

**FILED****FEB 04 2008** *m***STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES****PUBLIC MATTER****STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of	)	Case No. 01-O-00681; 01-O-04282;
	)	02-O-12999; 02-O-13575
<b>PAMELA A. MOZER,</b>	)	
	)	<b>DECISION AND ORDER FILING AND</b>
<b>Member No. 155893,</b>	)	<b>SEALING CERTAIN DOCUMENTS</b>
	)	
<u>A Member of the State Bar.</u>	)	

**INTRODUCTION/PERTINENT PROCEDURAL HISTORY**

This disciplinary matter involving respondent Pamela A. Mozer ("respondent") arises out of misconduct involving two client matters, as well as misconduct stemming from her partnership with two other attorneys and failing to timely report to the State Bar the entry of a judgment against her as to a fraud charge stemming from a lawsuit involving said partnership.

On July 21, 2003, respondent contacted the Lawyer Assistance Program ("LAP"), seeking to participate in the program ("LAP") to assist her with her mental health issues. On October 30, 2003, respondent executed a Participation Agreement with the LAP.

On August 1, 2003, the Office of the Chief Trial Counsel of the State Bar of California ("State Bar") filed formal disciplinary charges against respondent.

In August 2003, respondent sought to participate in the State Bar Court's Alternative Discipline Program ("ADP"),<sup>1</sup> and on August 26, 2003, the Honorable Alban I. Niles issued an order referring this matter to the ADP.

In March 2004 and January 2005, respondent submitted a declaration to the court which

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<sup>1</sup>The 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. The court will use ADP throughout this decision to refer to this program.

established that at the time of her misconduct, respondent was suffering from mental health issues.

On October 20, 2004, the State Bar submitted to the court its brief on the issue of the appropriate discipline in this matter.

In December 2004, the parties executed a Stipulation Re Facts and Conclusions of Law which was received by the court on December 17, 2004.<sup>2</sup> Respondent's declaration(s) 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. Thus, respondent has adequately established a nexus between her mental health issues and her misconduct in this matter, i.e., that her mental health issues directly caused the misconduct set forth in this matter.

On March 29, 2005, respondent submitted to the court her briefs on the issue of the appropriate discipline in this matter.

Thereafter, on July 11, 2005, the court lodged its Written Statement Regarding Discipline in ADP Matter Involving Respondent Pamela A. Mozer, setting forth the recommended discipline if respondent successfully completed or was terminated from or failed to successfully complete the court's ADP.

On July 15, 2005, 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 September 4, 2007, which reflects that respondent has complied with the requirements set forth in her LAP Participation Agreement for at least one year prior to September 4, 2007, and that during this time period, respondent has maintained mental health and stability and has participated successfully in the LAP.

On September 6, 2007, the court received respondent's declaration with respect to the

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<sup>2</sup>The court executed an Order modifying and approving the stipulation on May 18, 2005.

issue of her early completion of the ADP.

On September 20, 2007, the court filed an order setting forth that respondent would be involuntarily enrolled as an inactive member of the State Bar of California pursuant to Business and Professions Code section 6233 effective October 15, 2007, and until further order of the court.

On January 2, 2008, the court held a status conference in this matter. On that same date, the court filed an order setting forth that respondent has successfully completed the ADP. The court also filed a separate order on January 2, 2008, terminating respondent's involuntary inactive enrollment pursuant to Business and Professions Code section 6233 effective January 2, 2008.

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 a court Case Administrator file the parties' Stipulation Re Facts and Conclusions of Law lodged on July 15, 2005, including the court's Order modifying and 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.

At the time respondent engaged in the misconduct for which she 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 suffer 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 2003 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 her 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 and respondent submitted briefs to the court on the appropriate discipline in this matter. After reviewing the parties' briefs 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 disciplinary proceeding, and respondent's declaration(s) regarding the nexus between her mental health issues and her 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 or failed to successfully complete 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 the court's order filed on January 2, 2008, 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 Written Statement Regarding Discipline in ADP Matter Involving Respondent Pamela A. Mozer if respondent successfully completed the ADP.

### **RECOMMENDED DISCIPLINE**

**IT IS HEREBY RECOMMENDED** that respondent **PAMELA A. MOZER** be suspended from the practice of law in the State of California for a period of one (1) year, that execution of such suspension be stayed, and that respondent be placed on probation for a period of three (3) years on the following conditions:

1. Respondent must be actually suspended from the practice of law for the first seventy-five (75) days of the period of probation, with credit for the period of involuntary inactive enrollment pursuant to Business and Professions Code section 6233 which commenced on October 15, 2007 and was terminated on January 2, 2008;
2. Respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;
3. Within thirty (30) days from the effective date of discipline, respondent must contact the State Bar's Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request;
4. 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 respondent's 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;
5. Respondent must comply with all provisions and conditions of respondent's 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 respondent's compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition;

6. 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 in each report whether respondent 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 period of probation and no later than the last day of the probation period;
7. Respondent must fulfill all orders of the Ventura County Superior Court in *Lopez v. Birk*, Case No. SC028644/SC028450, except as may be excused or modified by order of the U.S. Bankruptcy Court. Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, respondent must provide the State Bar's Office of Probation with copies of all orders of the Ventura County Superior Court in *Lopez v. Birk*. Respondent must provide satisfactory proof to the Office of Probation of respondent's fulfillment of these orders or proof that any such orders were excused or modified by order of the U.S. Bankruptcy Court;
8. 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 respondent personally or in writing relating to whether respondent is complying or has complied with the conditions of respondent's probation;
9. Unless respondent has already done so during her period of participation in the ADP, within one year after the effective date of the discipline herein, respondent must provide the Office of Probation with satisfactory proof of respondent's attendance at a session of State Bar Ethics School, given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California,

90015, and passage of the test given at the conclusion of that session. Arrangements to attend Ethics School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education ("MCLE") requirement, and respondent will not receive MCLE credit for attending Ethics School (Rules Proc. of State Bar, rule 3201);

10. These probation conditions will commence on the effective date of the Supreme Court's final disciplinary order in this proceeding;
11. At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for one (1) year will be satisfied and that suspension will be terminated.

The court also recommends that, unless respondent has already done so during her period of participation in the ADP, respondent be required to take and pass the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, within one (1) year after the effective date of the Supreme Court's final disciplinary order in this proceeding and that respondent be ordered to provide satisfactory proof of passage of the MPRE to the Office of Probation within said year.

### **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 a court Case Administrator to file the parties' Stipulation Re Facts and Conclusions of Law, including the court's Order modifying and approving the stipulation, as well as 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 further ordered that protected and sealed material will only be disclosed to: (1) parties

to the proceeding and counsel; (2) personnel of the Supreme Court, the State Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosure. All persons to whom protected material is disclosed will be given a copy of this order sealing the documents by the person making the disclosure.

**IT IS SO ORDERED.**

Dated: February 1, 2008

A handwritten signature in black ink, appearing to read 'R. Honn', is written above a horizontal line.

RICHARD A. HONN  
Judge of the State Bar Court