

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 01-O-04579 ; 01-O-05225
)	(03-O-04081; 04-O-10603);
)	03-O-01568; 04-O-13189
JON RANDOLPH KNISS,)	(05-O-01388); 04-O-13927;
)	06-O-14358 (Cons.)
)	
Member No. 141454,)	DECISION AND ORDER SEALING
)	CERTAIN DOCUMENTS
)	
A Member of the State Bar.)	
)	
_____)	

INTRODUCTION

In this consolidated original disciplinary proceeding, respondent Jon Randolph Kniss (respondent) was accepted for participation in the State Bar Court's Alternative Discipline Program (ADP). As the court has now terminated respondent from the ADP, the court will recommend to the Supreme Court that respondent be suspended from the practice of law in California for three (3) years, that execution of that period of suspension be stayed, and that he be placed on probation for three (3) years subject to certain conditions, including a minimum two (2) year period of suspension which will remain in effect until he shows proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice, 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.

PERTINENT PROCEDURAL HISTORY

The State Bar of California, Office of the Chief Trial Counsel (State Bar) filed a Notice of Disciplinary Charges (NDC) against respondent on June 30, 2004, in case nos. 02-O-13176 (03-O-01568; 03-O-02307). The matter was originally assigned to the Honorable Pat McElroy.

Thereafter, on August 4, 2004, the State Bar filed an NDC against respondent in case no. 01-O-04579. This matter was also assigned to Judge McElroy.

The court filed a Status Conference Order in case no. 02-O-13176 on August 18, 2004, consolidating case nos. 02-O-13176 (03-O-01568; 03-O-02307) and 01-O-04579.

Effective January 3, 2005, case nos. 02-O-13176 (03-O-01568; 03-O-02307) and 01-O-04579 were reassigned to the undersigned judge.

On February 10, 2005, a NDC was filed against respondent in case nos. 01-O-05225 (03-O-04081; 04-O-10603).

The court filed an order on February 17, 2005, consolidating case nos. 01-O-05225 (03-O-04081; 04-O-10603) with case nos. 01-O-04579 and 02-O-13176 (03-O-01568; 03-O-02307).

Respondent contacted the State Bar's Lawyer Assistance Program (LAP) on April 11, 2005, for assistance with his mental health issue. On that same date, the court filed an order referring case nos. 01-O-04579; 01-O-05225 (03-O-04081; 04-O-10603); 02-O-13176 (03-O-01568; 03-O-02307) to the State Bar Court's ADP before the Honorable Richard A. Honn for evaluation of respondent's eligibility for participation in the State Bar Court's ADP.

On April 27, 2005, the State Bar filed a NDC against respondent in case no. 04-O-13927. The matter was assigned to Judge Honn.

Effective June 1, 2005, case nos. 01-O-04579; 01-O-05225 (03-O-04081; 04-O-10603); 02-O-13176 (03-O-01568; 03-O-02307); and 04-O-13927 were reassigned to the undersigned judge.

Respondent submitted a statement to the court on July 19, 2005, which established a nexus between respondent's mental health issue and his misconduct in this matter.

On September 23, 2005, the court filed an order consolidating case no. 04-O-13927 with case nos. 01-O-04579; 01-O-05225 (03-O-04081; 04-O-10603); 02-O-13176 (03-O-01568; 03-O-02307).

In furtherance of his participation in the ADP, respondent signed a long-term Participation Plan with the LAP on October 6, 2005.¹

On November 29, 2005, the State Bar filed a NDC against respondent in case nos. 04-O-13189 (05-O-01388).

The court filed an order on March 15, 2006, consolidating case nos. 04-O-13198 (05-O-01388) with all other matters.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) in case nos. 01-O-04579; 01-O-05225 (03-O-04081; 04-O-10603); 02-O-13176 (03-O-01568; 03-O-02307); 04-O-13189 (05-O-01388); 04-O-13927 (Cons.) in August 2006. The Stipulation sets forth the factual findings, legal conclusions and aggravating circumstances in this matter. The Stipulation was received by the court on August 31, 2006.

On January 22, 2007, the State Bar filed a NDC against respondent in case no. 06-O-14358.

