

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

In the Matter of)	Case No. 01-O-02794 RAH,
)	02-O-13941 RAH, 03-O-01780 RAH
JOHN THOMAS LOGAN,)	[Investigation Matters 03-O-04232,
)	03-O-01042; 03-O-00061,
Member No. 66623,)	03-O-04382, 03-O-05070,
)	04-O-11104 & 04-O-11404]
A Member of the State Bar.)	
)	
_____)	DECISION AND ORDER FILING AND
)	SEALING CERTAIN DOCUMENTS

INTRODUCTION/PERTINENT PROCEDURAL HISTORY

This consolidated disciplinary matter involving respondent John Thomas Logan (respondent) arises out of ten matters and involves several acts of misconduct including failing to refund or return unearned fees promptly, disobedience of court orders, failing to perform legal services, engaging in the unauthorized practice of law, failing to keep a client informed of significant developments, representing clients with adverse interests without the informed written consent of each client, and failing to comply with disciplinary probation conditions.

After the filing of formal disciplinary charges in this matter by the Office of the Chief Trial Counsel of the State Bar of California (State Bar) on September 16, 2003, respondent sought to participate in the State Bar's Lawyer Assistance Program (LAP) and the State Bar Court's Alternative Discipline Program (ADP).¹

On November 7, 2003, respondent contacted the LAP to assist him with his mental health issues, and on June 23, 2004, respondent executed a Participation Agreement with the LAP.

In August 2004, respondent submitted a declaration to the court which established that at the

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

time of his misconduct, respondent was suffering from mental health issues. The parties also entered into a stipulation regarding facts and conclusions of law in this matter in August 2004. Respondent's declaration and the stipulated facts established 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 parties submitted to the court their respective briefs on the issue of discipline in this matter, the court lodged its Decision Re Alternative Recommendations for Degree of Discipline on October 15, 2004, setting forth the recommended discipline if respondent successfully completed or was terminated from or failed to successfully complete the court's ADP. On that same day, respondent and his counsel entered into a Contract and Waiver for Participation in the State Bar Court's ADP; the court executed an order approving the parties stipulation which was then lodged with the court; and respondent was accepted as a participant in the ADP.

In March 2005, the court received from respondent a motion to modify the ADP contract and/or to vacate or modify the parties' stipulation of facts and conclusions of law. Respondent's motion was opposed by the State Bar. On April 28, 2005, the court granted respondent's motion.

Thereafter, on August 30 and September 1, 2005, respondent and his counsel, respectively, executed an Amended Contract and Waiver for Participation in the State Bar Court's ADP (Amended Contract), and on September 2, 2005, the parties' Amended Contract was lodged with the court. The court also lodged on that same date an Amended Decision Re Alternative Recommendations for Degree of Discipline and an order modifying the Order Approving Stipulation Re Facts and Conclusions of Law executed on October 15, 2004.

On February 6, 2006, the court filed an order directing the State Bar's Office of Probation to monitor respondent's compliance with the terms and conditions of specified restitution set forth in the Amended Contract.

Upon motion of the State Bar, on April 17, 2007, the court ordered respondent to appear in person on May 4, 2007, to show cause why he should not be terminated from the ADP. Respondent

did not file a response to the OSC. At the May 4, 2007, hearing, at which respondent appeared in person, the court found that respondent was not in compliance with the conditions of the court's ADP, and respondent was terminated from the ADP.

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 Clerk file the parties' Stipulation Re Facts and Conclusions of Law (stipulation) lodged on October 15, 2004, including the court's Order approving the stipulation, as well as the court's Modification Order lodged on September 2, 2005. The parties' stipulation, including the court's order approving the stipulation, as well as the Modification Order, are attached hereto and hereby incorporated by reference, as if fully set forth herein. The stipulation, along with the modification order, set forth the factual findings, legal conclusions and aggravating circumstances in this proceeding. There are no mitigating circumstances in this matter.

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 being accepted for participation in the ADP, the parties 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 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 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.

Several months later, the court granted respondent's motion to modify the ADP contract

and/or to vacate or modify the parties' stipulation, and the court executed an Amended Decision Re Alternative Recommendations for Degree of Discipline setting forth 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 and his counsel also executed an Amended Contract.

