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PUBLIC MATTER

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THE STATE BAR COURT

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of

DENISE D. MOOREHEAD,

Member No. 136369,

A Member of the State Bar.

Case Nos. 01-N-04179; 02-N-10881;
02-O-11339-JMR

**DECISION AND ORDER SEALING
DOCUMENTS**

I. INTRODUCTION

This disciplinary proceeding arises out of Respondent Denise D. Moorehead's (Respondent) failure to timely file two declarations in compliance with rule 955 of the California Rules of Court and her failure to comply with conditions of probation imposed in a prior disciplinary matter.

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, that execution be stayed, and that Respondent be placed on probation for two years with conditions including an actual suspension for six months, with credit towards the period of

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

1 actual suspension given for the period of involuntary inactive enrollment.

2 II. SIGNIFICANT PROCEDURAL HISTORY

3 This case involves three separate Notices of Disciplinary Charges: (1) State Bar Court case
4 number 01-N-04179 filed on January 12, 2002 (amended notice); (2) State Bar Court case number
5 02-N-10881 filed on March 18, 2002; and (3) State Bar Court case number 02-O-11334 filed on
6 March 19, 2002. Respondent filed a response on February 8, 2002 in case number 01-N-04179.
7 Thereafter, to avoid entry of her default in the other matters, Respondent entered into a stipulation
8 of facts on all three matters with the State Bar on April 15, 2002. On March 23, 2002, all three
9 matters were consolidated.

10 Shortly thereafter, Respondent expressed her desire to participate in the State Bar Lawyer
11 Assistance Program (LAP) to address her mental health problems and to participate in the State Bar
12 Court's Alternative Discipline Program. On October 9, 2002, after an extensive evaluation process,
13 Respondent entered into a five-year participation agreement with the LAP to assist in her recovery
14 process.

15 Based on Respondent's statements in her response filed on February 8, 2002, her evaluation
16 with LAP and others statements made during the proceeding, the court was concerned about
17 Respondent's then-existing mental state and her ability to competently represent herself in the
18 pending disciplinary proceeding. Accordingly, on October 11, 2002, the court issued an order to
19 show cause why Respondent should not be placed on involuntary inactive enrollment and appointed
20 Jonathan Arons to represent her in that proceeding. On March 7, 2003, the parties submitted and the
21 court approved a stipulation for inactive enrollment pursuant to Business and Professions Code
22 section 6007(b)(3). (State Bar Court Case No. 02-TT-14902.)²

23 On March 7, 2003, the court also approved a Stipulation Re Facts and Conclusions of Law
24

25 ²Respondent was encouraged to stipulate to her involuntary inactive enrollment in order
26 to focus on her treatment program with LAP. In addition, it was the intention of the parties that
27 Respondent receive credit for the period of her involuntary inactive enrollment towards any
28 period of actual suspension received as part of this disciplinary proceeding. After a sustained
period of recovery, Respondent was relieved from this involuntary inactive enrollment on
November 19, 2004. (State Bar Court Case No. 4-ZT-15329.)

1 submitted by the parties for purposes of Respondent's participation in the State Bar Court's
2 Alternative Discipline Program. (Rules Proc. of State Bar, rule 802(a).)

3 On the same date, this court issued its Decision Re Alternative Recommendations for Degree
4 of Discipline pursuant to rule 803(a) of the Rules of Procedure of the State Bar. After considering
5 the court's alternative disciplinary recommendations, Respondent elected to participate in the
6 Alternative Discipline Program. Following the execution of a Contract and Waiver for Participation,
7 this court accepted Respondent into the Alternative Discipline Program on March 7, 2003.

8 Two years later, on March 7, 2005, this court found that Respondent successfully completed
9 the Alternative Discipline Program and ordered that the Stipulation Re Facts and Conclusions of
10 Law be filed. The court indicated that it would issue this Decision recommending the lower level
11 of discipline reflected in the March 7, 2003 Decision Re Alternative Recommendations for Degree
12 of Discipline, as modified on December 22, 2004.

