misconduct which occurred after he was accepted into the ADP.

Accordingly, pursuant to rule 803 and in light of his admitted misconduct, the court hereby recommends that respondent be suspended from the practice of law for two years, that execution of the suspension be stayed, and that respondent be placed on probation for five years on conditions that include his actual suspension for one year and restitution.

¹This program is also known as the State Bar Court's Program for Respondents with Substance Abuse and Mental Health Issues and formerly known as the Pilot Program.

²References to rule are to the Rules of Procedure of the State Bar, unless otherwise stated.

II. Significant Procedural History

A. Respondent's Acceptance into the Alternative Discipline Program

On October 21, 2003, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed a Notice of Disciplinary Charges against respondent. Respondent filed a response.

On January 18, 2005, the court approved a stipulation as to facts and conclusions of law (Stipulation) submitted by the parties for purposes of respondent's participation in the ADP. (Rules Proc. of State Bar, rule 802(a).) At the same time, this court issued its Decision re Alternative Recommendations for Degree of Discipline (January 2005 decision), pursuant to rule 803(a). Following the execution of a Contract and Waiver for Participation in the State Bar Court's Program for Respondents with Substance Abuse or Mental Health Issues (Contract), this court accepted respondent into the ADP on January 18, 2005.

Respondent's eligibility and acceptance into the ADP was based on, among other things: 1) his participation in the LAP; 2) the stipulation as to facts and conclusions of law he entered with the State Bar; 3) the nexus evidence he provided; and 4) his agreement to accept the court's low and high levels of recommended discipline set forth in the January 2005 decision. (Rules Proc. of State Bar, rule 802.) The terms and conditions of participation were set forth in the Contract, which respondent signed on January 18, 2005.

Specifically, paragraph 12 of the Contract provides as follows:

Respondent acknowledges and agrees that any of the following could result in his termination from the State Bar Court Program: (a) positive urinalysis tests on multiple occasions; (b) missed treatment or group meetings; (c) allegations of additional misconduct which occurred after Respondent was accepted into the Program; or (d) failure to comply with the terms of this Contract.

B. Respondent's Termination from the Alternative Discipline Program

On July 9, 2007, the State Bar requested the court to terminate respondent from the ADP, or in the alternative, issue an order to show cause why respondent should not be terminated from the ADP. The State Bar alleged that respondent had violated certain conditions of his agreement with LAP and restitution requirements under the Contract. The State Bar also alleged that it received another complaint against respondent.

On July 30, 2007, the court held an in-person hearing on whether respondent should be

terminated from ADP. The hearing was continued to August 16, 2007. On August 15, 2007, respondent submitted his voluntary termination from the ADP. At the hearing, the State Bar was represented by Deputy Trial Counsel Cydney Batchelor and Donald Steedman. By special appearance, attorney Lindsay Slatter represented respondent.

By order filed August 21, 2007, the court terminated respondent from the ADP based upon his noncompliance with the conditions of the ADP in that there are allegations of additional misconduct which occurred after he was accepted into the ADP.

III. Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on January 11, 1966, and has been a member of the State Bar of California at all times relevant to this proceeding.

The Stipulation approved by the court and filed on August 21, 2007, is attached and incorporated by reference, as if set forth fully herein.

In summary, respondent admitted to a total of 13 violations of professional misconduct in seven matters. These violations included failing to perform services, failing to communicate with clients, failing to return unearned fees and files, failing to maintain client funds, engaging in the unauthorized practice of law, and failing to obey a court order.³

IV. Aggravation and Mitigation

The parties also stipulated to certain aggravating and mitigating factors. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2.)⁴

A. Aggravation

In aggravation, respondent stipulated that his misconduct evidenced multiple acts of wrongdoing in at least seven matters. Respondent also admitted that his misconduct caused significant harm to his clients. (Stds. 1.2(b)(ii), and (iv).)

³Specific violations were: rules 3-110(A), 3-700(D)(1) and 4-100(A) of the Rules of Professional Conduct and Business and Professions Code sections 6068, subdivisions (a) and (m), 6103, 6125 and 6126.

