

JUL 26 2005

PUBLIC MATTER

STATE BAR COURT CLERK'S OFFICE
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THE STATE BAR COURT

HEARING DEPARTMENT - SAN FRANCISCO

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In the Matter of)
JEFFREY GREENWALD,)
Member No. 178377,)
A Member of the State Bar.)

Case No. 02-N-11589-JMR

DECISION AND ORDER SEALING
DOCUMENTS

I. INTRODUCTION

This disciplinary proceeding arises out of respondent Jeffrey Greenwald's (respondent) failure to timely file an affidavit in compliance with rule 955 of the California Rules of Court.

After 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), this court approved the stipulation and accepted respondent as a participant in the State Bar Court's Alternative Discipline Program.¹ (Rules Proc. of State Bar, rules 800-807.)

As set forth below in greater detail, respondent has successfully completed the Alternative Discipline Program. Accordingly, pursuant to rule 803 of the Rules of Procedure of the State Bar of California, the court hereby recommends that respondent be suspended from the practice of law for two years and 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, that execution be stayed, and that respondent be placed on probation for two years with conditions including an actual

¹Also known as the State Bar Court's Program for Respondents with Substance Abuse and Mental Health Issues.

1 suspension for six months, with credit towards the period of actual suspension given for the period
2 of his involuntary inactive enrollment.

3 II. SIGNIFICANT PROCEDURAL HISTORY

4 On May 24, 2002, the State Bar filed a notice of disciplinary charges. On September 13,
5 2002, respondent filed his response to the notice.

6 In his response, respondent outlined the many personal problems he had been experiencing
7 since as early as 1994, including marital, financial and health problems, depression, and ultimately,
8 an addiction to methamphetamine. Based on respondent's statements in his response and his
9 representation that since October 2002 he had been participating in the State Bar Lawyer Assistance
10 Program (LAP),² the court ordered the case to be reassigned to the Alternative Discipline Program
11 to evaluate whether respondent met the requirements for participation in the court's program. (Rules
12 Proc. of State Bar, rule 801(b).)

13 On April 2, 2003, after an extensive evaluation process, respondent entered into a five-year
14 participation agreement with the LAP to assist in his recovery process.

15 Meanwhile, respondent and the State Bar negotiated a stipulation as to facts and conclusions
16 of law in the pending disciplinary matter. As part of the negotiations, the parties discussed
17 stipulating to respondent's transfer to involuntary inactive enrollment pursuant to Business and
18 Professions Code section 6007(b)(3) and rules 420-429 of the Rules of Procedure of the State Bar.
19 Thus, on May 7, 2003, the court issued an order appointing counsel, Kurt Melchior, to represent
20 respondent for purposes of any stipulation for involuntary inactive enrollment. On June 16, 2003,
21 the court approved a stipulation for involuntary inactive enrollment pursuant to Business and
22 Professions Code section 6007(b)(3). (State Bar Court case No. 03-TT-01794.)³

23
24 ²The State Bar implemented the LAP pursuant to Business and Professions Code sections 6230-
25 6238. The LAP offers support to attorneys recovering from substance abuse and mental health problems.
Experts provide consultations and private support groups are offered to attorneys in the program.

26 ³ Respondent was encouraged to stipulate to his involuntary inactive enrollment to focus on his
27 recovery program with the LAP. It was the intention of the parties that respondent receive credit for the
28 period of his involuntary inactive enrollment towards any period of actual suspension received as part of
this proceeding. Over one year later, after a sustained period of recovery, respondent was relieved from
this involuntary inactive enrollment on July 2, 2004. (State Bar Court case No. 04-ZT-12216.)

1 On June 16, 2003, the court also approved the Stipulation Re Facts and Conclusions of Law
2 submitted by the parties for purposes of respondent's participation in the State Bar Court's
3 Alternative Discipline Program. (Rules Proc. of State Bar, rule 802(a).) At the same time, this court
4 issued its Decision Re Alternative Recommendations for Degree of Discipline pursuant to rule
5 803(a) of the Rules of Procedure of the State Bar. After considering the court's disciplinary
6 recommendations, respondent elected to participate in the Alternative Discipline Program.
7 Following the execution of a Contract and Waiver for Participation, this court accepted respondent
8 into the Alternative Discipline Program on June 16, 2003.

9 Approximately 24 months later, on June 20, 2005, this court found that respondent
10 successfully completed the Alternative Discipline Program and ordered that the Stipulation Re Facts
11 and Conclusions of Law be filed. The court indicated that it would issue this decision
12 recommending the lower level of discipline reflected in the June 16, 2003 Decision Re Alternative
13 Recommendations for Degree of Discipline, as modified on April 19, 2005.

14 II. FACTS AND CONCLUSIONS OF LAW

15 The Stipulation Re Facts and Conclusions of Law approved by the court and filed on June
16 20, 2005, is incorporated by reference as if set forth fully herein.