13 III. FACTS AND CONCLUSIONS OF LAW

14 The Stipulation Re Facts and Conclusions of Law approved by the court and filed on March
15 7, 2005, is hereby incorporated by reference, as if set forth fully herein.

16 A. State Bar Court Case No. 01-N-04179 - Rule 955 Violation

17 On July 26, 2001, in case number 097697 (State Bar Court case no. 00-O-10266), the
18 Supreme Court ordered that Respondent be suspended for two years and until she satisfied standard
19 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct, execution stayed, and
20 that she be actually suspended for one year and until she made specified restitution. In addition,
21 Respondent was ordered to comply with rule 955 of the California Rules of Court (hereinafter "rule
22 955") and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days,
23 respectively, after the effective date of the order.

24 On July 26, 2001, the Clerk of the Supreme Court of the State of California served upon
25 Respondent a copy of the Supreme Court order. On September 20, 2001, the Probation Unit of the
26 Office of the Chief Trial Counsel of the State Bar sent Respondent at her official membership
27 records address a copy of the Supreme Court order. The mail was returned with the stamped
28 notation, "Insufficient address."

1 Pursuant to the Supreme Court order, Respondent was required to comply with subdivision
2 (a) of rule 955 no later than September 24, 2001. Respondent was required to comply with
3 subdivision (c) of rule 955 by filing a declaration of compliance with the State Bar Court no later
4 than October 4, 2001.

5 Respondent filed her declaration in compliance with rule 955(c) on February 18, 2003.

6 By failing to timely file a declaration of compliance in accordance with rule 955 as required
7 by the July 26, 2001 Supreme Court order, Respondent violated rule 955 and a court order in wilful
8 violation of Business and Professions Code section 6103.

9 **B. State Bar Court Case No. 02-N-10881 - Rule 955 Violation**

10 On November 13, 2001, in case number 100601 (State Bar Court case no. 01-O-00235), the
11 Supreme Court ordered that Respondent be suspended for two years, execution stayed, and that she
12 be actually suspended for one year and until she satisfied standard 1.4(c)(ii) of the Standards for
13 Attorney Sanctions for Professional Misconduct. In addition, Respondent again was ordered to
14 comply with rule 955 and to perform the acts specified in subdivisions (a) and (c) of that rule within
15 30 and 40 days, respectively, after the effective date of the order.³

16 On November 13, 2001, the Clerk of the Supreme Court of the State of California served
17 upon Respondent a copy of the Supreme Court order. On December 26, 2001, the Probation Unit
18 of the Office of the Chief Trial Counsel of the State Bar sent Respondent at her official membership
19 records address a copy of the Supreme Court order. The mail was returned with the stamped
20 notation, "undeliverable as addressed, forwarding order expired."

21 Pursuant to the Supreme Court order, Respondent was required to comply with subdivision
22 (a) of rule 955 no later than January 12, 2002. Respondent was required to comply with subdivision
23 (c) of rule 955 by filing a declaration of compliance with the State Bar Court no later than January
24 22, 2002.

25 Respondent filed her declaration in compliance with rule 955(c) on February 18, 2003.

26
27 ³Respondent was ordered to comply with rule 955 again even though she would not have
28 been entitled to practice at any time since the effective date of the July 26, 2001 Supreme Court
order of suspension and order to comply with rule 955.

1 By failing to timely file a declaration of compliance in accordance with rule 955 as required
2 by the November 13, 2001 Supreme Court order, Respondent violated rule 955 and a court order in
3 wilful violation of Business and Professions Code section 6103.

4 C. **State Bar Court Case No. 02-O-11339**

5 On July 18, 2000, the Supreme Court filed a disciplinary order in case number S087905
6 (State Bar Court case nos. 95-O-15569, et al.). The Supreme Court order required Respondent to
7 comply with certain conditions of probation. Respondent failed to comply with the conditions of
8 her probation. In particular, she failed to file written quarterly probation reports on or after April 10,
9 2001, including quarterly statements from her treating psychologist or psychiatrist; failed to complete
10 State Bar Ethics School; and failed to timely notify the Probation Unit and the State Bar's
11 membership records office of changes in her current office or other address for State Bar purposes.