Thereafter, based on the misconduct set forth in the parties' Stipulation, the court advised the parties of (1) the discipline which would be recommended to the Supreme Court if

¹ Respondent executed an amendment to his Participation Plan on August 16, 2007.

respondent successfully completed the ADP and (2) the discipline which would be recommended if respondent failed to successfully complete, or was terminated from, the ADP. After agreeing to those alternative possible dispositions, respondent executed the Contract and Waiver for Participation in the State Bar Court's ADP; the court executed a Confidential Statement of Alternative Dispositions and Orders (Confidential Statement) formally advising the parties in writing of the alternative discipline recommendations in this matter; the court accepted respondent for participation in the ADP; and respondent's period of participation in the ADP began on April 30, 2007.²

Respondent thereafter participated in both the LAP and the State Bar Court's ADP.

On May 2, 2008, the court received the Parties' Addendum to Stipulation Re: Facts and Conclusions of Law, Regarding State Bar Case No. 06-O-14358 (Addendum).³ The court did not recommend any additional discipline as a result of the inclusion of case no. 06-O-14358 into the existing ADP matter.

On September 30, 2010, the State Bar filed a Motion for Issuance of an Order to Show Cause and Termination of Respondent from the ADP (OSC). Respondent did not file a response to the OSC.

Therefore, on November 19, 2010, the court filed an order terminating respondent from the ADP, based on respondent's failure to comply with his participation plan with the LAP and for violating the terms of his ADP Contract.

This matter was thereafter submitted for decision on November 19, 2010.

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² The parties' Stipulation, an order approving the parties' Stipulation, the Confidential Statement, and the ADP Contract pertaining to case nos. 01-O-04579; 01-O-05225 (03-O-04081; 04-O-10603); 02-O-13176 (03-O-01568; 03-O-02307); 04-O-13189 (05-O-01388); 04-O-13927 (Cons.) were lodged on May 1, 2007. Also on that date, the court consolidated case no. 06-O-14358 with all other matters.

³ The parties executed the Addendum in April and early May 2008.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties' Stipulation, including the court's order approving the Stipulation, as well as the parties' Addendum, are attached hereto and hereby incorporated by reference, as if fully set forth herein.

In case no. 01-O-04579, respondent stipulated that he: (1) willfully, intentionally, repeatedly, or recklessly failed to perform legal services with competence in violation of rule 3-110(A) of the Rules of Professional Conduct of the State Bar of California;⁴ (2) failed to keep his client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services in violation of section 6068, subdivision (m) of the Business and Professions Code;⁵ and (3) disobeyed a series of court orders requiring him to do an act connected with or in the course of his profession in violation of section 6103.

In case no. 01-O-05225, respondent stipulated that he: (1) failed to keep his client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services in violation of section 6068, subdivision (m).

Regarding case no. 03-O-04081, respondent stipulated that he: (1) failed to promptly pay client funds as requested by his client in willful violation of rule 4-100(B)(4); (2) failed to respond to reasonable client status inquiries in violation of section 6068, subdivision (m); and (3) recklessly, intentionally, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

In case no. 04-O-10603, respondent stipulated that he: (1) intentionally, repeatedly, or recklessly failed to perform legal services with competence in willful violation of rule 3-110(A);

⁴ Unless otherwise indicated, all further references to rule(s) refer to the Rules of Professional Conduct of the State Bar of California.

⁵ Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

and (2) failed to cooperate in a disciplinary investigation in violation of section 6068, subdivision (i).

Regarding case no. 03-O-01568, respondent stipulated that he: (1) intentionally, repeatedly, or recklessly failed to perform legal services with competence in willful violation of rule 3-110(A); (2) disobeyed a court order requiring him to do an act connected with or in the course of his profession in violation of section 6103; and (3) failed to cooperate in a disciplinary investigation in violation of section 6068, subdivision (i).

In case nos. 04-O-13189 and 05-O-01388, respondent stipulated that he failed to cooperate in a disciplinary investigation in violation of section 6068, subdivision (i).

Regarding case no. 04-O-13927, respondent stipulated that he: (1) intentionally, repeatedly, and recklessly failed to perform legal services with competence in willful violation of rule 3-110(A); (2) failed to respond to his client's reasonable status inquiries in violation of section 6068, subdivision (m); (3) improperly withdrew from employment in willful violation of rule 3-700(A)(2); (4) upon termination of employment, failed promptly release to his client, at the client's request, all the client's papers in willful violation of rule 3-700(D)(1); and (5) failed to cooperate in a disciplinary investigation in violation of section 6068, subdivision (i).

In case no. 06-O-14358, respondent stipulated that he failed to respond to reasonable client status inquiries and to communicate significant developments in a matter in which respondent had agreed to provide legal services in violation of section 6068, subdivision (m).

