

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No. 01-O-03939
)	
ROBERT B. BEAUCHAMP,)	DECISION AND DISCIPLINE ORDER;
)	ORDER FILING AND SEALING
Member No. 132198,)	CERTAIN DOCUMENTS
)	
<u>A Member of the State Bar.</u>)	

INTRODUCTION

This disciplinary proceeding arises out of misconduct with respect to the personal bankruptcy matter of respondent Robert B. Beauchamp (“respondent”). The parties stipulated that Counts Two and Three of the Notice of Disciplinary Charges (“NDC”) would be dismissed. The Court hereby approves the dismissal of the above-referenced counts with prejudice.

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. After respondent entered into a Contract and Waiver for Participation in the State Bar Court’s Alternative Discipline Program (“ADP”),¹ the court accepted respondent as a participant in the ADP. (Rules Proc. of State Bar, rules 800-807.)

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

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 hereby orders that respondent be privately reprimanded with conditions in this matter.

SIGNIFICANT PROCEDURAL HISTORY

On August 29, 2002, the State Bar filed a NDC against respondent in the above-entitled matter. This matter was originally assigned to the Honorable Paul A. Bacigalupo.

On September 23, 2002, respondent filed an Answer to NDC.

In or about the Fall of 2002, respondent contacted the State Bar’s Lawyer Assistance Program (“LAP”), and in November 2002, respondent executed a Participation Agreement with the LAP to assist him with his mental health issues.

On February 11, 2003, respondent submitted a declaration establishing a nexus between his mental health issues and his misconduct in this matter.

Effective January 6, 2003, this matter was assigned to the undersigned judge.

On February 20, 2003, respondent submitted his brief regarding the appropriate discipline in this matter.

On February 24, 2003, the parties executed and submitted to the court a Stipulation Re Facts and Conclusions of Law.

On June 17, 2003, respondent executed a Contract and Waiver for Participation in the State Bar Court’s ADP which was lodged with the court on July 22, 2003.

On July 22, 2003, the court also lodged its Decision Re Alternative Recommendations for Degree of Discipline. Thereafter, respondent was accepted for participation in the ADP effective July 22, 2003.

On February 26, 2004, the court lodged an order approving the parties’ stipulation nunc pro tunc from July 22, 2003.

On June 15, 2006, respondent submitted a letter to the court from his medical professional dated June 13, 2006.

On June 13, 2006, the LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program certifying that respondent has complied with the requirements set forth in the LAP Participation Agreement/Plan for one year prior to June 13, 2006, and that during this time, respondent has maintained mental health stability and is participating successfully in the LAP.

In June 2006, the court found that respondent had successfully completed the ADP.

On June 15, 2006, the parties filed a Joint Request to Strike and Remove Attachment Pages 8 and 9 from the Stipulation Re Facts and Conclusions of Law Submitted to the Court February 24, 2003.

On June 19, 2006, the parties' Stipulation Re Facts and Conclusions of Law was filed in this matter, and the court issued an Order Approving Parties' Request Regarding Stipulation Re Facts and Conclusions of Law; Order Directing Clerk to Perform Certain Act. This matter was thereafter submitted for decision on June 19, 2006.

FACTS AND CONCLUSIONS OF LAW

The Stipulation Re Facts and Conclusions of Law, approved by the court nunc pro tunc from July 22, 2003, is incorporated by reference as if set forth fully herein.

Jurisdiction

Respondent is a member of the State Bar of California, admitted December 11, 1987.

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In May 1996, respondent signed a Chapter 7 bankruptcy petition, under penalty of perjury, in which he failed to disclose the existence of an account that he maintained in his wife's name but which held approximately \$10,935 that belonged solely to respondent. At the time respondent filed the bankruptcy petition, he was jointly and severally liable, along with his former wife, on a promissory note payable to his former father-in-law in the amount of \$158,000, plus accrued interest. Additionally, at the time respondent filed the bankruptcy petition, his former wife had filed a Chapter 13 bankruptcy petition.

Based on the foregoing, the court finds that respondent violated Business and Professions Code section 6068, subdivision (d), by his failure to notify the bankruptcy court of the existence of nearly \$11,000 in funds in a bank account in his current wife's name.

AGGRAVATION AND MITIGATION

Aggravation

The court finds no aggravating circumstances in this matter.

