

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

In the Matter of)
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)
JEFFERY KIRK RUBENSTEIN,)
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Member No. 167192,)
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)
)
A Member of the State Bar.)
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)

**Case No. 01-O-00175 [Investigation Case
Nos. 00-O-13863, 01-O-00209,
01-O-00505, 01-O-00664,
01-O-00783, 01-O-00863,
01-O-00910, 01-O-01347,
01-O-02920, 01-O-04535,
02-O-10536, 02-O-11575,
02-O-12544]**

**DECISION AND ORDER FILING
AND SEALING CERTAIN
DOCUMENTS**

INTRODUCTION

This disciplinary proceeding arises from the misconduct of respondent Jeffery Kirk Rubenstein (“respondent”) in thirteen client matters.

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”) which was approved by the court. Thereafter, respondent entered into a Contract and Wavier for Participation in the State Bar Court’s

Program for Respondents with Substance Abuse or Mental Health Issues (“ADP”),¹ and the court accepted respondent as a participant in the ADP. (Rules Proc. of State Bar, rules 800-807.)

As set forth below in greater detail, respondent has successfully completed the ADP. Accordingly, pursuant to rule 803 of the Rules of Procedure of the State Bar of California (“Rules of Procedure”), the court recommends that respondent be suspended from the practice of law for two 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, that execution of said suspension be stayed, and that respondent be placed on probation for three years on conditions including that respondent be actually suspended from the practice of law for the first 60 days of the period of probation, with credit towards the period of actual suspension to be given for the period of his inactive enrollment from August 20, 2001 through May 15, 2003.

SIGNIFICANT PROCEDURAL HISTORY

Respondent was enrolled as an inactive member of the State Bar from August 20, 2001 through May 15, 2003, pursuant to a stipulation entered into between respondent and the State Bar.

In July 2002, contacted the State Bar’s Lawyer Assistance Program (“LAP”) for assistance with his substance abuse and mental health issues.

On October 1, 2002, respondent executed a Participation Agreement with the LAP.

Effective May 16, 2003, respondent was transferred to active membership status and placed on interim remedies.

At an Early Neutral Evaluation Conference held on January 14, 2004, this matter was referred to the ADP.

On January 15, 2004, the State Bar filed a Notice of Disciplinary Charges (“NDC”) against respondent in Case No. 01-O-00175.

¹The State Bar Court’s Program for Respondents with Substance Abuse or Mental Health Issues (“Program”) is now known as the Alternative Discipline Program (“ADP”). The court will use ADP throughout this decision to refer to this program.

On March 26, 2004, respondent filed a response to the NDC.

On August 10, 2004, the court received the State Bar's brief regarding the appropriate discipline in this matter.

On August 20, 2004, the parties entered into a Stipulation Re Facts and Conclusions of Law. A few days later, the parties executed a Corrigendum [sic] to Stipulation Re: Facts and Conclusions of Law.

On August 27, 2004, respondent submitted a declaration establishing a nexus between his substance abuse and mental health issues and his misconduct in this matter. On September 17, 2005, respondent submitted a supplement to his declaration.

On September 16, 2004, respondent submitted his brief on the issue of the appropriate discipline in this matter.

On November 19, 2004, the court approved the parties' Stipulation Re Facts and Conclusions of Law, as corrected by the Corrigendum [sic] to Stipulation Re: Facts and Conclusions of Law, and the stipulation and the corrigendum were lodged with the court. The court also lodged its Alternative Recommendations for Degree of Discipline on November 19, 2004. On that same date, respondent and his counsel executed, and the court lodged, a Contract and Waiver for Participation in the State Bar Court's ADP, and respondent was accepted for participation in the ADP.

On June 23, 2005, respondent executed an amendment to his LAP Participation Plan.

The LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program dated July 5, 2006, certifying that respondent has complied with all drug testing requirements set forth in his LAP Participation Agreement/Plan for at least one year prior to July 5, 2006; that during this time period, no unauthorized substances were detected; and LAP is not aware of the use of any unauthorized substances by respondent for at least the year prior to July 5, 2006.

On November 27, 2006, respondent filed a request for early termination from the ADP.

