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JUN 29 2005

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO



PUBLIC MATTER

**THE 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-10009**

**DECISION AND ORDER SEALING
DOCUMENTS**

I. INTRODUCTION

This disciplinary proceeding arises out of respondent Andrew K. Alger's (respondent) unauthorized practice of law and his failure to timely file a declaration in compliance with rule 955 of the California Rules of Court.

After respondent reached a stipulation as to facts and conclusions of law with the Office of the Chief Trial Counsel of the State Bar of California (State Bar), this court approved the stipulation and accepted respondent as a participant in the State Bar Court's Alternative Discipline Program.¹ (Rules Proc. of State Bar, rules 800-807.)

As set forth below in greater detail, respondent has successfully completed the Alternative Discipline Program. Accordingly, pursuant to rule 803 of the Rules of Procedure of the State Bar of California, the court hereby recommends that respondent be suspended from the practice of law for two years and until he shows proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice 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 be

¹Also known as the State Bar Court's Program for Respondents with Substance Abuse and Mental Health Issues.

1 stayed, and that respondent be placed on probation for three years with conditions including an actual
2 suspension for nine months, with credit towards the period of actual suspension given for the period
3 of his involuntary inactive enrollment.

4 **II. SIGNIFICANT PROCEDURAL HISTORY**

5 On May 23, 2002, the State Bar filed an amended notice of disciplinary charges in State Bar
6 Court case No. 02-N-10009. On August 21, 2002, respondent's default was entered based on his
7 failure to file a timely response.

8 On September 10, 2002, respondent filed a motion for relief from default and his proposed
9 response. In his moving papers, respondent stated that one of the reasons he had difficulty in
10 responding in the disciplinary proceedings was that he had been suffering from mental health and
11 substance abuse problems that impacted his ability to perform his duties and responsibilities to the
12 State Bar. Respondent asked for any assistance the State Bar may have to offer him regarding his
13 mental health and substance abuse problems. On September 20, 2002, the court granted
14 Respondent's motion to set aside the default, ordered that his proposed response be filed and set a
15 status conference for October 28, 2002.

16 At the October 28, 2002 status conference, based on respondent's statements in his response
17 and his representation that he was seeking to participate in the State Bar Lawyer Assistance Program
18 (LAP),² the court ordered the case to be reassigned to the court's Alternative Discipline Program to
19 evaluate whether respondent met the requirements for participation in the program. (Rules Proc. of
20 State Bar, rule 801(b).)

21 On February 18, 2003, after an extensive evaluation process, respondent entered into a five-
22 year participation agreement with the LAP to assist in his recovery process.

23 Meanwhile, respondent and the State Bar negotiated a stipulation as to facts and conclusions
24 of law in the pending disciplinary matter as required for respondent's participation in the Alternative
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26 ²The State Bar implemented the LAP pursuant to Business and Professions Code sections 6230-
27 6238. The LAP offers support and structure to attorneys recovering from substance abuse and mental
28 health problems. Experts provide consultations regarding rehabilitation and private support groups are
offered to attorneys in the program.

1 Discipline Program. (Rules Proc. of State Bar, rule 802(a).) As part of the negotiations, the parties
2 discussed stipulating to respondent's transfer to involuntary inactive enrollment pursuant to Business
3 and Professions Code section 6007(b)(3), and rules 420-429 of the Rules of Procedure of the State
4 Bar. Thus, on April 30, 2003, the court issued an order appointing counsel, Doron Weinberg, to
5 represent respondent for purposes of any stipulation for involuntary inactive enrollment. On July
6 28, 2003, the court approved a stipulation for involuntary inactive enrollment pursuant to Business
7 and Professions Code section 6007(b)(3). (State Bar Court Case No. 03-TT-01720.)³

8 On July 28, 2003, the court also approved a Stipulation Re Facts and Conclusions of Law
9 submitted by the parties for purposes of Respondent's participation in the State Bar Court's
10 Alternative Discipline Program.⁴ (Rules Proc. of State Bar, rule 802(a).) At the same time, this
11 court issued its Decision Re Alternative Recommendations for Degree of Discipline pursuant to rule
12 803(a) of the Rules of Procedure of the State Bar. After considering the court's disciplinary
13 recommendations, respondent elected to participate in the Alternative Discipline Program.
14 Following the execution of a Contract and Waiver for Participation, this court accepted respondent
15 into the Alternative Discipline Program on July 28, 2003.

