

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

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| In the Matter of               | ) | Case Nos. <b>02-C-11140-RAH; 04-C-10858;</b> |
|                                | ) | <b>06-O-11089; 08-O-12305 (Cons.)</b>        |
| <b>BRYAN THOMAS CASTORINA,</b> | ) |  |
|                                | ) |  |
| <b>Member No. 162843,</b>      | ) | <b>DECISION AND ORDER SEALING</b>            |
|                                | ) | <b>DOCUMENTS</b>                             |
| A Member of the State Bar.     | ) |  |
| _____                          | ) |  |

**I. Introduction**

In this consolidated conviction referral matter and disciplinary proceeding, respondent **Bryan Thomas Castorina** stipulated to: (1) misdemeanor convictions of assault, trespass and petty theft; and (2) professional misconduct in two client matters, including failing to perform competently, failing to communicate, failing to promptly return client files, and failing to cooperate with the State Bar.

In 2005, respondent sought to participate in the State Bar’s Lawyer Assistance Program (LAP) and State Bar Court’s Alternative Discipline Program (ADP). He has now successfully completed the ADP. (Rules Proc. of State Bar, rules 800-807.) Accordingly, the court recommends that respondent be suspended from the practice of law for two years, that execution

of such suspension be stayed, and that respondent be placed on probation for three years with conditions. (Rules Proc. of State Bar, rule 803.)<sup>1</sup>

## **II. Significant Procedural History**

### **A. Case Nos. 02-C-11140 and 04-C-10858**

The State Bar Court Review Department referred two matters to the Hearing Department for a hearing and decision as to whether the facts and circumstances surrounding respondent's final misdemeanor convictions involved moral turpitude or other misconduct warranting discipline and, if so found, a recommendation as to the discipline to be imposed. The referral orders were filed on:

1. November 1, 2004 (case No. 04-C-12867); and
2. February 16, 2005 (case No. 02-C-11140).

On October 17, 2005, respondent executed a Participation Agreement with the LAP.

Respondent submitted a declaration to the court establishing a nexus between his mental health issues and his criminal conduct in this matter.

On July 31, 2006, the court lodged its Confidential Statement of Alternative Dispositions and Orders (Statement), setting forth the recommended discipline if respondent successfully completed or was terminated from the court's ADP. On that same day, respondent entered into a Contract and Waiver for Participation in the State Bar Court's Alternative Discipline Program; the parties' Stipulation Re Facts and Conclusions of Law (2006 stipulation) was lodged with the court; and respondent was accepted as a participant in the ADP.

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<sup>1</sup>References to rule are to the Rules of Procedure of the State Bar, unless otherwise noted.

**B. Case Nos. 06-O-11089 and 08-O-12305**

On October 2, 2008, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed a Notice of Disciplinary Charges (NDC) against respondent in case No. 06-O-11089.

In 2009, an additional complaint was filed against respondent in case No. 08-O-12305.

Respondent then submitted a Second Amended Nexus Declaration to the court establishing a nexus between his mental health issues and his misconduct in these two disciplinary matters.

On January 11, 2010, the parties' two Stipulations Re Facts and Conclusions of Law (2010 stipulations) in these two matters were approved and filed. They were also consolidated with the previous conviction referral matter. The court had determined that no additional discipline would be imposed. Thus, the recommended discipline in the Statement lodged in 2006 remains the same.

On February 2, 2010, the LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program – Mental Health (certificate), setting forth that respondent has complied with the requirements of the LAP Participation Agreement/Plan for one year prior to the date of this certificate, and that during this period, respondent has maintained mental health stability and has participated successfully in the LAP.

On February 3, 2010, the court found that respondent successfully completed the ADP and ordered the 2006 stipulation regarding the conviction referral matter to be filed on the same day. The court also indicated that it would issue this decision recommending to the Supreme Court the imposition of the lower level of discipline reflected in the Statement.

### III. Findings of Fact and Conclusions of Law

The three Stipulations Re Facts and Conclusions of Law (stipulations) approved by the court are incorporated by reference as if set forth fully herein:

1. Stipulation Re Facts and Conclusions of Law filed February 3, 2010, in case Nos. 02-C-11140 and 04-C-12867;
2. Stipulation Re Facts and Conclusions of Law filed January 11, 2010, in case No. 06-O-11089; and
3. Stipulation Re Facts and Conclusions of Law filed January 11, 2010, in case No. 08-O-12305.

The three stipulations set forth the factual findings, conclusions of law and certain aggravating and mitigating circumstances in this consolidated matter.<sup>2</sup>

Regarding respondent's conviction referral matter, his misdemeanor convictions involved the following:

- In January 2002, respondent was arrested for trespass in a retail store. (Case No. 02-C-11140; Pen. Code, § 602(j).)
- In September 2003, respondent was arrested for trespass, assault and petty theft in a retail store. (Case No. 04-C-12867; Pen. Code, §§ 602(j); 240; and 490.1.)

