

JUL 26 2005

PUBLIC MATTER

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCOTHE STATE BAR COURT
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of

ANDREW K. ALGER,

Member No. 142838,

A Member of the State Bar.

Case Nos. 00-O-14612-JMR
02-N-10009ORDER DENYING, IN PART, AND
GRANTING, IN PART, MOTION FOR
RECONSIDERATION

On July 19, 2005, the Office of the Chief Trial Counsel of the State Bar (State Bar) filed a motion for reconsideration of the court's June 29, 2005 Decision and Order Sealing Documents (Decision) in the above-entitled matter. In particular, the State Bar requests that the court modify its Decision to recommend the following two additional probation conditions that were not reflected in the court's July 28, 2003 Decision Re Alternative Recommendations for Degree of Discipline: 1) abstinence from mood-altering substances; and 2) waivers to the State Bar Lawyer Assistance Program (LAP) and the State Bar Office of Probation.

1. Abstinence from Mood-Altering Substances

As set forth in the court's Decision, the court approved a Stipulation Re Facts and Conclusions of Law submitted by the parties for purposes of respondent's participation in the State Bar Court's Alternative Discipline Program on July 28, 2003. (Rules Proc. of State Bar, rule 802(a).) At the same time, this court issued its Decision Re Alternative Recommendations for Degree of Discipline pursuant to rule 803(a) of the Rules of Procedure of the State Bar. After considering the court's disciplinary recommendations, respondent elected to participate in the Alternative Discipline Program.



1 On May 9, 2005, this court found that respondent successfully completed the Alternative
2 Discipline Program. The court also indicated that it would issue a decision recommending the lower
3 level of discipline as reflected in the July 28, 2003 Decision Re Alternative Recommendations for
4 Degree of Discipline.

5 The July 28, 2003 Decision Re Alternative Recommendations for Degree of Discipline and
6 the court's June 29, 2005 Decision require as a condition of the three-year period of probation that:

7 Respondent must comply with all provision and conditions of his Participation
8 Agreement with the State Bar Lawyer Assistance Program as initially agreed to and
9 as the State Bar Lawyer Assistance Program may change or modify those conditions
thereafter.

10 Among other things, respondent's Participation Agreement with the LAP requires that he:

11 Abstain from the use of alcohol and all psychotropic drugs except those prescribed
12 for [him] by an approved physician in consultation with the Program. . . Provide
13 biological fluid samples as directed. Collections will be random and observed. The
laboratory analysis of these samples will be submitted to the Program.

14 Respondent has complied with his LAP Participation Agreement and abstained from the use
15 of alcohol and all psychotropic drugs for at least two years. For the next three years, respondent
16 must continue to comply with his LAP Participation Agreement and must remain abstinent. Thus,
17 as the court's Decision currently provides, as long as respondent complies with all the LAP
18 requirements, respondent would be in compliance with his probation condition.

19 However, under the State Bar's proposed probation condition, respondent could be in
20 violation of probation even if he was in full compliance with his LAP Participation Agreement. For
21 example, this could occur if respondent used alcohol on one occasion, self-reported his use to the
22 LAP, and the LAP recommended additional conditions of participation. Even if respondent
23 complied with all additional recommendations of the LAP, his use of alcohol would be considered
24 a probation violation and would subject him to further discipline. The court finds that it would be
25 fundamentally unfair to add any conditions of probation that were not part of the court's July 28,
26 2003 Decision Re Alternative Recommendations for Degree of Discipline at the time respondent
27 agreed to enter the program, especially when such conditions may subject respondent to further
28 discipline.

1 A relapse is always a possibility with any person in recovery. However, the LAP is designed
2 to adequately monitor and address any such incident while ensuring that the public is not
3 endangered. (Bus. & Prof. Code §6230.) If appropriate, respondent may be required to agree to
4 various practice restrictions or to stop practicing entirely. (Bus. & Prof. Code §6233.) As the court's
5 Decision currently provides, as long as respondent complies with all treatment and other
6 recommendations of the LAP, respondent would remain in compliance with his probation condition.

7 The court finds that the LAP condition as set forth in the Decision serves the purpose of
8 respondent's probation as it relates to his recovery program and adequately protects the public.
9 Accordingly, the State Bar's motion for reconsideration to add a probation condition regarding
10 abstinence is hereby **DENIED**.

11 **2. Waivers**

12 As part of respondent's participation in the Alternative Discipline Program he was required
13 to sign all appropriate waivers to allow the court and the Office of Probation to monitor his
14 compliance with the LAP. In light of the condition in the Decision that respondent must continue
15 to comply with the LAP and show compliance with the Office of Probation, it is clear that ongoing
16 waivers were anticipated and necessary. Accordingly, the court finds that the State Bar's motion for
17 reconsideration is more of a request for clarification and hereby **GRANTS** the motion as to that
18 request, and **ORDERS** that the June 29, 2005 Decision is modified as follows:

19 On page 12, paragraph 3, at line 15, a period is inserted after "thereafter" and the following
20 language is inserted immediately after the period:

21 "Respondent must provide the Office of Probation with all necessary waivers to
22 allow the Lawyer Assistance Program to report respondent's compliance with his
23 Participation Agreement to the Office of Probation. Revocation of any of these
24 waivers is a violation of this condition;"

25 **IT IS SO ORDERED.**

26
27 Dated: July 26, 2005

28

JOANN M. REMKE
Judge of the State Bar Court

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. 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 July 26, 2005, I deposited a true copy of the following document(s):

ORDER DENYING, IN PART, AND GRANTING, IN PART, MOTION FOR RECONSIDERATION

in a sealed envelope for collection and mailing on that date as follows:

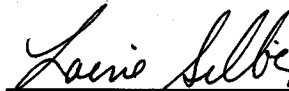
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

ANDREW K. ALGER
P O BOX 234
BODEGA BAY CA 94923

- [X] by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

CYDNEY BATCHELOR, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **July 26, 2005.**



Laine Silber
Case Administrator
State Bar Court