16 Over 21 months later, on May 9, 2005, this court found that respondent successfully
17 completed the Alternative Discipline Program and ordered that the Stipulation Re Facts and
18 Conclusions of Law be filed. (See further discussion, *post.*) The court indicated that it would issue
19 this decision recommending the lower level of discipline reflected in the July 28, 2003 Decision Re
20 Alternative Recommendations for Degree of Discipline.

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24 ³Respondent was encouraged to stipulate to his involuntary inactive enrollment in order to focus
25 on his recovery program with the LAP. In addition, it was the intention of the parties that respondent
26 receive credit for the period of his involuntary inactive enrollment towards any period of actual
27 suspension received as part of this disciplinary proceeding. After a sustained period of recovery,
28 respondent was relieved from this involuntary inactive enrollment on May 7, 2004. (State Bar Court case
No. 04-ZT-11776.)

⁴The stipulation included an investigation matter that had not yet been filed, State Bar Court case
No. 00-O-14612.

II. FACTS AND CONCLUSIONS OF LAW

The Stipulation Re Facts and Conclusions of Law approved by the court and filed on May 9, 2005, is incorporated by reference as if set forth fully herein.

A. State Bar Court Case No. 00-O-14612

Respondent's license to practice law was placed on involuntary inactive status when his default was entered in State Bar Court case No. 97-O-15733-EEB, effective October 8, 2000 (the default order). Respondent received actual notice of the default order on or about October 12, 2000. However, on October 18, 2000, Respondent appeared at a status conference in the Yolo county Superior Court case entitled *People v. Jennifer Lopez*. Later that same day, respondent also represented defendant Lopez at her preliminary hearing in the same case. Respondent failed to inform the court of his inactive status.

Respondent held himself out as entitled to practice law and practiced law when he was not an active member of the State Bar, contrary to Business and Professions Code sections 6125 and 6126,⁵ in wilful violation of section 6068(a).

B. State Bar Court Case No. 02-N-10009

On October 2, 2001, in Supreme Court case No. S099328, the Supreme Court ordered respondent to comply with rule 955(a) and (c) of the California Rules of Court within 30 and 40 days respectively. The order became effective on November 2, 2001, and respondent received actual notice of the Supreme Court order. Respondent did not file a rule 955 affidavit by December 12, 2001, as ordered. Respondent eventually filed a rule 955 affidavit on September 10, 2002, after the notice of disciplinary charges was filed in this proceeding.

By not filing a rule 955 affidavit of compliance in a timely fashion as ordered by the Supreme Court, respondent wilfully failed to comply with a court order in violation of section 6103.

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⁵Unless otherwise noted, all further references to section are to the Business and Professions Code.

III. AGGRAVATION AND MITIGATION

A. Aggravation

Respondent has three prior records of discipline, a serious aggravating circumstance. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(b)(i) (all further references to standards are to this source).)

1. State Bar Court Case Nos. 96-O-07821 and 96-O-08066.

Respondent was publicly reprimanded, effective July 24, 1998. In two client matters, respondent stipulated to two violations of rule 3-110(A) of the Rules of Professional conduct, two violations of section 6068(i) and one violation of section 6068(m). Respondent also was ordered to make restitution to both clients within 90 days from the effective date of discipline. The misconduct in these matters occurred in 1996 and 1997.

2. Supreme Court Case No. S096365 (State Bar Court Case Nos. 97-O-15733; 97-O-18414).

Pursuant to Supreme Court order, effective July 13, 2001, respondent was suspended for two years, execution stayed, and he was actually suspended for six months and until he made specified restitution and until the State Bar Court granted a motion pursuant to rule 205 of the Rules of Procedure.⁶ Respondent also was ordered to comply with rule 955 of the California Rules of Court. In a default proceeding, respondent was found culpable in two client matters of two violations of rule 3-110(A) of the Rules of Professional Conduct, two violations of section 6068(m), and one violation each of rule 3-700(A)(2) of the Rules of Professional Conduct, sections 6103 and 6068(o)(3). The misconduct in these matters also occurred in 1996 and 1997.

3. Supreme Court Case No. S099328 (State Bar Court Case No. 00-H-13538).

Pursuant to Supreme Court order, effective November 2, 2001, respondent was suspended for three years, execution stayed, and he was actually suspended for one year and until he made specified restitution and until the State Bar Court granted a motion pursuant to rule 205 of the Rules of Procedure. Respondent also was ordered to comply with rule 955 of the California Rules of

⁶On July 1, 2003, pursuant to respondent's rule 205 motion, the court terminated respondent's actual suspension pursuant to the Supreme Court order in case No. S096365.