Mitigation

In mitigation, respondent has no record of prior discipline in approximately eight and one-half years of practice prior to the date of his misconduct.² Such a period of practice without prior discipline is a mitigating factor but is not long enough to be entitled to significant weight. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std.1.2(e)(i) ["standard"]; *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287, 295 [eight years and four months of practice without prior discipline].)

Respondent presented to the State Bar character evidence from several attorneys who have known respondent for a number of years and who have attested to his otherwise high ethical standards and high standing in the legal community. (Standard 1.2(e)(vi).)

In addition, respondent's misconduct did not harm any of his creditors, since respondent filed amended schedules to his bankruptcy petition within about five weeks of the filing of the petition and prior to the first meeting of creditors. In fact, respondent's former father-in-law actually benefitted from respondent's misconduct because the bankruptcy court denied the discharge of the debt due to respondent's initial failure to disclose the account. (Standard 1.2(e)(iii).)

Respondent has performed a variety of civic service and pro bono work since becoming an attorney. He is actively involved in community service activities through his church and has averaged about 50 hours per year on pro bono matters. These pro bono and civic service activities are entitled to weight as a mitigating circumstance. (*In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456, 471.)

²Paragraph C(1) on page 3 of the Stipulation Re Facts and Conclusions of Law erroneously states that respondent's misconduct occurred in May 1986. However, it is clear from the stipulated facts that respondent's misconduct actually occurred in May 1996.

Many years have elapsed since May 1996, when respondent engaged in the misconduct that is the subject of this proceeding. A lengthy period of post-misconduct practice without further disciplinary problems is entitled to weight as a mitigating factor. (Standard 1.2(e)(viii); *Rodgers v. State Bar* (1989) 48 Cal.3d 300, 316-317 [eight years of post-misconduct practice without further complaint]; *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 360-361 [12 years of post-misconduct practice].)

Finally, at the time of Respondent's misconduct, he was suffering from extreme emotional difficulties or physical disabilities which expert testimony would establish were directly responsible for his misconduct. (Standard 1.2(e)(iv).)

Respondent was suffering from mental health issues at the time of his misconduct which were directly responsible for the misconduct in this matter, and respondent has established through clear and convincing evidence that he no longer suffers from such difficulties. (Standard 1.2(e)(iv).)

Respondent's declaration establishes that at the time of his misconduct, respondent was suffering from mental health issues. The court therefore finds that respondent has adequately established a nexus between his mental health issues and his misconduct in this matter, i.e., that his mental health disorders directly caused the misconduct in this proceeding.

Furthermore, respondent sought assistance from the LAP in the Fall of 2002. In November 2002, respondent entered into a participation agreement with the LAP to assist him with his mental health issues. Since entering into the LAP, respondent has maintained compliance with the terms of his participation agreement. Pursuant to rule 804 of the Rules of Procedure, on June 15, 2006, respondent provided the court with a letter from his medical professional dated June 13, 2006, which was satisfactory to the court. In addition, on June 13, 2006, the LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program, certifying that respondent has complied with the requirements set forth in the LAP Participation Agreement/Plan for one year prior to June 13, 2006, and that during this time, respondent has maintained mental health stability and is participating successfully in the LAP.

In addition to participating in the LAP, respondent was accepted into the court's ADP effective July 22, 2003. 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 substantially complied with all the terms and conditions of the program. Accordingly, based upon respondent's dedication to his mental health and emotional stability and to the ADP and the LAP, the court found in June 2006 that respondent had 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

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.

In this case, standard 2.6 provides that culpability of a violation of Business and Professions Code section 6068, subdivision (d), shall result in suspension or disbarment depending on the gravity of the offense or the harm to the victim, with due regard to the purposes of imposing discipline.

The standards, however, 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 considering the appropriate discipline in this matter, the court has considered both the recommendations of the parties and relevant case law. The State Bar recommends that respondent be publicly reprimanded if he successfully completes the ADP. On the other hand, in his brief regarding discipline submitted on February 20, 2003, respondent recommends that this proceeding should be dismissed if he successfully completes the ADP.

In determining the appropriate disposition in this matter, the court is guided by both Supreme Court and Review Department case law. In *Di Sabatino v. State Bar* (1980) 27 Cal.3d 159, the California Supreme Court imposed a public reproof upon an attorney who misled a bail commissioner by failing to disclose the fact that he had made two earlier bail reduction motions that same day on behalf of the same criminal clients and that those bail reduction motions had been denied. The Supreme Court held that the attorney clearly had an affirmative duty to inform the bail commissioner fully and completely as to all relevant circumstances regarding his request for bail reduction and that his failure to do so constituted a violation of Business and Professions Code section 6068, subdivision (d). The attorney had no record of prior discipline but had only been admitted to practice law for about five years at the time of his misconduct.