⁴All further references to standards are to this source.

B. Mitigation

In mitigation, the parties stipulated that respondent has no prior record of discipline in more than 38 years of practice before the commencement of his misconduct in 1999. (Std. 1.2(e)(i).)

Respondent demonstrated remorse and recognition of his wrongdoing. (Std. 1.2(e)(vii).)

Under standard 1.2(e)(iv), extreme emotional difficulties or physical disabilities suffered by the attorney at the time of the professional misconduct may be considered mitigating. The Supreme Court has held 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.) However, the Supreme Court also has held that, absent a finding of rehabilitation, emotional problems are not considered to be a mitigating factor. (*Kaplan v. State Bar* (1991) 52 Cal.3d 1067, 1072-1073; *In re Naney, supra*, 51 Cal.3d at p. 197.)

Here, in accepting respondent into the ADP, the court found that respondent had suffered from depression and alcoholism and that there was a sufficient connection between respondent's problems and the stipulated misconduct. (Rules Proc. of State Bar, rule 802(c).) Upon the recommendation of the State Bar's Lawyer Assistance Program (LAP), respondent also entered into a residential treatment. However, respondent's conduct before this court while participating in the ADP and his termination from that program prevent the court from making a finding that respondent has established his sustained rehabilitation by clear and convincing evidence. Therefore, the court will not give respondent any mitigation credit for his participation in the LAP or the ADP.

Furthermore, although the parties stipulated that respondent was candid and cooperative with the State Bar during its resolution of these matters, the mitigating force of this factor is dramatically reduced based on respondent's termination from the ADP. (Std. 1.2(e)(v).)

V. Degree of Discipline

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession and maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; standard 1.3.) Standard 1.6(b) provides that the specific discipline for a particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions.

The standards applicable to this proceeding are standards 2.2(b), 2.4(b), 2.6, and 2.10, which provide for reproof, suspension or disbarment, depending upon the gravity of the offenses and the harm to the clients. While the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

Citing to the standards and *Young v. State Bar* (1990) 50 Cal.3d 1204, the State Bar recommended a five-year probation and a two-year actual suspension and until he complies with standard 1.4(c)(ii) if respondent fails to complete the ADP.

Respondent, however, argued that, if he does not successfully complete the ADP, the period of actual suspension should be between six months and one year with a two-year stayed suspension and a two-year probation, citing *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071 in support of his argument. The court finds the attorney's misconduct in *Silva-Vidor* to be comparable to respondent's misconduct in the current proceeding.

In *Silva-Vidor*, the attorney's misconduct demonstrated a common pattern of misconduct involving client abandonment and misrepresentations, misappropriation of funds and other violations. The Supreme Court held that a two-year actual suspension was unnecessarily harsh given the significant mitigating circumstances and imposed a one-year actual suspension with a five-year stayed suspension and a five-year probation. Noting that most of her misconduct was confined to the period in which she was experiencing severe financial and emotional problems, that she had substantially improved her condition through counseling and that she had indicated a desire to make restitution, the court held this was a case in which personal problems may legitimately explain a

period of inattention to an attorney's law practice.

Here, respondent cited to depression and alcoholism as major contributing factors to his misconduct. Respondent was seeking and obtaining professional treatment and support to address his difficulties. However, since respondent has been terminated from the ADP, he is not entitled to any mitigating credit for his efforts since he has failed to establish his rehabilitation by clear and convincing evidence.

Moreover, it has long been held that "[r]estitution is fundamental to the goal of rehabilitation." (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1094.) Restitution is a method of protecting the public and rehabilitating errant attorneys because it forces an attorney to confront the harm caused by his misconduct in real, concrete terms. (*Id.* at p. 1093.)

Therefore, after considering the scope of respondent's acts of admitted misconduct, all of the mitigating and aggravating circumstances and the relevant case law, the court concludes that the imposition of a one-year actual suspension with appropriate conditions is warranted. In particular, as conditions of probation, the court is recommending that respondent be required to make restitution to his former clients.

