

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of)	Case No. 01-N-03976; 02-O-12186 (Cons).
)	
JOHN HENRY EDWARDS, III,)	DECISION AND ORDER FILING AND
)	SEALING CERTAIN DOCUMENTS
Member No. 52343,)	
)	
<u>A Member of the State Bar.</u>)	

INTRODUCTION/PERTINENT PROCEDURAL HISTORY

This consolidated disciplinary matter involving respondent John Henry Edwards, III (respondent) arises out of the following acts of misconduct: failing to comply with a Supreme Court order, committing an act of moral turpitude, intentionally and recklessly failing to perform legal services, failing to promptly respond to client status inquiries, and failing to promptly refund unearned fees.

After the 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 Alternative Discipline Program (ADP)¹.

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

In July 2002, respondent contacted the LAP to assist him with his mental health issues, and on September 11, 2002, respondent executed a Participation Agreement with the LAP.²

On November 8, 2002, respondent submitted a declaration to the court which established that at the time of his misconduct, respondent was suffering from mental health issues. The parties also submitted a stipulation regarding facts and conclusions of law in this matter which was received by the court on December 10, 2002. Respondent's declaration and the stipulated facts, as well as the opinion of a medical professional, establish a casual 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 his mental health issues and his misconduct in this matter, i.e., that his mental health issues directly caused the misconduct set forth in this matter.

After the State Bar submitted to the court its brief on the issue of discipline in this matter, the court lodged its Decision Re Alternative Recommendations for Degree of Discipline on December 18, 2003, 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 ADP; the parties' stipulation was lodged with the court; and respondent was accepted as a participant in the ADP.

The LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program dated January 24, 2007, which reflects that respondent has complied with the requirements set forth in the LAP Participation Agreement for at least one year prior to January 24, 2007, and that during this time period, respondent has maintained mental health and stability and has participated successfully in the LAP.

²In July 2003, respondent's Participation Agreement was amended.

On February 2, 2007, the court held a status conference in this matter. On February 8, 2007, the court issued a Status Conference Order which set forth that respondent has successfully completed the ADP. Thereafter, respondent sought to modify the recommended discipline in this matter. On May 10, 2007, the court issued a Status Conference Order denying respondent's request to modify the discipline recommendation and, on its own motion, consolidating Case No. 01-N-03976 and Case No. 02-O-12186. The order set forth that respondent has successfully completed the ADP, and that the court would prepare its decision and recommendation regarding the lower level of discipline.

Accordingly, the court now issues this decision recommending that the Supreme Court impose upon respondent the discipline set forth below in this decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court orders that the Case Administrator file the parties' Stipulation Re Facts and Conclusions of Law (stipulation) lodged on December 18, 2003, including the court's Order approving the stipulation. The parties' stipulation, including the court's order approving the stipulation is attached hereto and hereby incorporated by reference, as if fully set forth herein. The stipulation sets forth the factual findings, legal conclusions and certain aggravating and mitigating circumstances in this matter. However, in addition to the aggravating circumstances set forth in the stipulation, the court also finds as an aggravating circumstance that respondent's current conduct evidences multiple acts of misconduct. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(b)(ii) (standard).)

Furthermore, at the time respondent engaged in the misconduct for which he has been found culpable, respondent was suffering from mental health issues, and respondent's mental health issues 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 2002 and has successfully completed the ADP. Respondent's successful completion of the ADP, which required his successful participation in the LAP, as well as the Certificate of One Year Participation in the Lawyer Assistance Program from LAP, qualify as clear and convincing evidence that respondent no longer suffers from the mental health issues which led to his misconduct. Accordingly, it is appropriate to consider respondent's successful completion of the ADP as a further mitigating circumstance. (Standard 1.2(e)(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.)

Prior to respondent being 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 this consolidated disciplinary proceeding, and respondent's declaration regarding the nexus between his mental health issues and his 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 which 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 status conferences orders filed on February 8 and May 10, 2007, the court found that respondent successfully completed the ADP. Accordingly, the court will recommend to the Supreme Court the imposition of the discipline set forth in the court's Decision Re Alternative Recommendations for Degree of Discipline if respondent successfully completed the ADP.

RECOMMENDED DISCIPLINE

Therefore, **IT IS HEREBY RECOMMENDED** that respondent **JOHN HENRY EDWARDS, III** be suspended from the practice of law for a period of four (4) years and until he provides satisfactory proof to the State Bar Court of his 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 and until he makes the restitution set forth below, 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 year of the period of probation and until he provides satisfactory proof to the Office of Probation that he has made restitution to Maria Escalante in the amount of \$1,000, plus interest of 10% per annum from January 13, 2001. If the Client Security Fund (CSF) has already reimbursed Ms. Escalante for all or any portion of her loss, respondent must make restitution to CSF of the amount paid, plus interest and costs, in accordance with Business and Professions Code section 6140.5. Any restitution owed to the CSF is enforceable as provided in Business

- and Professions Code section 6140.5, subdivision (c) and (d). To the extent that respondent has paid any restitution prior to the effective date of the Supreme Court's final disciplinary order in this proceeding, respondent will be given credit for such payment(s) provided satisfactory proof of such is shown to the Office of Probation;
2. Respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;
 3. Within ten (10) calendar 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 his current office address and telephone number, respondent must report such change in writing to both the Office of Probation and to the Membership Records Office of the State Bar;
 4. Unless respondent has successfully completed the Lawyer Assistance Program (LAP), respondent must comply with all provisions and conditions of his Participation Agreement and must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent's participation in the LAP and his compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. If respondent has successfully completed the LAP, respondent must provide the Office of Probation with satisfactory certification of completion of the LAP;
 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 he 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) calendar days, that report must be submitted on the reporting 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) calendar days before the last day of the probation period and no later than the last day of the probation period;
6. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully, all inquiries of the Office of Probation which are directed to him personally or in writing, relating to whether respondent 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 the Office of Probation with satisfactory proof of his attendance at a session of State Bar Ethics School and of his passage of the test given at the end of that session, unless he provides or has provided the Office of Probation with satisfactory proof that he fully complied with the requirements of this condition during his period of participation in the court's Alternative Discipline Program;
 8. The period of probation will commence on the effective date of the Supreme Court's final disciplinary order in this proceeding.

In September 2003, respondent provided proof of passage of the Multistate Professional Responsibility Examination (MPRE) as part of his compliance with the Supreme Court's final disciplinary order in a prior disciplinary matter. In light of that fact, this court does not recommend that respondent be required to again take and pass the MPRE in connection with the current proceeding.

It is recommended that respondent be ordered to comply with the requirements of rule 9.20 (formerly rule 955) of the California Rules of Court, and that he be ordered to perform the acts specified in subdivisions (a) and (c) of that rule within thirty (30) and

forty (40) calendar days, respectively, from the effective date of the Supreme Court's final disciplinary order in this proceeding.

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.

ORDER FILING AND SEALING CERTAIN DOCUMENTS

The court orders the Case Administrator to file the parties' Stipulation Re Facts and Conclusions of Law lodged on December 18, 2003, including the court's order approving the stipulation, and this Decision and Order Filing and Sealing Certain Documents. Thereafter, pursuant to rule 806(c) of the Rules of Procedure of the State Bar of California (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: October 23, 2007

RICHARD A. PLATEL
Judge of the State Bar Court