Thereafter, following an OSC hearing, the court found that respondent was not in compliance with the conditions of the court's ADP, and respondent was terminated from the ADP. As such, respondent cannot be found to have undergone a meaningful and sustained period of rehabilitation from his mental health problems

Accordingly, the court will recommend to the Supreme Court the imposition of the discipline set forth in the court's Amended Decision Re Alternative Recommendations for Degree of Discipline in the event respondent was terminated from or failed to successfully complete the ADP.

RECOMMENDED DISCIPLINE

IT IS HEREBY RECOMMENDED that respondent **JOHN THOMAS LOGAN** be suspended from the practice of law for a period of four years and until he (a) provides satisfactory proof to the Office of Probation that he has made the specific restitution and has complied with any fee arbitration award, decision or final determination, as set forth below; and (b) 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. It is further recommended that execution of the order of suspension be stayed, and that respondent be placed on probation for a period of five years on the following conditions:

1. Respondent must be actually suspended from the practice of law for the first three years of the period of probation and until he provides satisfactory proof to the Office of Probation that he has made restitution to each of the following individuals (or to the Client Security Fund [CSF], if it has paid) in the principal amount set forth below plus 10% interest per annum accruing from the date specified:

Chantelle Stone; \$5,000; March 1, 2001;

Carlos Armendariz; \$2,000; June 1, 2001;
Linda Taylor; \$5,000; April 1, 2001;
Antonio Lopez; \$2,700; June 1, 2001;
Tanya Plascentia; \$2,000; July 1, 2001;
Rigaberto Salcido; \$2,200; August 1, 2000;
Paula Kusmierz; \$5,000; March 1, 1999;
Enrigueta Branch; \$2,500; August 1, 2000;
Robert Nelson; \$865.27; January 1, 2002; and
Maria Fuentez; \$3,500; February 1, 2002.

If the CSF has reimbursed any individual(s) for all or any portion of the principal amount owed, respondent must remain actually suspended from the practice of law until he also makes restitution to the CSF of the amount paid, plus applicable interest and costs, and until he provides satisfactory proof of such restitution to the Office of Probation. To the extent the CSF has paid only principal amounts, respondent will still be liable for interest payments to said individuals. Furthermore, to the extent that respondent has paid restitution prior to the effective date of the Supreme Court's final disciplinary order in this proceeding, respondent will be given credit for such payments provided satisfactory proof of such payments is shown to the Office of Probation;

2. Respondent must also remain actually suspended from the practice of law until he shows proof satisfactory 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;
3. Respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;
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 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;

5. If respondent has not been terminated from the LAP prior to his successful completion of the LAP, respondent must comply with all provisions and conditions of his Participation Agreement with the LAP and must immediately report any non-compliance to the Office of Probation. Respondent 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 LAP and his compliance or non-compliance with requirements of the LAP. Revocation of the written waiver for release of LAP information is a violation of this condition. However, if respondent has successfully completed the LAP, he need not comply with this condition;
6. If respondent has been terminated from the LAP prior to his successful completion of the LAP, respondent must obtain psychiatric or psychological help/treatment from a duly licensed psychiatrist, psychologist or clinical social worker at respondent's own expense a minimum of two (2) times per month and must furnish evidence to the Office of Probation that respondent is so complying with each quarterly report. Help/treatment should commence immediately, and in any event, no later than thirty (30) days after the effective date of the Supreme Court's final disciplinary order in this matter. Treatment must continue for the period of probation or until a motion to modify this condition is granted and that ruling becomes final.

If the treating psychiatrist, psychologist or clinical social worker determines that there has been a substantial change in respondent's condition, respondent or the State Bar's Office of Probation or the Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 550 of the Rules of Procedure of the State Bar. The motion must be supported by a written statement from the psychiatrist, psychologist, or clinical social worker, by affidavit or under penalty or perjury, in support of the proposed modification.

Upon the request of the Office of Probation, respondent must provide the Office of Probation with medical waivers and access to all of respondent's medical records.

Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation shall be confidential and no information concerning them or their contents shall be given anyone except members of the Office of the Chief Trial Counsel, the Office of Probation, and the State Bar Court, who are directly involved with maintaining, enforcing or adjudicating this condition;

7. 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;
8. If he has not previously done so, within thirty (30) days after the effective date of the Supreme Court's final disciplinary order in this matter, respondent must send a letter by certified mail, return receipt requested, to the following individuals and therein offer to initiate and participate in binding fee arbitration with said individual(s) upon the request of said individual(s): Fermin Tafoya ("Tafoya"), Rodolfo Garcia-Negrete ("Garcia-Negrete"), Brigitte Riedl ("Riedl"), Hugo Parejo ("Parejo") and Edward Lona ("Lona").

Unless respondent has previously done so, within sixty (60) days after the effective date of the Supreme Court's final disciplinary order in this matter, respondent must provide the Office of Probation with copies of the letters offering to initiate and participate in binding fee arbitration with each of the individuals set forth in the previous paragraph, along with a copy of the return receipt from the U.S. Postal Service.

Respondent must advise the Office of Probation, in writing, of any request to participate in fee arbitration made by any of these individuals within fifteen (15) days after any such request or within thirty (30) days after the effective date of the Supreme Court's final disciplinary order in this matter, whichever is later.

Respondent must initiate and participate in binding fee arbitration upon the request of any of these individuals within three (3) months of any such request or as directed by the organization conducting the fee arbitration. Respondent will not be permitted to raise the statute of limitations as a defense to fee arbitration in these matters.

Within thirty (30) days after issuance of an award, decision or final determination by any fee arbitrator pursuant to any such fee arbitration, or within thirty (30) days after the effective date of the Supreme Court's final disciplinary order in this matter, whichever is later, Respondent must provide a copy of said award, decision or final determination to the Office of Probation, unless he has previously done so.

Respondent must abide by any award, decision or final determination of any such fee arbitrator. Unless he has previously provided to the Office of Probation satisfactory proof of compliance with any award, decision, or final determination of any such fee arbitrator, respondent must provide, with each written quarterly report required herein, satisfactory proof of compliance with any award, decision or final determination of any such fee arbitrator performed by respondent during such quarter.

If the CSF has reimbursed Tafoya, Garcia-Negrete, Riedl, Parejo and/or Lona for all or any portion of any award pursuant to fee arbitration, respondent must pay restitution to the CSF of the amount paid, plus applicable interest and costs. Furthermore, to the extent that respondent has paid any fee arbitration award prior to the effective date of the Supreme Court's final disciplinary order in this proceeding, Respondent will be given credit for such

payments provided satisfactory proof is shown to the Office of Probation;

9. If he has not previously done so, within ninety (90) days of the effective date of the Supreme Court's final disciplinary order in this matter, respondent must fulfill his requirements, including the payment of sanctions, under court orders issued by the Ninth Circuit dated April 12, 2002, May 17, 2002, and July 29, 2002, in the matter involving Fermin Tafoya, (Case No. 02-O-13941) and must show satisfactory proof of his compliance with such requirements to the Office of Probation within one hundred twenty (120) days after the effective date of the Supreme Court's final disciplinary order in this matter;
10. If he has not previously done so, within ninety (90) days of the effective date of the Supreme Court's final disciplinary order in this matter, respondent must become current with all conditions, other than restitution, under Supreme Court order S110459, which are described in the probation violation case (Case No. 04-O-11104) and must provide satisfactory proof thereof to the Office of Probation within one hundred twenty (120) days after the effective date of the Supreme Court's final disciplinary order in this matter;
11. 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;
12. 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 conclusion of that session;
13. These probation conditions will commence on the effective date of the Supreme Court's final disciplinary order in this proceeding;
14. 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 four years and until he (a) provides satisfactory proof to the Office of Probation

that he has made the specific restitution and has complied with any fee arbitration award, decision or final determination, as set forth above; and (b) 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 will be satisfied and that suspension will be terminated.

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 the period of his actual suspension and that he be ordered to provide satisfactory proof of his passage of the MPRE to the Office of Probation within that period.

The Court also recommends that respondent be ordered to comply with the requirements of rule 9.20 (formerly 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 30 and 40 calendar days, respectively, after 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 sections 6140.7 and as a money judgment.

ORDER FILING AND SEALING CERTAIN DOCUMENTS

The court orders the Clerk to file the parties' Stipulation Re Facts and Conclusions of Law lodged on October 15, 2004, 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: September ___, 2007

RICHARD A. HONN
Judge of the State Bar Court