12 By failing to comply with the conditions of her probation, Respondent wilfully violated
13 Business and Professions Code section 6068(k).

14 **III. MITIGATION AND AGGRAVATION**

15 A. **Aggravation**

16 **1. Prior record of discipline**

17 Respondent has a record of discipline in three prior matters, a serious aggravating
18 circumstance. (Standard 1.2(b)(i), Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof.
19 Misconduct ("standard").)

20 On July 18, 2000, in Supreme Court case number S087905 (State Bar Court case nos. 95-O-
21 15569, 97-O-12913 & 98-O-03672), Respondent was ordered suspended for one year and until she
22 satisfied standard 1.4(c)(ii), execution stayed, and she was placed on three years probation subject
23 to conditions including restitution. Respondent stipulated to her misconduct in three client matters,
24 including her failure to competently perform legal services in two matters, failure to pay judicial
25 sanctions or to report those sanctions to the State Bar in one of those matters, improper withdrawal
26 from employment in one of the client matters and advancing facts prejudicial to the honor or
27 reputation of her client in a third matter. In mitigation, Respondent was suffering from depression
28 at the time of the misconduct.

1 On July 26, 2001, in Supreme Court case number S097697 (State Bar Court case no. 00-O-
2 10266), Respondent be suspended for two years and until she satisfied standard 1.4(c)(ii), execution
3 stayed, and she was actually suspended for one year and until she made specified restitution.
4 Respondent was found culpable in a default proceeding of failing to maintain her current address on
5 the membership records of the State Bar and of misconduct in one client matter, including failure
6 to competently perform legal services, failure to communicate with the client, improperly holding
7 herself out as entitled to practice law and failure to refund unearned fees.

8 Finally, in Supreme Court case number S100601 (State Bar Court case no. 01-O-00235),
9 Respondent was found culpable in a default proceeding of violating various conditions of probation
10 that were imposed in Supreme Court case number S087905, including some of the same conditions
11 that are also the subject of the current proceeding in State Bar Court case number 02-O-11339.⁴

12 **2. Multiple acts of wrongdoing**

13 Respondent's current misconduct evidences multiple acts of wrongdoing. (Standard
14 1.2(b)(ii).)

15 **3. Harm to the administration of justice**

16 The parties stipulated that Respondent's misconduct also harmed significantly the
17 administration of justice based on her failure to comply with court orders. (Standard 1.2(b)(iv).)

18 **B. Mitigation**

19 **1. Extraordinarily candid and cooperative**

20 In mitigation, Respondent was extraordinarily candid and cooperative with the State Bar
21 during the investigation and resolution of these matters. (Standard 1.2(e)(v).) Respondent readily
22 admitted her misconduct and signed a stipulation admitting her misconduct early on in the
23 proceeding.

24 **2. Recovery from extreme emotional difficulties**

25 Respondent was suffering from extreme emotional difficulties at the time of her misconduct

26
27 ⁴The time period addressed in the original matter regarding Respondent's probation
28 violations was from October 10, 2000 to January 10, 2001. The current violations regard the
subsequent time period.

1 which were directly responsible for the misconduct, and she has established through clear and
2 convincing evidence that she no longer suffers from such difficulties. (Standard 1.2(e)(iv).)