At a status conference held on December 13, 2006, the court found that respondent has successfully completed the ADP.

Thereafter, pursuant to rule 804 of the Rules of Procedure, respondent submitted to the court a satisfactory recommendation from a mental health professional to support the finding that respondent has successfully completed the ADP, and this matter was submitted for decision.

FACTS AND CONCLUSIONS OF LAW

The Stipulation Re Facts and Conclusions of Law lodged with the court on November 19, 2004, is incorporated by reference as if set forth fully herein.

A. Jurisdiction

Respondent is a member of the State Bar of California, having been admitted on December 13, 1993.

B. Misconduct

Respondent admitted to misconduct in thirteen client matters. In eight client matters, respondent admitted to failing to competently perform the legal services for which he was retained in wilful violation of rule 3-110(A) of the Rules of Professional Conduct. In seven client matters, respondent admitted he failed to promptly refund unearned fees in wilful violation of rule 3-700(D)(2). In addition, respondent also admitted that he failed to notify the State Bar of the imposition of judicial sanctions against him in an amount in excess of \$1,000 in violation of Business and Professions Code section 6068, subdivision (o).

With one exception, all of respondent's misconduct occurred between February 2000 and May 2001, a period of approximately fifteen months. However, in the Raygor matter, respondent's misconduct commenced in March 1999 and continued until at least March 2000. Thus, considered in its totality, respondent's misconduct covered a period of more than two years (i.e., March 1999 to May 2001).

AGGRAVATION AND MITIGATION

A. Aggravating Circumstances

In aggravation, the parties stipulated that respondent's misconduct significantly harmed clients, the public or the administration of justice. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(b)(iv) ("standard").)

The parties also stipulated that respondent's misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. (Standard 1.2(b)(ii).)

B. Mitigating Circumstances

In mitigation, the parties stipulated that (a) respondent has no record of prior discipline (standard 1.2(e)(i));² (b) he displayed candor and cooperation to the victims of his misconduct and to the State Bar (standard 1.2(e)(v)); (c) he acted in good faith (standard 1.2(e)(ii)); and (d) his good character has been attested to by a wide range of references in the legal and general communities (standard 1.2(e)(vi)).

In addition, respondent was suffering from substance abuse and mental health problems at the time of his misconduct which were directly responsible for the misconduct, and he has established through clear and convincing evidence that he no longer suffers from such difficulties. (Standard 1.2(e)(iv).)

Respondent's Nexus Statement and the parties' Stipulation Re Facts and Conclusions of Law establish that at the time of his misconduct, respondent was suffering from substance abuse problems which were addictive in nature, as well as a mental health issue which expert testimony would establish was directly responsible for the misconduct in this matter. In addition, respondent's Nexus Statement and the stipulated facts also establish a causal connection between respondent's substance abuse and mental health problems and the misconduct found in this proceeding. The court therefore finds that respondent has adequately established a nexus between his substance abuse and mental health problems and his professional misconduct, i.e., that his substance abuse and mental health problems directly caused his professional misconduct.

Furthermore, respondent sought assistance from the LAP in July 2002 to assist him with his substance abuse and mental health problems. On October 1, 2002, respondent signed a long-term

²However, the weight to be accorded to respondent's lack of a prior record of discipline is drastically reduced by the fact that he was only admitted to practice for slightly more than five years prior to the commencement of his misconduct (i.e., December 1993 to March 1999). (See *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 66 [five years of discipline-free practice does not entitle an attorney to mitigating credit].)

participation agreement with the LAP. Since entering into the LAP, respondent has maintained compliance with the terms of his participation agreement.³ He has undergone regular random drug testing since July 2003, and since that time, a period of more than three years, no unauthorized substances have been detected. Furthermore, as is required for successful completion of the ADP pursuant to rule 804 of the Rules of Procedure, on July 5, 2006, the LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program establishing: (1) that respondent has complied with all drug testing requirements set forth in his LAP Participation Agreement/Plan for at least one year prior to July 5, 2006; (2) during this time period, no unauthorized substances were detected; and (3) the LAP is not aware of the use of any unauthorized substances during this period.