Similarly, in *Davidson v. State Bar* (1976) 17 Cal.3d 570, the Supreme Court imposed a public reproof upon an attorney who was found culpable of an act of moral turpitude by failing to disclose to the judge in a child custody matter that he had a telephone number at which the child's father, who had improperly taken the child with him to another location, could be contacted.

In *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211, the State Bar Court Review Department recommended that an attorney be suspended from the practice of law for a period of one year, that execution of the suspension be stayed, and that the attorney be placed on probation for a period of two years on conditions that did not include any period of actual suspension. The Review Department's recommendation was based upon findings that established the attorney's culpability for misleading a judge in a personal injury matter by failing to disclose to that judge that his client, a defendant and cross-complainant in the case, had died. The Review Department also found the attorney culpable for failing to appear as ordered on behalf of his client at a mandatory settlement conference. The attorney had previously been disciplined in federal court in another state, but demonstrated his good character through many civic and professional pro bono activities.

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 the misconduct for which he has been found culpable, respondent was suffering from mental health disorders, and respondent's mental health disorders directly caused the misconduct in this proceeding. Furthermore, respondent has been participating in the LAP since 2002 and has successfully completed the ADP. Respondent's successful completion of the ADP, which required his compliance with all terms and conditions set forth by the LAP, as well as the letter from the medical professional pursuant to rule 804 of the Rules of Procedure and the Certificate of One Year Participation in the Lawyer Assistance Program from the LAP, qualify as clear and convincing evidence that he no longer suffers from such mental health issues.

Because of respondent's lack of a prior record of discipline, the lack of aggravating circumstances, the lack of any significant harm caused by respondent's initial failure to disclose the existence of the bank account in his bankruptcy petition, respondent's many years of post-misconduct practice without further incident, and the fact that respondent has established that he no longer suffers from the mental health disorders which led to his misconduct, the court concludes that discipline less than that imposed in *Di Sabatino*, *Davidson* or *Jeffers* is warranted in this matter. The court finds that based on respondent's participation in the ADP and the LAP, and his commitment to his mental health stability, the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys; and the preservation of public confidence in the legal profession will be adequately addressed in this case by the discipline set forth below. Therefore, based upon consideration of the case law, the standards, and the strong mitigating circumstances in this case, the court concludes that the discipline set forth below is appropriate in this matter.

DISCIPLINE ORDER

Accordingly, it is ordered that respondent **ROBERT B. BEAUCHAMP** is hereby privately reprovved. Pursuant to the provisions of rule 270(a) of the Rules of Procedure, the private reprovval will be effective when this decision becomes final. Furthermore, pursuant to rule 956(a) of the California Rules of Court and rule 271 of the Rules of Procedure, the court finds that the interests of respondent and the protection of the public will be served by the following specified conditions being attached to the private reprovval imposed in this matter. Failure to comply with any conditions attached to this reprovval may constitute cause for a separate proceeding for wilful breach of rule 1-110 of the Rules of Professional Conduct of the State Bar of California. Respondent is hereby ordered to comply with the following conditions attached to his private reprovval for a period of 12 months following the effective date of the private reprovval imposed in this matter:

1. During the twelve month period, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;

2. Within ten (10) 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, or if no office is maintained, the address to be used for State Bar purposes, respondent must report any such change in writing to the Membership Records Office of the State Bar and to the State Bar's Office of Probation;

3. Respondent must comply with all provisions and conditions of his Participation Agreement with the Lawyer Assistance Program;

4. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of these conditions. Under penalty of perjury, respondent must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions set forth in this

Decision during the preceding calendar quarter. If the first report will cover less than thirty (30) days, that report must be submitted on the reporting due 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) days before the last day of the period during which these conditions apply and no later than the last day of said period;

5. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any 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 these conditions;

6. The period during which these conditions apply will commence on the effective date of this Decision.

ORDER FILING AND SEALING CERTAIN DOCUMENTS

The court orders the Clerk to file this Decision and Discipline Order; 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.

IT IS SO ORDERED.

Dated: July __, 2006

ROBERT M. TALCOTT
Judge of the State Bar Court