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<sup>2</sup> In the conviction referral matter, the stipulation was executed on November 22, 2005, but lodged on July 31, 2006. Thus, the typographical errors in the stipulations in case Nos. 06-O-11089 and 08-O-12305 regarding the lodged date of the prior stipulation are corrected as follows: On page 4, the paragraph regarding "Incorporation of Prior Stipulation," the date "November 22, 2005" is deleted and "July 31, 2006" is inserted in its place.

Also, the typographical error in the stipulation in case No. 06-O-11089 is corrected as follows: On page 8, paragraph 24, "3-700(D)(2)" is deleted and "3-700(D)(1)" is inserted in its place.

In case No. 02-C-11140, the parties stipulated that the facts and circumstances surrounding respondent's conviction for trespass did not involve moral turpitude but constituted other misconduct warranting discipline.

In case No. 04-C-12867, the parties stipulated that the facts and circumstances surrounding respondent's convictions for assault and trespass involved misconduct warranting discipline and the conviction for petty theft involved moral turpitude. Accordingly, the court finds that respondent's convictions for assault and trespass did not involve moral turpitude but constituted other misconduct warranting discipline. And, his conviction for petty theft involved moral turpitude warranting discipline.

Regarding respondent's disciplinary matter, his professional misconduct, which occurred between 2005 through 2008 in two client matters, involved failing to perform competently, failing to communicate, failing to promptly return client files, and failing to cooperate with the State Bar.

At the time respondent engaged in the misconduct, respondent was suffering from mental health issues which 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 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 has been participating in the LAP since 2005 and has successfully completed the ADP. Respondent's successful completion of the ADP, as well as the certificate, qualify as clear and convincing evidence that respondent no longer suffers from the mental health issues which led to his misconduct. Accordingly, it is appropriate to consider respondent's successful completion of the ADP as a further mitigating circumstance. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,<sup>3</sup> std. 1.2(e)(iv).)

#### **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 the parties' briefs on discipline and considering the standards and case law cited therein, the parties' 2006 stipulation setting forth the facts, conclusions of law and aggravating and mitigating circumstances with respect to the conviction referral matter, and respondent's declaration regarding the nexus between his mental health issues and his criminal 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 that would be recommended if respondent was terminated from the ADP.

In 2006, after agreeing to the recommended discipline, respondent executed the contract to participate in the ADP and was accepted for participation in the ADP.

In 2010, respondent stipulated to additional professional misconduct. After reviewing respondent's Second Amended Nexus Declaration and his stipulations, the court advised the parties that no additional discipline would be imposed.

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<sup>3</sup> References to standard(s) or std. are to this source.

Thereafter, respondent successfully participated in the ADP and, as set forth in the order filed on February 3, 2010, 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 Statement if respondent successfully completed the ADP.

## **V. Recommendations**

### **A. Recommended Discipline**

Therefore, the court recommends that respondent Bryan Thomas Castorina be suspended from the practice of law for two years, that execution of such suspension be stayed, and that respondent be placed on probation for a period of three years, on the following conditions:

1. During the period of probation, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;
2. Within 10 days of any change in the information required to be maintained on the State Bar's membership records 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 Office of Probation;
3. Unless respondent has successfully completed the Lawyer Assistance Program, respondent must comply with all provisions and conditions of his Participation Agreement with the LAP and must execute an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of his 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. If respondent has

successfully completed the LAP, respondent must provide the Office of Probation with satisfactory certification of completion of the LAP;

4. Respondent must submit written quarterly probation 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 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 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 20 days before the last day of the probation and no later than the last day of said period;
5. Within 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 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;
6. 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 probation conditions;

7. Within one year of the effective date of the Supreme Court's final disciplinary order in this proceeding, respondent must provide to the Office of Probation satisfactory proof of his attendance at a session of State Bar Ethics School and of passage of the test given at the end of that session, unless he previously completed the course within the prior two years (Rules Proc. of State Bar, rule 290);
8. Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation;
9. These probation conditions will commence on the effective date of the Supreme Court's final disciplinary order in this proceeding; and
10. At the expiration of the period of this probation, if respondent has complied with all of the terms and conditions of probation, the order of the Supreme Court suspending respondent from the practice of law for two years will be satisfied and that suspension will be terminated.

**B. Multistate Professional Responsibility Exam**

It is further recommended that respondent take and pass the Multistate Professional Responsibility Examination within one year. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) Failure to pass the MPRE within the specified time results in actual suspension by the Review Department, without further hearing, until passage. (But see Cal. Rules of Court, rule 951(b), and Rules Proc. of State Bar, rule 3201(a)(1) and (3).)

**C. Costs**

It is recommended that costs be awarded to the State Bar pursuant to Business and Professions Code section 6086.10, and be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Finally, it is recommended that respondent be ordered to reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and such payment is enforceable as provided under Business and Professions Code section 6140.5.

#### **VI. Order Sealing Documents**

The court orders this Order Sealing Documents be filed. Thereafter, pursuant to rule 806(c) of the Rules of Procedure, all other documents not previously filed in this matter will be sealed under 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 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

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**RICHARD A. HONN**  
Judge of the State Bar Court