1 Court. In this default proceeding, respondent was found culpable of failing to comply with the
2 conditions attached to his public reproof, including failing to pay the specified restitution as ordered
3 in 1998.⁷

4 The parties stipulated that respondent's current misconduct evidences multiple acts of
5 wrongdoing. (Standard 1.2(b)(ii).)

6 **B. Mitigation**

7 In mitigation, the parties stipulated that Respondent has paid all restitution ordered in the
8 prior disciplinary cases.

9 In addition, in accordance with applicable Supreme Court case law, an attorney's
10 rehabilitation from substance abuse problems can be accorded significant mitigating weight if it is
11 established that (1) the abuse was addictive in nature; (2) the abuse causally contributed to the
12 misconduct; and (3) the attorney has undergone a meaningful and sustained period of rehabilitation.
13 (*Hartford v. State Bar* (1990) 52 Cal.3d 93, 101; *In re Billings* (1990) 50 Cal.3d 358, 367.) The
14 court finds by clear and convincing evidence that respondent has satisfied all three conditions
15 necessary to receive significant mitigating weight for his recovery efforts.

16 Respondent's participation in LAP, his LAP Participation Agreement, his response to the
17 amended notice of disciplinary charges, his declaration dated February 18, 2003 in support of his
18 participation in the court's Alternative Discipline Program, and the letter from Wayne C. Thurston,
19 Psy. D., dated January 31, 2003, establish that Respondent had a substance abuse problem starting
20 in April 1998, involving an addiction to methamphetamine.

21 The court finds that there is a causal connection between respondent's substance abuse and
22 his failure to timely comply with rule 955 of the California Rules of Court and his other misconduct.
23 During the entire period of respondent's misconduct, October 2000 through December 2001,
24 respondent was using methamphetamine on an almost daily basis. During these periods of heavy
25 usage, respondent experienced a variety of symptoms ranging from periods of anxiety to episodes
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27 ⁷On August 22, 2003, pursuant to respondent's rule 205 motion, the court terminated
28 respondent's actual suspension pursuant to the Supreme Court order in case No. S099328. Among other
things, the parties stipulated that respondent had satisfied all outstanding restitution orders.

1 where he experienced auditory hallucinations. Respondent's addiction impacted his ability to fully
2 meet the day-to-day responsibilities of life, including his obligations as an attorney. Thus, the first
3 two prongs of the three-part test established by the Supreme Court have been met.

4 Respondent stopped using methamphetamine and all other drugs in April 2002. Respondent
5 began participation in the LAP in October 2002. On February 18, 2003, he entered into a five-year
6 Participation Agreement with the LAP to assist in his recovery process. Since entering the LAP,
7 respondent has been in full compliance with all the LAP requirements. His participation
8 requirements include successfully completing a three-month intensive outpatient treatment program
9 for substance abuse; attending weekly LAP group meetings; attending required AA/NA meetings;
10 and submitting to random drug testing.

11 On July 28, 2003, respondent was accepted into the State Bar Court's Alternative Discipline
12 Program. As part of his participation, respondent appeared at regular status conferences before the
13 court and waived confidentiality to allow the court to monitor his progress in the LAP.

14 On May 5, 2005, the LAP submitted to the court a Certificate of One Year Participation in
15 the Lawyer Assistance Program (Certificate) for respondent. (Rules Proc. of State Bar, rule 804.)
16 The Certificate confirmed that respondent complied with all drug testing requirements set forth in
17 his LAP Participation Agreement for at least one year and that no unauthorized substances were
18 detected. Although the Rules of Procedure of the State Bar of California require the LAP to certify
19 only one year of compliance with drug testing, the court finds, based on the participation reports
20 provided by the LAP, that respondent has complied with all drug testing requirements since the
21 testing system started in October 2003.

22 Based on his full compliance for 21 months with all terms and conditions of the LAP and the
23 court's program, this court found that respondent successfully completed the Alternative Discipline
24 Program on May 9, 2005. Respondent's successful completion of the Program qualifies as the
25 "meaningful and sustained period of rehabilitation" required by the Supreme Court's three-part test.
26 Accordingly, respondent's rehabilitation is accorded significant mitigating weight in determining
27 the appropriate level of discipline.

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IV. DEGREE OF DISCIPLINE

“The primary purposes of disciplinary proceedings conducted by the State Bar of California and of sanctions imposed . . . are the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession.” (*In re Morse* (1995) 11Cal.4th 184, 205, quoting standard 1.3.)