Furthermore, respondent has submitted a satisfactory recommendation from a mental health professional to support the finding that respondent has successfully completed the ADP

In addition to participating in the LAP, respondent was accepted into the court's ADP on November 19, 2004. Respondent's participation in the ADP allowed the court to monitor respondent's progress in the LAP and his overall efforts at addressing the problems that led to his misconduct. Respondent fully complied with all the terms and conditions of the ADP, including timely appearing for all court ordered events. Respondent was an exemplary participant in the ADP. Based on his dedication to his sobriety and his mental health stability, as well as his dedication to the ADP and the LAP, the court finds it appropriate to reduce the length of time that respondent is required to participate in the ADP. (Rules Proc. of State Bar, rule 804.) Accordingly, this court finds that respondent has successfully completed the ADP.

Respondent is entitled to significant mitigating credit for his participation in the LAP and his successful completion of the court's ADP.

DISCUSSION

³Although respondent missed one lab test on May 17, 2006, this appears merely to be the result of an inadvertent error by respondent. The court notes that despite this missed lab test, the LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program dated July 5, 2006, certifying that respondent has complied with all drug testing requirements set forth in his LAP Participation Agreement/Plan for at least one year prior to July 5, 2006.

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.)

Standard 2.4(b) provides that culpability of a member of wilfully failing to perform services must result in reproof or suspension, depending upon the degree of harm to the client and the extent of the misconduct. Respondent admitted to failing to competently perform the legal services for which he was retained in eight client matters.

Standard 2.6 provides that culpability of a member of, among other things, a violation of Business and Professions Code section 6068 must result in disbarment or suspension depending upon the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline. Respondent has admitted to his violation of section 6068, subdivision (o), as a result of his failure to notify the State Bar of the imposition of judicial sanctions against him in an amount in excess of \$1,000.

Standard 2.10 provides that culpability of a member of a violation of, among other things, any rule of professional conduct not specified in the standards must result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline. Respondent admitted that he failed to promptly refund unearned fees in seven client matters in wilful violation of rule 3-700(D)(2).

Standard 1.6(a) states, in pertinent part, "If two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by these standards for said acts, the sanction imposed shall be the more or most severe of the different applicable sanctions." As such, standard 2.6, which provides for suspension or disbarment is the applicable standard in this proceeding. Nevertheless, standard 1.6(b) provides that the specific discipline for the particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions.

Furthermore, the standards are only guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.)

“[E]ach case must be resolved on its own particular facts and not by application of rigid standards.”
(*Id.* at p. 251.)

In this matter, respondent admitted that he: (1) failed to competently perform the legal services for which he was retained in eight client matters; (2) failed to promptly refund unearned fees in seven client matters; and (3) failed to notify the State Bar of the imposition of judicial sanctions against him in an amount in excess of \$1,000. In aggravation, respondent’s misconduct significantly harmed clients, the public or the administration of justice, and respondent’s misconduct evidences multiple acts of wrongdoing. In mitigation, respondent has no record of prior discipline (although the weight to be accorded this mitigating circumstance is greatly reduced by his limited number of years in the practice of law); he displayed candor and cooperation to the victims of his misconduct and to the State Bar; he acted in good faith; and his good character has been attested to by a wide range of references in the legal and general communities. In addition, respondent was suffering from substance abuse and mental health problems at the time of his misconduct.

Supreme Court case law establishes that an attorney’s rehabilitation from alcoholism or other substance abuse problems can be accorded significant weight if it is established that (1) the abuse was addictive in nature; (2) the abuse causally contributed to the misconduct; and (3) the attorney has undergone a meaningful and sustained period of rehabilitation. (*Harford v. State Bar* (1990) 52 Cal.3d 93, 101; *In re Billings* (1990) 50 Cal.3d 358, 367.)

Similarly, 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.)