3 In particular, the reports of Dr. James R. Westphal, M.D. (dated July 25, 2002), Eileen M.
4 Creen, MFT (dated March 29, 2002) and Gerard A. Aglioni, Ph.D. (dated July 14, 1999) all establish
5 that at the time of her prior misconduct Respondent was suffering from severe, untreated clinical
6 depression. On October 9, 2002, recognizing the need to address her condition, Respondent entered
7 into a five-year participation agreement with LAP to assist in her recovery process. Her participation
8 requirements include attending a weekly LAP group meeting; attending a weekly Emotions
9 Anonymous meeting; participating in weekly psychotherapy sessions; complying with all medication
10 orders; submitting bi-annual LAP reports; and attending five annual hours of mental health
11 education. Since entering LAP, Respondent has been in full compliance with all LAP requirements.
12 On February 28, 2005, Respondent's psychotherapist submitted a declaration stating that Respondent
13 is mentally stable and has been so continuously for at least one year. (Rules Proc. of State Bar, rule
14 804.)

15 As set forth above, in addition to participating in LAP, Respondent was accepted into the
16 court's Alternative Discipline Program on March 7, 2003. Respondent's participation in this
17 program allowed the court to monitor Respondent's progress in LAP and her overall efforts at
18 addressing the problems that contributed to her misconduct. Respondent fully complied with all
19 terms and conditions of the program, including timely appearing for all court ordered events.
20 Respondent was an exemplary participant in the Alternative Discipline Program. Based on her
21 dedication and hard-work, the court found it appropriate to reduce the length of time that Respondent
22 was required to participate in the program from 36 months to 24 months. (Rules Proc. of State Bar,
23 rule 804.) Accordingly, on March 7, 2005, the court found that Respondent successfully completed
24 the Alternative Discipline Program.

25 Respondent is entitled to significant mitigating credit for her participation in LAP and her
26 successfully completion of the court's Alternative Discipline Program.

27 ///

28 ///

IV. LEVEL OF DISCIPLINE

The purpose of disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; Standard 1.3.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions.

Standard 1.7(a) provides that a greater degree of discipline shall be imposed in a current proceeding than was imposed in a prior disciplinary proceeding.

Disbarment is the generally imposed sanction for a wilful violation of rule 955. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131; *Powers v. State Bar* (1988) 44 Cal.3d 337, 342.) However, it is not always the necessary or most appropriate level of discipline.

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

In *Athearn v. State Bar* (1982) 32 Cal.3d 38, the Supreme Court also suspended the attorney for a period of six months and until he complied with the provisions of rule 955. In that case, the attorney filed a timely, but false affidavit of compliance with rule 955. The Court found that the attorney had not informed his clients of his suspension but, rather, had arranged to have most of his clients sign forms consenting to the substitution of the attorney's mother (who was also an attorney) in his place. None of the forms suggested that the reason for the substitution was the attorney's

1 suspension from practice. Moreover, in some cases, the attorney backdated the substitution forms
2 to falsely suggest that the substitution had occurred prior to the effective date of the attorney's
3 suspension. As previously indicated, despite the attorney's failure to comply with rule 955, the
4 Supreme Court imposed an actual suspension of six months and until the attorney fully complied
5 with rule 955.

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

19 Finally, in *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527,
20 the State Bar Court Review Department recommended an actual suspension of thirty days for an
21 attorney who had complied with the client notification requirements of rule 955(a) but was
22 approximately two weeks late in filing his rule 955(c) compliance affidavit.

23 In the present case, Respondent was involuntarily enrolled as an inactive member of the State
24 Bar effective December 23, 2000, as a result of the entry of her default in State Bar Court Case No.
25 00-O-10266. She was not entitled to practice law from that date until November 19, 2004. In her
26 declaration dated January 23, 2003, and filed in this matter, Respondent acknowledged that she
27 became aware of her inactive enrollment and consequent inability to practice law in December 2000.
28 She has not, in fact, practiced law since that date. The Supreme Court's first order imposing upon

1 Respondent a requirement of complying with rule 955 was filed on July 26, 2001, and became
2 effective on August 25, 2001. Since Respondent was not practicing law on July 26, 2001, she had
3 no clients, opposing counsel, courts or others to notify of her suspension. While this did not relieve
4 Respondent of the obligation to file a compliance affidavit pursuant to rule 955(c) (*Powers v. State*
5 *Bar, supra*, 44 Cal.3d at p. 341), as the above cases indicate, the failure to file the compliance
6 affidavit is often treated far differently from the failure to provide the required notification to clients.
7 Moreover, Respondent has now filed her affidavit of compliance pursuant to rule 955(c).