The standards for respondent’s misconduct provide a broad range of sanctions ranging from suspension to disbarment. (Standards 1.6(b)(ii), 1.7(b) and 2.6.) The standards “promote the consistent and uniform application of disciplinary measures,” and while they are entitled to great weight, they “are not binding.” (*In re Morse, supra*, 11Cal.4th at p. 205.) “[E]ach case must be resolved on its own particular facts and not by application of rigid standards.” (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 251.)

Standard 1.7(b) provides that if a member has a record of two prior impositions of discipline, the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate. Respondent has three prior records of discipline.

Standard 2.6 provides that violations of sections 6103, 6125 and 6126, shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline.

While disbarment is the often imposed sanction for a wilful violation of rule 955 of the California Rules of Court (rule 955), it is not always the necessary or most appropriate level of discipline. In fact, rule 955 states that the sanction for failing to comply with the rule “constitutes a cause for disbarment *or suspension*.” (Emphasis added.) In light of the range of discipline provided for under the standards and rule 955, the court looks to similar cases for guidance.

In *Durbin v. State Bar* (1979) 23 Cal.3d 461, the Supreme Court suspended an attorney who had failed to comply with rule 955 for a period of six months and until he filed the rule 955 compliance affidavit. The attorney asserted that he had given his clients oral notice of his suspension, gave them refunds and returned their files but was thereafter unable to file the compliance affidavit because he had not kept any records of the notifications he made to his clients. The Supreme Court held that the attorney’s failure to comply with the Court’s rule 955 order could

1 not be ignored but that, since he provided notice to his clients and simply failed to file the
2 compliance affidavit, the one year suspension recommended by the State Bar Court was too severe.

3 In *Shapiro v. State Bar* (1990) 51 Cal.3d 251, the attorney referred his clients to another law
4 firm prior to the Supreme Court's issuance of its suspension order. The partners of the other firm
5 met with the attorney's clients, informed them that the attorney would no longer be able to represent
6 them and offered to substitute as counsel if the clients so desired and, if not, to assist them in finding
7 other counsel. The attorney was present at these meetings. After the Supreme Court entered its
8 suspension order, the attorney consulted with his probation monitor and subsequently filed an
9 "affidavit" that was a quarterly probation report rather than a rule 955 compliance affidavit.
10 Subsequently, after being informed that his original notification to clients with improper, the attorney
11 sent letters to the clients notifying them of his suspension but failed to file a proper compliance
12 affidavit for approximately an additional three months. The Supreme Court actually suspended the
13 attorney for a period of one year, based not only upon the rule 955 violation, but also upon the
14 Court's conclusion that the attorney had failed to competently perform legal services and had
15 improperly withdrawn from employment in another matter.

16 Finally, in *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192, the State
17 Bar Court Review Department recommended an actual suspension of nine months for an attorney
18 who had attempted to file the rule 955 affidavit within two weeks of when it was due.⁸ The attorney
19 had two records of prior discipline and was ordered to comply with rule 955 in both priors. The
20 attorney filed the affidavit required by rule 955(c) in the first matter in a timely manner. The time
21 between the end of the attorney's actual suspension in the first matter and the beginning of the actual
22 suspension in the second matter, the attorney did not practice law and had no clients or counsel to
23 notify. (*Id.* at p. 200.) The attorney attempted to file the second affidavit about two weeks late, but
24 it was rejected because a rule 955 proceeding already was pending. The Review Department found
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26 ⁸The rule 955 proceeding was consolidated with a conviction referral and probation
27 violation matter. The conviction referral was dismissed, and the attorney was actually suspended
28 for two years for the probation violations. The Review Department recommended that the
discipline for the probations violations and the rule 955 violations run concurrently.

1 as mitigating circumstances, the attorney's recognition of wrongdoing demonstrated by his attempted
2 filing of the rule 955 affidavit; his efforts on behalf of physically handicapped persons; and the lack
3 of harm to clients. (*Id.* at p. 205.)

4 Furthermore, "[p]racticing law while suspended has resulted in a range of discipline from
5 suspension to disbarment, depending on the circumstances of the misconduct, including the nature
6 of any companion charges and the existence and gravity of prior disciplinary proceedings." (*In the*
7 *Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.) For example, in
8 *Chasteen v. State Bar of California* (1985) 40 Cal.3d 586, the Supreme Court ordered the attorney
9 suspended for five years, stayed, and placed the attorney on probation for five years with conditions,
10 including actual suspension for two months and supervised employment during the probationary
11 period. The attorney was found culpable of the unauthorized practice of law while suspended for
12 nonpayment of dues, failing to act competently, commingling and misappropriating funds. (*Id.* at
13 p. 592.) As a mitigating factor, the Supreme Court found that the "bulk" of the attorney's
14 misconduct was attributable to his long history of alcoholism, which the attorney was beginning to
15 come to terms with by participating in an ongoing treatment program. (*Id.* at p. 593.)