17 On October 10, 2001, in case No. S099692 (State Bar Court Case Nos. 99-O-13639; 00-O-
18 12088; 00-O-12411(cons.)), the Supreme Court ordered respondent suspended from the practice of
19 law for two years and until certain conditions were satisfied, execution stayed, and ordered that he
20 be actually suspended for 60 days and until he made specified restitution, and until the State Bar
21 Court granted a motion to terminate his actual suspension pursuant to rule 205 of the Rules of
22 Procedure of the State Bar. The Supreme Court order was effective November 9, 2001.

23 The Supreme Court order also provided that if respondent was actually suspended for 90 days
24 or more, respondent was to comply with rule 955 of the California Rules of Court (rule 955) by
25 performing the acts specified in subdivisions (a) and (c) of the rule within 120 and 130 days,
26 respectively, after the effective date of the order. Respondent remained actually suspended for 90
27 days or more. Thus, respondent was ordered to comply with subdivision (a) of rule 955 no later than
28 March 9, 2002, and was ordered to comply with subdivision (c) of rule 955 no later than March 19,

1 2002. Respondent did not file his rule 955 compliance affidavit pursuant to subdivision (c) of the
2 rule until February 26, 2003.

3 Respondent wilfully violated Business and Professions Code section 6103 by failing to timely
4 comply with rule 955 as ordered by the Supreme Court.

5 III. AGGRAVATION AND MITIGATION

6 A. Aggravation

7 Respondent has a prior record of discipline, an aggravating circumstance. (Rules Proc. of
8 State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(b)(i) (all further
9 references to standards are to this source).)

10 As set forth above, on October 10, 2001, in case No. S099692 (State Bar Court Case Nos.
11 99-O-13639; 00-O-12088; 00-O-12411(cons.)), the Supreme Court ordered Respondent suspended
12 from the practice of law for two years and until certain conditions were satisfied, execution stayed,
13 and ordered that he be actually suspended for 60 days and until he makes restitution to William Ikon
14 in the amount of \$1,600 plus 10% interest per annum from December 13, 1999, and until the State
15 Bar Court grants a motion to terminate his actual suspension pursuant to rule 205 of the Rules of
16 Procedure of the State Bar.⁴ In the default proceeding involving three client matters, respondent was
17 found culpable of failing to competently perform legal services, failing to communicate with two of
18 the clients, failing to return unearned fees in one of the matters, failing to maintain respect due to the
19 courts and failing to cooperate in the State Bar investigation in all three matters.

20 B. Mitigation

21 In mitigation, the parties stipulated that Respondent has demonstrated candor and cooperation
22 in that he has readily admitted his failure to timely comply with rule 955. (Standard 1.2(e)(v).)

23 In addition, in accordance with applicable Supreme Court case law, an attorney's
24 rehabilitation from substance abuse problems can be accorded significant mitigating weight if it is
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26
27 ⁴On January 7, 2005, pursuant to respondent's rule 205 and standard 1.4(c)(ii) motion, the court
28 terminated respondent's actual suspension pursuant to the Supreme Court order in case No. S099692.
(State Bar Court case no. 04-V-15941.) Among other things, the parties stipulated that respondent had
satisfied all outstanding restitution orders and had established his rehabilitation.

1 established that (1) the abuse was addictive in nature; (2) the abuse causally contributed to the
2 misconduct; and (3) the attorney has undergone a meaningful and sustained period of rehabilitation.
3 (*Hartford v. State Bar* (1990) 52 Cal.3d 93, 101; *In re Billings* (1990) 50 Cal.3d 358, 367.) The
4 court finds by clear and convincing evidence that respondent has satisfied all three conditions
5 necessary to receive significant mitigating weight for his recovery efforts.

6 Respondent's participation in LAP, his LAP Participation Agreement, his response to the
7 notice of disciplinary charges, and his declaration dated April 23, 2003 in support of his participation
8 in the court's Alternative Discipline Program, establish that Respondent had a substance abuse
9 problem starting in the late 1990's, involving an addiction to methamphetamine.

10 The court finds that there is a causal connection between respondent's substance abuse and
11 his misconduct, including his failure to timely comply with rule 955 of the California Rules of Court.
12 Respondent's addiction impacted his ability to fully meet the day-to-day responsibilities of life,
13 including his obligations as an attorney. Respondent stopped practicing law in February 2001,
14 however, he failed to update his membership records address. As a result, he did not receive notice
15 of the underlying disciplinary matter or the Supreme Court order. Thus, the first two prongs of the
16 three-part test established by the Supreme Court have been met.

17 Respondent stopped using methamphetamine in February 2001. On August 31, 2002, he
18 stopped using all intoxicating substances, including alcohol and marijuana. Respondent began
19 participation in the LAP in October 2002. On April 2, 2003, he entered into a five-year Participation
20 Agreement with the LAP to assist in his recovery process. Since entering the LAP, respondent has
21 been in full compliance with all the LAP requirements. His participation requirements include
22 successfully completing a treatment program with aftercare; attending weekly LAP group meetings;
23 attending at least three abstinence based self-help group meetings a week; engaging in psychiatric
24 mediation management for depression; abstaining from the use of alcohol and all psychotropic drugs
25 except those prescribed by an approved physician; and submitting to random drug testing.