8 Supreme Court and Review Department case law establish that extreme emotional difficulties
9 are a mitigating factor where expert testimony establishes that those emotional difficulties were
10 directly responsible for the misconduct, provided that the attorney has also established, through clear
11 and convincing evidence, that he or she no longer suffers from such difficulties. (*Porter v. State Bar*
12 (1990) 52 Cal.3d 518, 527; *In re Naney* (1990) 51 Cal.3d 186, 197; *In re Lamb* (1989) 49 Cal.3d
13 239, 246; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 701-702.)

14 The expert reports provided to the court all establish that Respondent has suffered from
15 severe depression for many years and that her depression directly contributed to her failure to comply
16 with rule 955 and the conditions of her probation. In fact, it is clear from Dr. Aglioni's evaluation
17 and from the terms of the stipulation entered into by the parties in Supreme Court case number
18 S087905 (State Bar Court Case Nos. 95-O-15569, et al.), that Respondent's depression was directly
19 related to her misconduct in her first proceeding. It is obvious that Respondent's depression also was
20 directly related to the conduct which resulted in the second and third disciplinary proceedings against
21 her.

22 Respondent's successful completion of the Alternative Discipline Program, which required
23 her compliance with all provisions and conditions of her Participation Agreement with the Lawyer
24 Assistance Program, qualifies as clear and convincing evidence of her rehabilitation from her
25 emotional difficulties.

26 Therefore, upon consideration of the Supreme Court and Review Department precedent set
27 forth above, and the strong mitigating circumstances in this case, the court concludes that a six
28 month period of actual suspension, with credit for the period of time that Respondent was on

1 involuntary inactive enrollment, is appropriate.

2 **V. RECOMMENDATION**

3 **IT IS HEREBY RECOMMENDED** that Respondent **DENISE DAVIS MOOREHEAD**
4 be suspended two (2) years and until she shows proof satisfactory to the State Bar Court of her
5 rehabilitation, present fitness to practice and present learning and ability in the general law pursuant
6 to Standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct, that
7 execution of such suspension be stayed and that Respondent be placed on probation for a period of
8 two years on the following conditions:

- 9 1. Respondent must be actually suspended from the practice of law for a period of six months.
10 Credit toward the period of actual suspension will be given for the period of involuntary
11 inactive enrollment which commenced on March 7, 2003 and ended on November 19, 2004;
- 12 2. Respondent must pay restitution to Alameda Superior Court (or the Client Security Fund, if
13 appropriate) in the amount of \$1,000 and provide proof thereof to the Office of Probation of
14 the State Bar no later than the conclusion of her probationary period;
- 15 3. Respondent must comply with all provisions and conditions of her Participation Agreement
16 with the Lawyer Assistance Program;
- 17 4. During the period of probation, Respondent must comply with the provisions of the State Bar
18 Act and the Rules of Professional Conduct;
- 19 5. Within ten (10) days of any change in the information required to be maintained on the
20 membership records of the State Bar pursuant to Business and Professions Code section
21 6002.1, subdivision (a), including her current office address and telephone number, or if no
22 office is maintained, the address to be used for State Bar purposes, Respondent must report
23 such change in writing to the Membership Records Office of the State Bar and to the Office
24 of Probation;
- 25 6. Within thirty (30) days from the effective date of discipline, Respondent must contact the
26 Office of Probation and schedule a meeting with Respondent's assigned probation deputy
27 to discuss these terms and conditions of probation. Upon the direction of the Office of
28 Probation, Respondent must meet with the probation deputy either in-person or by telephone.