In aggravation, respondent has a prior record of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i).)⁶ Effective November 1, 2000,

⁶ All further references to standard(s) or std. are to this source.

respondent was privately reproved with conditions in State Bar Court case no. 98-O-00324 for violations of rules 3-110(A) (two counts) and 3-400(B) and section 6068, subdivision (m).⁷

Also in aggravation, respondent's misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct (std. 1.2(b)(ii)); respondent's misconduct harmed significantly a client, the public, or the administration of justice (std. 1.2(b)(iv)); and respondent displayed a lack of cooperation and candor to the victims of his misconduct or the State Bar during disciplinary investigation or proceedings (std. 1.2(b)(vi)).

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, preserve public confidence in the legal profession, and maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate alternative discipline recommendations if respondent successfully completed the ADP or was terminated from, or failed to successfully complete, the ADP, the court considered the discipline recommended by the parties, as well as certain standards and case law. In particular, the court considered standards 1.2, 1.3, 1.4, 1.5, 1.6, 1.7(a), 2.2(b), 2.4, 2.6 and 2.10 and *Chefsky v. State Bar* (1984) 36 Cal.3d 116; *Chasteen v. State Bar* (1985) 40 Cal.3d 586; *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73; *Pineda v. State Bar* (1989) 49 Cal.3d 753; *King v. State Bar* (1990) 52 Cal.3d 307; *Inniss v. State Bar* (1978) 20 Cal.3d 552; *Smith v. State Bar* (1984) 37 Cal.3d 17; and *Grove v. State Bar* (1967) 66 Cal.2d 680.

⁷ Efforts to incorporate another matter, case no. 06-O-11252, into this ADP matter were unsuccessful. The court takes judicial notice pursuant to Evidence Code section 452(d) that effective December 9, 2010, discipline was imposed against respondent in case nos. 06-O-11252; 08-O-14892; 09-O-10379; 09-O-19315 (Cons.).

Because respondent has now been terminated from the ADP, this court, in turn, now recommends to the Supreme Court the imposition of the higher level of discipline, set forth more fully below.

DISCIPLINE

Recommended Discipline

It is hereby recommended that respondent Jon Randolph Kniss, State Bar Number 141454, be suspended from the practice of law in California for three (3) years, that execution of that period of suspension be stayed, and that he be placed on probation⁸ for a period of three (3) years subject to the following conditions:

1. Respondent Jon Randolph Kniss is suspended from the practice of law for a minimum of the first two years of probation, and he will remain suspended until the following requirement is satisfied:
 - A. Jon Randolph Kniss must provide proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)
2. Respondent Jon Randolph Kniss must also comply with the following additional conditions of probation:
 - A. During the probation period, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
 - B. Within ten (10) days of any change, respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California (Office of Probation), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;
 - C. Within thirty (30) days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and

⁸ The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

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;

- D. 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 probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than thirty (30) days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of the probation period;

- E. 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 the probation conditions;
- F. Within one (1) year of the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, and passage of the test given at the end of that session;
- G. If respondent has not been terminated from the Lawyer Assistance Program (LAP), respondent must comply with all provisions and conditions of his Participation Agreement/Plan with the LAP and must provide the Office of Probation with certification of completion of the LAP. Respondent must immediately report any non-compliance with any provision(s) or conditions(s) of his Participation Agreement/Plan 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 the LAP and his compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. Respondent will be relieved of this condition upon providing to the Office of Probation satisfactory certification of completion of the LAP.

If respondent has been terminated from the LAP prior to his successful completion of the LAP, respondent must obtain an examination of his mental and physical condition with respect to his mental health issue pursuant to rule 184 of the Rules of Procedure from a qualified practitioner approved by the Office of Probation and must comply with any treatment/monitoring plan recommended following such examination. The examination and any further help/treatment/monitoring recommended by the examining practitioner will be at respondent's own expense. The examination must be conducted no later than thirty (30) days after the effective date of the Supreme Court's final disciplinary order in this matter. Help/treatment/monitoring should commence immediately after said examination and, in any event, no later than thirty (30) days after said examination. With each quarterly report, respondent must furnish to the Office of Probation sufficient evidence, as specified by the Office of Probation, that he is so complying with this condition of probation. Treatment/monitoring must continue for the period of probation or until a motion to modify this condition is granted and that ruling becomes final.

If the examining or treating practitioner 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. The motion must be supported by a written statement from the examining or treating practitioner, by affidavit or under penalty of perjury, in support of the proposed modification.

