

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 01-O-05268; 03-O-02519
)	(03-O-02610) (Cons.)
IRA DAVID JOHNS,)	
)	DECISION AND ORDER SEALING
Member No. 86179,)	CERTAIN DOCUMENTS
)	
A Member of the State Bar.)	

After the filing of formal disciplinary charges against respondent Ira David Johns (respondent) on February 5, 2003, in case number 01-O-05268, the Honorable Alban I. Niles referred this matter to the State Bar Court’s Alternative Discipline Program (ADP)¹ before the Honorable Robert M. Talcott.

On March 6, 2003, respondent contacted the State Bar of California’s Lawyer Assistance Program (LAP) to assist him with his mental health issue(s), and on October 21, 2003, respondent executed a Participation Agreement with the LAP.

Effective April 1, 2004, this matter was reassigned to the undersigned judge.

On March 11, 2005, respondent submitted a declaration establishing a nexus between his mental health issue(s) and his misconduct in this matter.

¹ At that time, the ADP was referred to as the Pilot Program for Respondents with Substance Abuse or Mental Health Issues.

The parties entered into a Stipulation Re Facts and Conclusions of Law in late June 2005 with respect to case no(s). 01-O-05268; 03-O-02519 (03-O-02610).

On September 12, 2005, the court lodged its Amended Statement of Alternative Dispositions and Orders, the Contract and Waiver for Participation in the State Bar Court's ADP (Contract),² and the parties' Stipulation Re Facts and Conclusions of Law, and respondent was accepted into the ADP as of this date.

The court issued an order on August 4, 2008, extending respondent's participation in the ADP until further order.

On December 24, 2008, the court issued an order finding that respondent has successfully completed the ADP. Thereafter, on that same date, the parties' Stipulation Re Facts and Conclusions of Law was filed, and this matter was submitted for decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In this matter, respondent stipulated to misconduct in three client matters. In each of these matters, respondent stipulated that he intentionally, recklessly or repeatedly failed to perform legal services with competence and failed to maintain the balance of funds received for the benefit of a client and deposited in a client trust account. In two of these matters, respondent also failed to respond promptly to reasonable client status inquires and/or failed to keep his client reasonably informed of significant developments in his client's legal matter. In mitigation, respondent had no prior record of discipline; suffered from severe financial stress; displayed candor/cooperation; and suffered other extreme difficulties in his personal life (which were not of a physical or emotional nature). In aggravation, respondent's misconduct resulted in significant harm; he engaged in multiple acts of wrongdoing; and trust funds were involved and

² The Contract was executed by respondent on September 3, 2005, and by his counsel on September 6, 2005.

respondent refused or was unable to account to the client for improper conduct towards the funds.

The parties' Stipulation Re Facts and Conclusions of Law, including the court's order approving the stipulation, is attached hereto and hereby incorporated by reference, as if fully set forth herein. The Stipulation Re Facts and Conclusions of Law sets forth the factual findings, legal conclusions, and aggravating and mitigating circumstances in this matter.

Furthermore, the parties also stipulated that respondent suffered emotional difficulties at the time of his misconduct and that this is a mitigating circumstance.

Supreme Court and Review Department case law establish that extreme emotional difficulties are a mitigating factor where expert testimony establishes that these 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.)

Respondent executed a Participation Agreement with the LAP on October 21, 2003,³ and successfully completed the LAP as of May 19, 2008. The LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program dated May 19, 2008, which reflects that respondent complied with requirements set forth in his LAP Participation Agreement for at least one year prior to the date of the certificate, and that during this time period, respondent maintained mental health and stability and participated successfully in the LAP.

³ Although respondent executed a LAP Participation Agreement on this date, he initially contacted the LAP on March 6, 2003.

Respondent also successfully completed the ADP. Respondent's successful completion of the ADP and the LAP qualify as clear and convincing evidence that respondent no longer suffers from the mental health issue(s) which led to his misconduct. Accordingly, it is appropriate to consider respondent's successful completion of the ADP as a mitigating circumstance in this matter. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, 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.)

After reviewing respondent's brief on the issue of discipline, which was received by the court on July 5, 2005, and the State Bar's revised brief on the issue of discipline, which was received by the court on July 7, 2005, and considering the Standards for Attorney Sanctions for Professional Misconduct (standard(s)) and case law cited therein, the parties' stipulation setting forth the facts, conclusions of law, and the aggravating and mitigating circumstances with respect to this disciplinary proceeding, and respondent's declaration regarding the nexus between his mental health issue(s) and his misconduct, the court advised the parties 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.

In determining the appropriate discipline to recommend in this matter if respondent successfully completed the ADP, the court considered the discipline recommended by the parties, as well as certain standards and case law. Respondent recommended that he receive no

actual suspension in this matter.⁴ In contrast, the State Bar recommended that respondent receive a six months' stayed suspension and two years of probation. The court also considered standards 1.3, 1.4, 1.5, 1.6, 2.2, 2.4(b), and 2.6 and the case law cited in the parties' discipline briefs, including *In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871, *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, *Schultz v. State Bar* (1975) 15 Cal.3d 799, *Chasteen v. State Bar* (1985) 40 Cal.3d 586, *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716, *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17, and *Chefsky v. State Bar* (1984) 36 Cal.3d 116.