16 In the present case, Respondent was involuntarily enrolled as an inactive member of the State
17 Bar effective October 8, 2000, as a result of the entry of his default in State Bar Court case No. 97-O-
18 15733-EEB. However, just ten days after his default was entered, Respondent appeared in court.
19 Subsequently, in Supreme Court case No. S099328, the Supreme Court ordered Respondent to
20 comply with rule 955. The order became effective on November 2, 2001, and Respondent was
21 required to file a rule 955 affidavit by December 12, 2001. Respondent did not file his affidavit until
22 September 2002.

23 As set forth above, during the entire period of respondent's misconduct, October 2000
24 through December 2001, respondent was using methamphetamine on an almost daily basis.
25 Respondent's addiction impacted his ability to meet the day-to-day responsibilities of life, resulted
26 in poor judgment and contributed to his professional misconduct. Thus, the "bulk" of respondent's
27 misconduct was attributable to his addiction, which he has taken significant steps to address based
28 on a successful three-year recovery program.

1 Respondent has not used any drugs since April 2002. Moreover, he signed a LAP
2 Participation Agreement on February 18, 2003, and has been in full compliance with the program
3 since that date. As part of the recommended probation conditions in this matter, respondent will be
4 required to continue to comply with his LAP Participation Agreement for the remainder of his five-
5 year commitment to that program, i.e., until at least February 2008.

6 Respondent also successfully completed the court's Alternative Discipline Program after 21
7 months of participation. The program requires extensive monitoring by the court over a prolonged
8 period of time and provides the court with evidence that respondent has taken the steps necessary
9 to maintain his recovery as recommended by the LAP. In addition, while participating in the court's
10 Program, respondent took measures to maintain his learning and ability in the law, including
11 complying with the mandatory continuing legal education requirements of the State Bar; passing the
12 Multistate Professional Responsibility Examination in November 2003; and passing the State Bar
13 Ethics School in February 2004.

14 The court is satisfied that a less severe discipline than disbarment is warranted in this case.
15 Respondent's addiction to methamphetamine during the time of his misconduct, and his substantial
16 and successful efforts at recovery over the past three years, establish the most compelling mitigating
17 circumstances to recommend less than disbarment. (Standard 1.7(b).) Based on respondent's
18 participation in the Alternative Discipline Program and his commitment to his recovery, the court
19 is provided with substantial evidence that the purposes of the disciplinary system are being
20 adequately addressed in this case, i.e, the protection of the public, the courts and the legal profession;
21 the maintenance of high professional standards by attorneys; and the preservation of public
22 confidence in the legal profession. Therefore, upon consideration of the standards and the case law
23 set forth above, and the strong mitigating circumstances in this case, the court concludes that a nine-
24 month period of actual suspension, with credit for the period of time that respondent was on
25 involuntary inactive enrollment, is appropriate.

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1 information required by the quarterly reports. The final report must be submitted no earlier
2 than twenty (20) days before the last day of the probation period and no later than the last day
3 of said period;

4 6. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and
5 truthfully, any inquiries of the State Bar Office of Probation that are directed to respondent
6 personally or in writing, relating to whether respondent is complying or has complied with
7 these probation conditions;

8 7. The period of probation will commence on the effective date of the Order of the Supreme
9 Court imposing discipline in this proceeding;

10 8. At the expiration of the period of this probation, if respondent has complied with all the
11 terms and conditions of probation, the Order of the Supreme Court suspending respondent
12 from the practice of law for two (2) years will be satisfied and that suspension will be
13 terminated.

14 Pursuant to the Supreme Court order in Supreme Court Case No. S099328 (State Bar Court
15 Case No. 00-H-13538), effective November 2, 2001, respondent was ordered to take and pass the
16 Multistate Professional Responsibility Examination (MPRE) during the period of his actual
17 suspension. Respondent took and passed the examination in November 2003. As a result, it is
18 unnecessary to impose an additional MPRE requirement as part of the disposition of this proceeding.

19 In addition, in February 2004, respondent attended the State Bar Ethics School and passed
20 the test given at the end of that session. As a result, it is unnecessary to impose an additional Ethics
21 School requirement as part of the disposition of this proceeding.