At the time respondent engaged in his professional misconduct, he was suffering from a mental health problem and substance abuse problems which were addictive in nature, and respondent's mental health and substance abuse problems directly caused the professional misconduct in this matter. Furthermore, respondent has been participating in the LAP since 2002, and the court finds that respondent has successfully completed the ADP. Respondent's successful completion of the ADP, which required his compliance with all terms and conditions set forth by the LAP, as well as the Certificate of One Year Participation in the Lawyer Assistance Program indicating that: (1) respondent has complied with all drug testing requirements set forth in his LAP Participation Agreement/Plan for at least one year prior to July 5, 2006; (2) during this time period, no unauthorized substances were detected; and (3) the LAP is not aware of the use of any unauthorized substances during this period, and the recommendation of his mental health professional, establish by clear and convincing evidence that respondent has undergone a meaningful and sustained period of rehabilitation (*Harford v. State Bar, supra*, 52 Cal.3d at p. 101; *In re Billings, supra*, 50 Cal.3d at p. 367) and that he no longer suffers from the mental health disorder which led to his misconduct. Thus, significant weight in mitigating is given for respondent's successful completion of the State Bar Court's ADP.⁴

The State Bar recommended that, if respondent successfully completes the State Bar Court's ADP, he should be suspended from the practice of law for a period of one year, the execution of the order of suspension should be stayed, and respondent should be placed on probation for a period of three years, on conditions which include his actual suspension for the first six months. Respondent recommended that if he successfully completes the State Bar Court ADP, he should be placed on three years of probation, with a stayed suspension and no period of actual suspension.

After consideration of this matter, the court finds that, given the nature and duration of the misconduct, as well as the aggravating and mitigating circumstances in this matter, in particular

⁴During respondent's participation in the ADP, he also paid over \$38,000 in restitution to the victims of his misconduct and complied with the sanction orders to the satisfaction of the State Bar and this court.

respondent's successful rehabilitation from his substance abuse problems and his mental health stability, as demonstrated by his successful completion of the court's ADP, the court finds that the appropriate discipline to recommend in this matter includes a period of actual suspension as recommended by the standards. However, the court also finds that, given the nature and extent of the mitigating circumstances in this matter and his full payment of restitution and satisfactory compliance with the sanction orders, only a short period of actual suspension is appropriate. Furthermore, the court recognizes that respondent stipulated to be enrolled as an inactive member of the State Bar and maintained such status from August 20, 2001 through May 15, 2003, a period of almost two years. Thus, the court believes, and the parties agree, that respondent should be given credit towards the period of actual suspension for the period of his inactive enrollment from August 20, 2001 through May 15, 2003.

RECOMMENDED DISCIPLINE

IT IS HEREBY RECOMMENDED that respondent **JEFFERY KIRK RUBENSTEIN** be suspended from the practice of law for a period of two 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, that execution of said suspension be stayed, and that respondent be placed on probation for a period of three years on the following conditions:

1. Respondent must be actually suspended from the practice of law for the first 60 days of the period of probation, with credit towards the period of actual suspension to be given for the period of his inactive enrollment from August 20, 2001 through May 15, 2003;
2. Respondent must comply with the provisions of the State Bar Act and of the Rules of Professional Conduct of the State Bar of California;
3. Within 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. Respondent must comply with all provisions and conditions of his Participation Agreement with the Lawyer Assistance Program (“LAP”) 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 with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition;
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 during which these probation conditions are in effect. 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 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 20 calendar days before the last day of the period of probation and no later than the last day of that 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 the conditions of his probation;
7. Within one year after 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 conclusion of that session;

8. These probation conditions will commence on the effective date of the Supreme Court's final disciplinary order in this proceeding.

The court recommends that respondent be required to take and pass the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, within one year after the effective date of the Supreme Court's final disciplinary order in this proceeding, and that he be ordered to provide satisfactory proof of his passage of the MPRE to the Office of Probation within that period.

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

Regarding the parties' Stipulation Re Facts and Conclusions of Law ("stipulation"), the court orders the Clerk to redact the last two sentences on page 5 of the stipulation (Attachment Page 1) under the heading "Respondent's substance abuse"⁵ and then file the parties' stipulation, as well as this Decision and Order Filing and Sealing Certain Documents. Thereafter, pursuant to rule 806(c) of the Rules of Procedure, all other documents not previously filed in this matter will be sealed pursuant to rule 23 of the Rules of Procedure.

Dated: March ____, 2007

RICHARD A. HONN
Judge of the State Bar Court

⁵The parties agreed to the redaction of this information at a status conference held on January 9, 2007.