Upon the request of the Office of Probation, respondent must provide the Office of Probation with medical and confidentiality waivers and access to all of respondent's medical records necessary to monitor this probation condition. Revocation of any medical/confidentiality waiver is a violation of this condition. Any medical records obtained by the Office of Probation will be confidential and no information concerning them or their contents will be given to 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;

- H. Respondent must pay restitution to Janice Anderson in the amount of \$6,500 plus 10% interest per annum from December 19, 2000 (or to the Client Security Fund (CSF) to the extent of any payment from the fund to Janice Anderson, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and provide satisfactory proof thereof to the Office of Probation. Any restitution to the CSF is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d). To the extent the CSF has paid only the principal amount, respondent will still be liable for interest payments to Janice Anderson, as set forth above.

With each written quarterly report required herein, respondent must provide to the Office of Probation satisfactory proof of all restitution payments made by him during that quarter or applicable reporting period.

To the extent that respondent has paid any 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 is or has been shown to the Office of Probation; and

- I. 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 or registered mail, return receipt requested, to each of the individuals set forth below and must therein offer to initiate and participate in binding fee arbitration with said individuals, upon the request of any such individual, regarding respondent's fees charged for representation of the individuals set forth below, unless he has previously sent such a written offer to each of these individuals. Respondent must retain a copy of the letter and proof of mailing for the entire period of probation and present it to the Office of Probation upon request.

1. Steven Glen Miller
2. Maurice Bourland

Respondent must initiate, pay for the filing fee for, and participate in binding fee arbitration upon the request of any of the above individuals and abide by the decision of the fee arbitrator. The letter to each of the individuals set forth above must inform the individual of respondent's obligations pursuant to this provision. Respondent must not use in any fee arbitration with these individuals a defense based on the statute of limitations. Respondent's failure to write to the individuals set forth above, to retain a copy of the letter, or to initiate, pay the filing fee for, or participate in fee arbitration upon any of these individuals' request, or to abide by the decision of the fee arbitrator, will constitute a violation of respondent's probation. Should either individual set forth above not request the fee arbitration within six months of receiving the letter from respondent offering arbitration, respondent will be relieved of this obligation. Respondent must note this in bold type in the letter to each individual set forth above.

Respondent must advise the Office of Probation, in writing, of any request to participate in fee arbitration made by any of the above 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, unless he has previously advised the Office of Probation of such a request.

Within thirty (30) days after issuance of any 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 respondent has previously done so.

Respondent must abide by any award, decision or final determination of any such fee arbitrator. Unless respondent 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 quarterly report required herein, satisfactory proof of compliance with any award, decision or final determination of any such fee arbitrator performed by respondent during said quarter or applicable reporting period.

If the State Bar Client Security Fund has reimbursed any of these individuals for all or any portion of any award pursuant to fee arbitration, respondent must pay restitution to the Client Security Fund of the amount paid, plus applicable interest and costs, in accordance with Business and Professions Code section 6140.5, unless he has previously done so. Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d).

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 payment(s) provided satisfactory proof of such payment(s) is or has been shown to the Office of Probation.

3. At the expiration of the period of probation, if Jon Randolph Kniss has complied with all conditions of probation, the three (3) year period of stayed suspension will be satisfied and that suspension will be terminated.

Multistate Professional Responsibility Examination

It is further recommended that Jon Randolph Kniss be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) during the period of his suspension and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

Rule 9.20, California Rules of Court⁹

It is further recommended that respondent Jon Randolph Kniss be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within thirty (30) and forty (40) calendar days, respectively, after the effective date of the Supreme Court's final disciplinary order in this matter.

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.

DIRECTION RE DECISION AND ORDER SEALING CERTAIN DOCUMENTS

The court directs a court case administrator to file the parties' Stipulation Re Facts and Conclusions of Law, the Order Approving Stipulation, the Parties' Addendum to Stipulation Re: Facts and Conclusions of Law, Regarding State Bar Case No. 06-O-14358, and this Decision and Order Sealing Certain Documents. Thereafter, pursuant to rule 5.388(c) (former rule 806(c)) of the Rules of Procedure of the State Bar of California (Rules of Procedure),¹⁰ all other documents not previously filed in this matter are ordered sealed pursuant to rule 5.12 (former 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 official duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosures. All persons to

⁹ Rule 9.20 was formerly numbered rule 955.

¹⁰ On January 1, 2011, new Rules of Procedure became effective.

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: January 27, 2011.

RICHARD A. PLATEL
Judge of the State Bar Court