22 Likewise, since respondent filed a compliance affidavit pursuant to rule 955(c) of the
23 California Rules of Court during this proceeding, and it is not recommended that respondent receive
24 any additional actual suspension time in light of the time he spent on involuntary inactive, it is *not*
25 recommended that he be required to comply with the requirements of rule 955 of the California
26 Rules of Court.

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VI. COSTS

It is further recommended that costs be awarded to the State Bar pursuant to section 6086.10 and that such costs be made payable in accordance with section 6140.7.

VII. ORDER SEALING DOCUMENTS

5 In the course of determining respondent's eligibility for participation in the State Bar Court's
6 Alternative Discipline Program, and while respondent was participating in the Program, various
7 documents were submitted to the court for review under confidential cover, including reports and
8 evaluations by mental health professionals. Pursuant to rule 806 of the Rules of Procedure of the
9 State Bar of California all information concerning the nature and extent of a respondent's treatment
10 is absolutely confidential and is not be disclosed to the public absent an express written waiver by
11 the respondent.

12 In order to maintain the confidentiality of the nature and extent of respondent's treatment,
13 the court finds that it is necessary to seal those documents that discuss respondent's substance abuse
14 and mental health issues.

15 In light of the foregoing,


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

- 18 1. All reports and evaluations by mental health professionals, including, but not limited to, the
19 letter from Wayne C. Thurston, Psy. D., dated January 31, 2003;
20 2. All information concerning the nature and extent of respondent's treatment provided by the
21 LAP, including, but not limited to, participation reports, application agreements and
22 participation agreements;
23 3. The Contract and Waiver for Participation in the State Bar Court's Pilot Program for
24 Respondent's with Substance Abuse or Mental Health Issues.

25 **IT IS FURTHER ORDERED** that the foregoing protected and sealed material will only be
26 disclosed to: (1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State
27 Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when
28 necessary for their official duties. Protected material will be marked and maintained by all

1 authorized individuals in a manner calculated to prevent improper disclosure. All persons to whom
2 protected material is disclosed will be given a copy of this order sealing the documents by the person
3 making the disclosure.
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7 Dated: June 29, 2005


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 June 29, 2005, I deposited a true copy of the following document(s):

DECISION AND ORDER SEALING DOCUMENTS, filed June 29, 2005

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND
ORDER APPROVING, filed May 9, 2005**

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

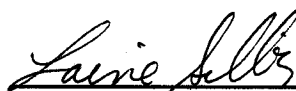
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

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

- ☒ 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 **June 29, 2005.**



Laine Silber
Case Administrator
State Bar Court

State Bar Court of the State Bar of California
Hearing Department: ☐ Los Angeles ☒ San Francisco
PILOT PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE AND MENTAL HEALTH ISSUES

Counsel for the State Bar Cydney Batchelor, #114637 State Bar of California 180 Howard St., 7th Fl. San Francisco, CA 94105 Tele: 415/538-2204	Case Number(s) <div style="text-align: center; font-size: 1.5em; font-weight: bold; margin: 10px 0;">CONFIDENTIAL</div> <div style="text-align: center;">02-N-10009-JMR 00-0-14612 [00-0-1397] FILED [filed] MAY 09 2005 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</div>	(for Court use) <div style="text-align: center; font-size: 1.5em; font-weight: bold; margin: 10px 0;">PUBLIC MATTER LODGED</div> <div style="text-align: center;">JUL 28 2003 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</div>
Counsel for Respondent Doron Weinberg, #46131 523 Octavia St. San Francisco, CA 94102 Tele: 415/431-3472	Submitted to Pilot Program Judge <div style="text-align: center; font-weight: bold; margin-top: 10px;">STIPULATION RE FACTS AND CONCLUSIONS OF LAW</div> <div style="text-align: center; margin-top: 20px;"><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</div>	
In the Matter of ANDREW K. ALGER Bar # 142838 A Member of the State Bar of California (Respondent)		

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted 12/11/89
(Date)
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, if Respondent is not accepted into the Lawyer Assistance Program, this stipulation will be rejected and will not be binding on Respondent or the State Bar.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." This stipulation consists of 9 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts".

See attachment.
- (5) Conclusions of law, drawn from and specifically referring to the facts, are also included under "Conclusions of Law."

See attachment.
- (6) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§ 6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

Note: All information required by this form and any additional information which cannot be provided in the space provided, shall be set forth in the text component (attachment) of this stipulation under specific headings, i.e., "Facts", "Dismissals", "Conclusions of Law."