VI. Recommendation

IT IS HEREBY RECOMMENDED that respondent **Leland Dale Stephenson** be suspended from the practice of law in the State of California for two years, that execution of such suspension be stayed and that respondent be placed on probation for five years on the following conditions:

1. Respondent must be actually suspended from the practice of law for the first year of the period of probation;
2. Respondent must make restitution to (a) David and Sharilee Cantal in the amount of \$1,000, plus 10 percent interest per annum from January 26, 1999 (or to the Client Security Fund to the extent of any payment from the fund to David and Sharilee Cantal, plus interest and costs, in accordance with Business and Professions Code section 6140.5); (b) Kirk and Dia Ringgold in the amount of \$7,565.47, plus 10 percent interest per annum from March 30, 2006, and in the amount of \$2,500, plus 10 percent interest per annum from July 1, 2002 (or

to the Client Security Fund to the extent of any payment from the fund to Kirk and Dia Ringgold, plus interest and costs, in accordance with Business and Professions Code section 6140.5); and (c) the Estate of Ichiro Yoshino⁵ and/or Yoshino Investment Corporation in the amount of \$87,306.22, plus 10 percent interest per annum from December 8, 2003 (or to the Client Security Fund to the extent of any payment from the fund to the Estate of Ichiro Yoshino and/or Yoshino Investment Corporation, plus interest and costs, in accordance with Business and Professions Code section 6140.5). Respondent must provide satisfactory proof of such restitution to the Office of Probation within the period of probation. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d);

3. Respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;
4. Within 10 calendar 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 his 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;
5. Respondent must submit written quarterly reports to the Office of Probation no later than 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 the conditions of probation 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

⁵Mr. Ichiro Yoshino passed away on July 15, 2006. Attorney Timothy V. Magill is counsel to Yoshino Investment Corporation.

information required by the quarterly reports. The final report must be submitted no earlier than 20 days before the last day of the probation period and no later than the last day of such period;

6. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully, any inquiries of the Office of Probation that are directed to him personally or in writing, relating to whether he is complying or has complied with these probation conditions;
7. Within one year of 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 his attendance at a session of State Bar Ethics School and of passage of the test given at the end of that session;
8. The period of probation will commence on the effective date of the final disciplinary order of the Supreme Court imposing discipline in this proceeding; and
9. 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 two years will be satisfied and that suspension will be terminated.

It is further recommended that respondent be ordered 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 year of the effective date of the Supreme Court's final disciplinary order in this proceeding. Failure to pass the MPRE, and to provide proof of such 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 also recommended that respondent be ordered to comply with the requirements of the California Rules of Court, rule 9.20, and that he be ordered to perform the acts specified in rule 9.20(a) and (c) within 30 and 40 calendar days, respectively, from the effective date of the Supreme Court's final disciplinary order in this proceeding. Failure to comply with rule 9.20 could result in disbarment. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Respondent is required to file a

rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

VII. 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.

VIII. Order Sealing Documents

In the course of determining respondent's eligibility for participation in the State Bar Court's Alternative Discipline Program, and while respondent was participating in the Program, various documents were submitted to the court for review under confidential cover, including reports and evaluations regarding respondent's recommended treatment for participation in the Lawyer Assistance Program. Pursuant to Business and Professions Code section 6234(a) and rule 806 of the Rules of Procedure of the State Bar of California, all information concerning the nature and extent of a respondent's treatment is absolutely confidential and is not to be disclosed to the public absent an express written waiver by the respondent.

In light of the foregoing,

IT IS HEREBY ORDERED that, pursuant to rules 23 and 806 of the Rules of Procedure of the State Bar of California, the following documents are to remain confidential and sealed:

1. All reports and evaluations by mental health professionals that were submitted to the court as part of respondent's participation in the Alternative Discipline Program;
2. All information concerning the nature and extent of respondent's treatment provided by the LAP, including, but not limited to, participation reports, application agreements and participation agreements; and
3. Contract and Waiver for Participation in the State Bar Court's Program for Respondents with Substance Abuse or Mental Health Issues.

IT IS FURTHER ORDERED that the foregoing 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.

Dated: September __, 2007

PAT McELROY
Judge of the State Bar Court