

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case No.: 02-C-14879-DFM
)
ANDREA SELENE BURGER,)
) **DECISION AND ORDER SEALING**
Member No. 173351,) **CERTAIN DOCUMENTS**
)
A Member of the State Bar.)
_____)

I. Introduction

In this conviction referral proceeding, respondent Andrea Selene Burger (respondent) was accepted for participation in the State Bar Court’s Alternative Discipline Program (ADP). As the court has now found that respondent has successfully completed the ADP, the court will recommend to the Supreme Court that respondent be suspended from the practice of law in California for three years; that execution of that period of suspension be stayed; and that she be placed on probation for three years subject to certain conditions, including a 15 month period of suspension (with credit given for the period of interim suspension, which was effective May 4, 2008, through October 8, 2009).

II. Significant Procedural History

After the transmittal to the State Bar Court of the records of respondent’s conviction, the Review Department of the State Bar Court issued an order on April 4, 2008, placing respondent

on interim suspension effective May 4, 2008, and ordering respondent to comply with California Rules of Court, rule 9.20.¹

Thereafter, the State Bar of California, Office of the Chief Trial Counsel (State Bar) filed two supplemental transmittals of records of respondent's conviction with the court, including notice of the finality of respondent's conviction.

On August 28, 2008, the review department issued an order referring respondent's misdemeanor conviction for violating Penal Code section 32 (accessory to a felony), a misdemeanor involving moral turpitude, to the Hearing Department of the State Bar Court for hearing and decision recommending the discipline to be imposed due to respondent's conviction.

A Notice of Hearing on Conviction was filed against respondent on September 5, 2008, and the matter was assigned to the Honorable Richard A. Platel.

On September 29, 2008, respondent requested that her case be transferred to the ADP. On October 16, 2008, Judge Platel filed an order referring this matter to the ADP before the undersigned judge for evaluation of respondent's eligibility for participation in the program. This matter was reassigned to the undersigned judge for all further proceedings pursuant to an order filed on November 7, 2008.

In furtherance of her participation in the ADP, respondent contacted the State Bar's Lawyer Assistance Program (LAP) on November 18, 2008, to assist her with her mental health issues.

On December 2, 2008, respondent submitted a declaration to the court establishing a nexus between respondent's mental health issues and her misconduct in this matter.

Respondent signed a long-term Participation Plan with the LAP on April 6, 2009.

¹ Respondent filed her rule 9.20 compliance declaration on May 27, 2008.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) in July 2009, received by the court on July 22, 2009. The Stipulation sets forth the factual findings, legal conclusions, and aggravating and mitigating circumstances in this matter.

Following submission of the parties' discipline recommendations, which were the result of the parties' negotiations and agreement, the court advised the parties of (1) the discipline which would be recommended to the Supreme Court if 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 and her counsel executed a Contract and Waiver for Participation in the State Bar Court's ADP on August 26, 2009.

On September 8, 2009, the court: (1) executed a Confidential Statement of Alternative Dispositions and Orders, formally advising the parties of the recommended alternative discipline levels; (2) signed an order approving the parties' Stipulation; and (3) accepted respondent into the ADP. Thus, respondent's period of participation in the ADP began on September 8, 2009.

On October 9, 2009, the review department filed an order granting respondent's motion for an order vacating the order of interim suspension, and the interim suspension previously imposed by the review department on April 4, 2008, was vacated effective October 9, 2009.

After being accepted into the ADP, respondent participated successfully in both the LAP and the ADP. The court received certificates from the LAP, dated October 20, 2010, and March 16, 2011, certifying that respondent had satisfied the requirements set forth in her LAP Participation Plan for at least one year prior to the date of the certificates and that respondent had maintained mental health stability and had participated successfully in the LAP during that time. On March 21, 2011, the court filed an order finding that respondent has successfully completed the ADP, and this matter was submitted for decision on that date.

III. Findings of Fact and Conclusions of Law

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

Misconduct

On August 2, 2001, respondent destroyed and attempted to hide or secret evidence of identity theft, possession of forged drivers' licenses, and grand theft in violation of Penal Code section 32 (accessory after the fact). Respondent stipulated that the items were related to felony criminal acts committed by her husband and of which he was convicted. After respondent was criminally charged, but before she entered her plea, respondent continued to associate with and aid her husband.