B. Aggravating Circumstances (Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b).) Facts supporting aggravating circumstances are required.

(1) ☒ Prior Record of Discipline [see standard 1.2(f)]

(a) ☐ State Bar Court Case # of prior case See Attachment

(b) ☐ Date prior discipline effective _____

(c) ☐ Rules of Professional Conduct/State Bar Action violations _____

(d) ☐ Degree of prior discipline _____

(e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below or under "Prior Discipline"

(2) ☐ Dishonesty: Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.

(3) ☐ Trust violation: Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

(4) ☐ Harm: Respondent's misconduct harmed significantly a client, the public or the administration of justice.

(5) ☐ Indifference: Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

(6) ☐ Lack of Cooperation: Respondent displayed a lack of candor and cooperation to the victims of his/her misconduct or the State Bar during disciplinary investigation or proceedings.

(7) ☒ Multiple/Pattern of Misconduct: Respondent's current misconduct evidences multiple acts of wrong doing or demonstrates a pattern of misconduct.

(8) ☐ No aggravating circumstances are involved.

Additional aggravating circumstances:

None.

C. Mitigating Circumstances [standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) ☐ No Prior Discipline: Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ No Harm: Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☐ Candor/Cooperation: Respondent displayed spontaneous candor and cooperation to the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) ☐ Remorse: Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ Restitution: Respondent paid \$ _____ on _____ in restitution to _____ without the threat of force of disciplinary, civil or criminal proceedings.
- (6) ☐ Delay: These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ Good Faith: Respondent acted in good faith.
- (8) ☐ Emotional/Physical Difficulties: At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish were directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drugs or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) ☐ Severe Financial Stress: At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ Family Problems: At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ Good Character: Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ Rehabilitation: Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ No mitigating circumstances are involved.

Additional mitigating circumstances:

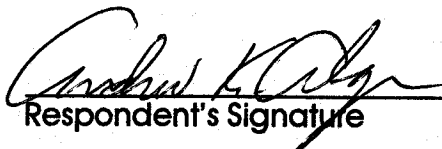
See Attachment

Respondent enters into this stipulation as a condition of his/her participation in the Pilot Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Pilot Program Contract.

If the Respondent is not accepted into the Pilot Program or does not sign the Pilot Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Pilot Program, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement Re: Discipline shall be imposed or recommended to the Supreme Court.

June 6, 2003
Date


Respondent's Signature


ANDREW K. ALGER
Print Name

July 9, 2003
Date


Respondent's Counsel Signature

DORON WEINBERG
Print Name

7/14/03
Date


Deputy Trial Counsel's Signature

CYDNEY BATCHELOR
Print Name

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: ANDREW K. ALGER
CASE NUMBER(S): 02-N-10009-JMR, ET AL.

DISMISSAL.

The State Bar hereby agrees to dismiss State Bar case number 00-O-13967 upon the execution date of this stipulation, in the interests of justice, with prejudice.

FACTS AND CONCLUSIONS OF LAW.

Case No. 00-O-14612-JMR

Facts: Respondent's license to practice law was placed on involuntary inactive status when his default was entered in State Bar case number 97-O-15733-EEB, effective October 8, 2000 ("the default order"). Respondent received actual notice of the default order on or about October 12, 2000.. However, on October 18, 2000, respondent appeared at a status conference in the Superior Court of Yolo County matter entitled *People v. Jennifer Lopez*, case number 00-4703. Later that same day, respondent also represented defendant Lopez at her preliminary hearing in the same case. Respondent failed to inform the Court (either Judge Johnson or Judge Mock) of his inactive status.

Conclusions of law: By willfully appearing in court and representing defendant Lopez, respondent held himself out as entitled to practice law and practiced law when he was not an active member of the State Bar, contrary to Business and Professions Code sections 6125 and 6126, in violation of Business and Professions Code section 6068(a).

AKA

Case no. 02-N-10009-JMR

Facts: On October 2, 2001, the California Supreme Court filed Order No. S099328, by which respondent was required to comply with rule 955(a) and (c) of the California Rules of Court within 30 and 40 days respectively ("the rule 955 order"). The rule 955 order became effective on November 2, 2001, and respondent received actual notice of the rule 955 order. Respondent did not file a rule 955 affidavit in a timely fashion, by December 12, 2001. However, Respondent did file a rule 955 affidavit on September 10, 2002, after the notice of disciplinary charges was filed in the captioned matter.

Conclusions of law: By not filing a declaration of compliance in a timely fashion, as he was ordered to do in the rule 955 order, respondent willfully failed to comply with a court order, in violation of Business and Professions Code section 6103.