1 During the period of probation, Respondent must promptly meet with the probation deputy
2 as directed and upon request;

3 7. Respondent must submit written quarterly reports to the Office of Probation on each January
4 10, April 10, July 10 and October 10 of the period of probation. Under penalty of perjury,
5 Respondent must state whether she has complied with the State Bar Act, the Rules of
6 Professional Conduct, and all of these probation conditions during the preceding calendar
7 quarter. If the first report will cover less than thirty (30) days, that report must be submitted
8 on the reporting due date for the next calendar quarter and must cover the extended period.
9 In addition to all quarterly reports, Respondent must submit a final report, containing the
10 same information required by the quarterly reports. The final report must be submitted no
11 earlier than twenty (20) days before the last day of the probation period and no later than the
12 last day of said period;

13 8. Subject to the assertion of applicable privileges, Respondent must answer fully, promptly,
14 and truthfully, any inquiries of the Office of Probation that are directed to Respondent
15 personally or in writing, relating to whether Respondent is complying or has complied with
16 these probation conditions;

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

19 10. At the expiration of the period of this probation, if Respondent has complied with all the
20 terms and conditions of probation, the Order of the Supreme Court suspending Respondent
21 from the practice of law for two (2) years will be satisfied and that suspension will be
22 terminated.

23 Respondent took and passed the Multistate Professional Responsibility Examination (MPRE)
24 on August 13, 2004. As a result, it is unnecessary to impose an additional MPRE requirement as part
25 of the disposition of this proceeding.

26 Respondent also successfully completed the State Bar Ethics School within the prior two
27 years and therefore it is not recommended that she be required to complete the course again. (Rules
28 Proc. of State Bar, rule 290(a).)

1 Likewise, since Respondent filed a rule 955(c) compliance affidavit in this proceeding shortly
2 before the period of her involuntary inactive enrollment began, and since it is recommended that
3 Respondent receive credit for the period of her involuntary inactive enrollment and thereby not serve
4 any additional suspension time, it is not recommended that she be required to comply with the
5 requirements of rule 955 of the California Rules of Court.

6 Inasmuch as the State Bar has stipulated to waive disciplinary costs in this proceeding, it
7 is not recommended that costs be awarded to the State Bar pursuant to Business and Professions
8 Code section 6068.10.

9 VI. ORDER SEALING DOCUMENTS

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

17 In order to maintain the confidentiality of the nature and extent of Respondent's treatment,
18 the court finds that it is necessary to seal those documents that discuss Respondent's mental health
19 issues.

20 In light of the foregoing,

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

- 23 1. All reports and evaluations by mental health professionals, including, but not limited to, the
24 reports of Dr. James R. Westphal, M.D. (dated July 25, 2002), Eileen M. Creen, MFT (dated
25 March 29, 2002) and Gerard A. Aglioni, Ph.D. (dated July 14, 1999);
- 26 2. All information concerning the nature and extent of Respondent's treatment provided by the
27 Lawyer Assistance Program, including, but not limited to, participation reports, application
28 agreements and participation agreements;

1 3. All information concerning the nature and extent of Respondent's mental health problems
2 and treatment, including, but not limited to, Respondent's declaration dated January 23,
3 2003;

4 4. The Contract and Waiver for Participation in the State Bar Court's Pilot Program for
5 Respondent's with Substance Abuse or Mental Health Issues.

6 **IT IS FURTHER ORDERED** that the foregoing protected and sealed material will only be
7 disclosed to: (1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State
8 Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when
9 necessary for their official duties. Protected material will be marked and maintained by all
10 authorized individuals in a manner calculated to prevent improper disclosure. All persons to whom
11 protected material is disclosed will be given a copy of this order sealing the documents by the person
12 making the disclosure.

13
14
15
16 Dated: March 28, 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 March 28, 2005, I deposited a true copy of the following document(s):

DECISION AND ORDER SEALING DOCUMENTS

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:

**DENISE DAVIS MOOREHEAD
1630 TIMOTHY DR
SAN LEANDRO CA 94577**

- ☒ 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 March 28, 2005.



Laine Silber
Case Administrator
State Bar Court