After agreeing to the discipline which the court would recommend to the Supreme Court if respondent successfully completed or was terminated from, or failed to successfully complete, the ADP, respondent executed the Contract to participate in the ADP; the Contract was lodged with the court; and respondent's period of participation in the ADP commenced.

Thereafter, respondent successfully participated in the ADP and, as noted above, the court has found that respondent has successfully completed both the ADP and the LAP. Accordingly, the court will recommend to the Supreme Court the imposition of the discipline set forth in the court's Amended Statement of Alternative Dispositions and Orders if respondent successfully completed the ADP.

RECOMMENDED DISCIPLINE

IT IS HEREBY RECOMMENDED that respondent **IRA DAVID JOHNS** be suspended from the practice of law in the State of California for a period of six (6) months, that execution of such suspension be stayed, and that respondent be placed on probation for a period of two (2) years on the following conditions:

⁴ Respondent noted that if actual suspension is recommended, it should be, at most, 30 days.

1. 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 thirty (30) days after 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;
3. 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;
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 during which these probation conditions are in effect. Under penalty of perjury, respondent must state in each report 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 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;

5. 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;

6. Within one year after the effective date of the Supreme Court's final disciplinary order in this matter, respondent must provide the Office of Probation with satisfactory proof of his 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).

7. As of October 16, 2008, respondent owes the State Bar's Client Security Fund (CSF) approximately \$16,845.43.⁵ CSF will assess simple interest at the rate of 10% at the end of each year, to be added to the principal at that time, which respondent is also responsible to pay to CSF.

⁵ After fee arbitration, a Statement of Decision and Award was filed on September 27, 2007, requiring respondent to pay Ms. Linda Sutton (Sutton) a total of \$21,810.43. Ms. Sutton was paid that amount by the Client Security Fund (CSF) on March 10, 2008, which constitutes the full amount due Sutton. Respondent does not owe Sutton interest payments on the \$21,810.43 awarded to Sutton. CSF has charged respondent a fee of \$147. The total due CSF was therefore \$21,957.43. Before CSF paid Sutton, respondent had paid Sutton directly a total of \$3,500. Respondent is credited with those payments against the amount due CSF, since there was a misunderstanding regarding the total amount due Sutton. As of the date of October 16, 2008, respondent had made additional payments of approximately \$1,612 against that amount, for a total of approximately \$5,112 paid by respondent.

Respondent is currently making payments of \$152 per month to CSF, payable on or before the twentieth (20th) day of each month. Respondent must continue these payments through June 2009. Beginning in July 2009, respondent must begin paying \$800 per month to CSF. Respondent must continue to provide the Office of Probation with evidence of each restitution payment to CSF. Respondent must pay any remaining balance to CSF by thirty (30) days before the end of his period of probation.

8. Reporting requirements:

A. If respondent possesses client funds at any time during the period covered by a required quarterly report, respondent must file with each required report a certificate from a certified public accountant or other financial professional approved by the Office of Probation, certifying that:

respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Client's Funds Account"; and respondent has kept and maintained the following:

- i. a written ledger for each client on whose behalf funds are held that sets forth:
 1. the name of such client,
 2. the date, amount, and source of all funds received on behalf of such client,
 3. the date, amount, payee and purpose of each disbursement made on behalf of such client, and
 4. the current balance for such client;

- ii. a written journal for each client trust fund account that sets forth:
 - 1. the name of such account,
 - 2. the date, amount, and client affected by each debit and credit, and
 - 3. the current balance in such account.
- iii. all bank statements and canceled checks for each client trust account; and
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii) above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii) above, the reason for the differences, and that respondent has maintained a written journal of securities or other properties held for a client that specifies:
 - 1. each item of security and property held,
 - 2. the person on whose behalf the security or property is held,
 - 3. the date of receipt of the security or property,
 - 4. the date of distribution of the security or property, and
 - 5. the person to whom the security or property was distributed.

B. If respondent does not possess any client funds, property or securities during the entire period covered by a report, respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, respondent need not file the accountant's certificate described above.

- C. This requirements of this condition are in addition to those set forth in rule 4-100 of the Rules of Professional Conduct of the State Bar of California.
9. Within one (1) year after the effective date of the Supreme Court's final disciplinary order in this matter, respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of item, 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 end of that session. Arrangements to attend Ethics School Client Trust Accounting 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 Trust Accounting 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 six (6) months will be satisfied and that suspension will be terminated.

It is further recommended that within one year after the effective date of the Supreme Court's final disciplinary order in this matter, respondent must take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243

(telephone: 319-337-1287) and provide satisfactory proof of his passage of the MPRE to the Office of Probation within said year.⁶

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 this Decision and Order 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 are ordered 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: March _____, 2011

RICHARD A. HONN
Judge of the State Bar Court

⁶ When ordered to take and pass the MPRE by the Supreme Court, failure to do so within the specified time results in actual suspension by the Review Department of the State Bar Court, without further hearing, until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) and (3), Rules of Procedure of the State Bar of California.