NEXUS BETWEEN MISCONDUCT AND CHEMICAL DEPENDENCY.

If called as a witness, Respondent would testify as follows regarding the nexus between the misconduct set forth above and his chemical dependency: "I began to use methamphetamine in April 1998, and my use escalated to a daily basis by April 2000. I have totally abstained from the use of methamphetamine and all other drugs since April 2002."

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was May 7, 2003.

AGGRAVATING CIRCUMSTANCES.

PRIOR DISCIPLINE.

Case Nos. 96-O-7821 & 96-O-8066: Respondent was publicly reprovved, effective 7/24/98. Respondent stipulated to two violations of Rules of Professional Conduct 3-110(A), and violations of Business and Professions Code sections 6068(i) and 6068(m).

Case No. SO96365 (97-O-15733 & 97-O-18414): Respondent was placed on probation for two years, with two years stayed suspension and six months actual suspension, effective July

Alsa

13, 2001. Respondent's default was entered and he was found culpable of violations of Rules of Professional Conduct 3-110(A) and 3-700(A)(2), and Business and Professions Code sections 6068(m), 6068(o)(3), and 6103.

Case No. S099328 (00-H-13538): Respondent was placed on probation, with three years stayed suspension and one year actual suspension and until restitution was paid, effective November 2, 2001. Respondent's default was entered and he was found culpable of violations of Rule of Professional Conduct 1-110.

FACTS SUPPORTING OTHER AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Misconduct: The facts and conclusions of law stipulated to herein involve multiple acts of misconduct.

MITIGATING CIRCUMSTANCES.

Restitution: The State Bar has confirmed that Respondent has paid all restitution ordered in the prior disciplinary cases. Specifically, Respondent has paid: Tamarra Navarro (case no. S099328); Michael Brocco (case no. S099328); Judith Staples (S096365); and Mendocino County Superior Court (case no. S096365).

Lawyer's Assistance Program Participation: Respondent signed an application to be assessed by the Lawyer's Assistance Program, and fully cooperated with the assessment process. Respondent participated in an evaluation by a LAP-selected physician, and then met with the LAP Evaluation Committee to discuss full participation in the LAP treatment program. Respondent signed the participation agreement with LAP that memorializes his five-year commitment to that treatment program, on February 18, 2003.

STATE BAR ETHICS SCHOOL.

Respondent has agreed to attend State Bar Ethics School as part of this stipulation; therefore, he may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

A/K

OTHER CONDITIONS NEGOTIATED BY THE PARTIES.

No further action on criminal case: By criminal complaint dated November 10, 2001, in criminal case number 6443, respondent was charged with violating Business and Professions Code section 6126(b) [unauthorized practice of law after action by the State Bar]. On March 15, 2001, respondent pled guilty to a misdemeanor violation of that statute, and was placed on three years summary probation effective May 24, 2001. The facts and circumstances which gave rise to the criminal complaint are the same as those set forth below under case no. 00-O-14612 and stipulated to herein. Accordingly, the State Bar will not refer this conviction for further action pursuant to Business and Professions Code sections 6101 or 6102.

No further action on additional rule 955 requirement: Respondent was also ordered to comply with rule 955 of the Rules of Court in case number S096365, effective July 13, 2001. In consideration of the execution of this stipulation by the Respondent regarding his failure to file a rule 955 affidavit in a timely fashion in case number 02-N-10009, the State Bar will take no further action on any failure to comply with rule 955 in case number S096365.

COMPLIANCE WITH CONDITIONS OF PROBATION/PAROLE IN UNDERLYING CRIMINAL MATTER.

Respondent shall comply with all conditions of his probation in Yolo County case number case number 6443, due to expire on May 23, 2004, and shall so declare under penalty of perjury in conjunction with any quarterly report required to be filed with the Probation Unit.

AKA

ORDER

Finding this stipulation to be fair to the parties, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED ^{gmk} without prejudice, and:

- ☒ The stipulation as to facts and conclusions of law is APPROVED.
- ☐ The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; 2) this court modifies or further modifies the approved stipulation; or 3) Respondent is not accepted for participation in the Pilot Program or does not sign the Pilot Program Contract. (See rules 135(b) and 802(b), Rules of Procedure.)

The effective date of the disposition is the effective date of the Supreme Court order herein, normally 30 days after the file date of the Supreme Court Order. (See rule 953(a), California Rules of Court.)

Date

7/28/03

John M. Runkle
Judge of the State Bar Court