Respondent entered a guilty plea to, and was convicted of, a felony violation of Penal Code section 32 on January 24, 2008, and a second felony charge was dismissed. The court granted respondent's motion on May 9, 2008, to withdraw her felony guilty plea; the charge was reduced to a misdemeanor; and respondent entered a guilty plea to a misdemeanor violation of Penal Code section 32. Respondent's sentence included three years' probation.

Respondent stipulated that the facts and circumstances surrounding her May 9, 2008, conviction involved moral turpitude and the misconduct warrants discipline.

Aggravation

Bad Faith, Dishonesty, Concealment, Overreaching or Other Violations of State Bar Act/Rules of Professional Conduct.

Respondent's conduct was surrounded by or followed by dishonesty, concealment, bad faith, overreaching or other violations of the Rules of Professional Conduct or the State Bar Act. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(iii).)² After her husband's arrest, respondent denied state parole agents entry to conduct a parole search

² All further references to standard(s) or std. are to this source.

and tried to leave the residence with several documents that incriminated her husband. Later, when police discovered respondent and her fugitive husband, she refused to answer certain questions from police; to identify herself to police; or to permit police inside her rented house, even after being shown warrants for her husband's arrest. She also left after being instructed by police to come back and not leave the scene.

Harm to Public/Administration of Justice

Respondent's misconduct inherently harmed the administration of justice and the public. (Std. 1.2(b)(iv).)

Mitigation

No Prior Record

Respondent has no prior record of discipline. (Std. 1.2(e)(i).) Respondent had practiced law for six years and nine months before her criminal conduct.

Cooperation

Respondent cooperated with law enforcement in another matter.

Extreme Emotional Difficulties

Respondent's misconduct was substantially caused by the severe emotional and physical abuse she had suffered as a result of her abusive then-husband, now ex-husband. These emotional issues were the subject of respondent's participation in the LAP. It is now appropriate to consider respondent's successful completion of the ADP as a further mitigating circumstance in this matter. (Std. 1.2(e)(iv).)

V. 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 1.3, 1.4, 1.5, 1.6, and 3.2 and *In the Matter of Sawyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 765; *In the Matter of Fandey* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 767; *In re Lindgren* (1979) 25 Cal.3d 65, and *In re Young* (1989) 49 Cal.3d 257.

Because Respondent has now successfully completed the ADP, this court, in turn, now recommends to the Supreme Court the imposition of the lower level of discipline, set forth more fully below.

V. Recommendations

Suspension

It is hereby recommended that respondent **Andrea Selene Burger**, State Bar Number 173351, be suspended from the practice of law in California for three years, that execution of that period of suspension be stayed, and that she be placed on probation³ for a period of three years subject to the following conditions:

Respondent Andrea Selene Burger is suspended from the practice of law for the first 15 months of probation (with credit given for interim suspension, which was effective May 4, 2008, through October 8, 2009);

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;

Within 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

³ 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.)

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;

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;

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 her 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 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 20 days before the last day of the period of probation and no later than the last day of the probation period;

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;

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; and

Respondent must comply with all provisions and conditions of her Participation Plan/Agreement with the Lawyer Assistance Program (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 condition(s) of her Participation Plan/Agreement 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 her 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.⁴

⁴ It is not recommended that respondent be ordered to take and pass State Bar Ethics School, as respondent completed Ethics School on March 25, 2009, during her period of evaluation for the ADP.

At the expiration of the period of probation, if respondent has complied with all conditions of probation, the three year period of stayed suspension will be satisfied.

Multistate Professional Responsibility Examination

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) as respondent took and passed the March 2011 administration of the MPRE.

Rule 9.20, California Rules of Court

It is not recommended that respondent be ordered to comply with California Rules of Court, rule 9.20, as respondent complied with the requirements of rule 9.20 in connection with her interim suspension. As respondent will receive credit for her period of interim suspension, she will not serve any period of actual suspension after the effective date of the Supreme Court's order imposing discipline in this matter. As such, it is not recommended that she be ordered to again comply with rule 9.20.

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.

VI. 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 5.388(c) (former rule 806(c)) of the Rules of Procedure of the State Bar of California (Rules of Procedure),⁵ all other documents not previously filed in this matter are ordered sealed pursuant to 5.12 (former rule 23) of the Rules of Procedure.

⁵ Effective January 1, 2011, new Rules of Procedure of the State Bar of California became effective.

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 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: May _____, 2011

DONALD F. MILES
Judge of the State Bar Court