26 On June 16, 2003, respondent was accepted into the State Bar Court's Alternative Discipline
27 Program. As part of his participation, respondent appeared at regular status conferences before the
28 court and waived confidentiality to allow the court to monitor his progress in the LAP.

1 On May 10, 2005, the LAP submitted to the court a Certificate of One Year Participation in
2 the Lawyer Assistance Program (Certificate) for respondent. (Rules Proc. of State Bar, rule 804.)
3 The Certificate confirmed that respondent complied with all drug testing requirements set forth in
4 his LAP Participation Agreement for at least one year and that no unauthorized substances were
5 detected. Although the Rules of Procedure of the State Bar of California require the LAP to certify
6 only one year of compliance with drug testing, the court finds, based on the participation reports
7 provided by the LAP, that respondent has complied with all drug testing requirements since the
8 testing system started in May 2003.

9 On June 20, 2005, this court found that respondent successfully completed the Alternative
10 Discipline Program based on his compliance for 24 months with all terms and conditions of the LAP
11 and the court's program. Respondent's successful completion of the Program qualifies as the
12 "meaningful and sustained period of rehabilitation" required by the Supreme Court's three-part test.
13 Accordingly, respondent's rehabilitation is accorded significant mitigating weight in determining
14 the appropriate level of discipline.

15 IV. DEGREE OF DISCIPLINE

16 "The primary purposes of disciplinary proceedings conducted by the State Bar of California
17 and of sanctions imposed . . . are the protection of the public, the courts and the legal profession; the
18 maintenance of high professional standards by attorneys and the preservation of public confidence
19 in the legal profession." (*In re Morse* (1995) 11Cal.4th 184, 205, quoting standard 1.3.)

20 The standards for respondent's misconduct provide a broad range of sanctions ranging from
21 suspension to disbarment. (Standards 1.6(b)(ii), 1.7(a) and 2.6.) The standards "promote the
22 consistent and uniform application of disciplinary measures," and while they are entitled to great
23 weight, they "are not binding." (*In re Morse, supra*, 11Cal.4th at p. 205.) "[E]ach case must be
24 resolved on its own particular facts and not by application of rigid standards." (*In the Matter of*
25 *Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 251.)

26 Standard 1.7(a) provides that if a member has a record of one prior imposition of discipline,
27 the degree of discipline in the current proceeding shall be greater than that imposed in the prior
28 proceeding. Respondent was previously suspended for 60 days.

1 Standard 2.6 provides that violations of Business and Professions Code section 6103 shall
2 result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the
3 victim, with due regard to the purposes of imposing discipline.

4 While disbarment is the sanction often imposed for a wilful violation of rule 955, it is not
5 always the necessary or most appropriate level of discipline. In fact, rule 955 states that the sanction
6 for failing to comply with the rule "constitutes a cause for disbarment *or suspension*." (Emphasis
7 added.) In light of the range of discipline provided for under the standards and rule 955, the court
8 looks to similar cases for guidance.

9 In *Durbin v. State Bar* (1979) 23 Cal.3d 461, the Supreme Court suspended an attorney who
10 had failed to comply with rule 955 for a period of six months and until he filed the rule 955
11 compliance affidavit. The attorney asserted that he had given his clients oral notice of his
12 suspension, gave them refunds and returned their files but was thereafter unable to file the
13 compliance affidavit because he had not kept any records of the notifications he made to his clients.
14 The Supreme Court held that the attorney's failure to comply with the Court's rule 955 order could
15 not be ignored but that, since he provided notice to his clients and simply failed to file the
16 compliance affidavit, the one year suspension recommended by the State Bar Court was too severe.

17 In *Athearn v. State Bar* (1982) 32 Cal.3d 38, the Supreme Court also suspended the attorney
18 for a period of six months and until he complied with the provisions of rule 955. In that case, the
19 attorney filed a timely, but false affidavit of compliance with rule 955. The Court found that the
20 attorney had not informed his clients of his suspension but, rather, had arranged to have most of his
21 clients sign forms consenting to the substitution of the attorney's mother (who was also an attorney)
22 in his place. None of the forms suggested that the reason for the substitution was the attorney's
23 suspension from practice. Moreover, in some cases, the attorney backdated the substitution forms
24 to falsely suggest that the substitution had occurred prior to the effective date of the attorney's
25 suspension.

26 In *Shapiro v. State Bar* (1990) 51 Cal.3d 251, the attorney referred his clients to another law
27 firm prior to the Supreme Court's issuance of its suspension order. The partners of the other firm
28 met with the attorney's clients, informed them that the attorney would no longer be able to represent

1 them and offered to substitute as counsel if the clients so desired and, if not, to assist them in finding
2 other counsel. The attorney was present at these meetings. After the Supreme Court entered its
3 suspension order, the attorney consulted with his probation monitor and subsequently filed an
4 "affidavit" that was a quarterly probation report rather than a rule 955 compliance affidavit.
5 Subsequently, after being informed that his original notification to clients with improper, the attorney
6 sent letters to the clients notifying them of his suspension but failed to file a proper compliance
7 affidavit for approximately an additional three months. The Supreme Court actually suspended the
8 attorney for a period of one year, based not only upon the rule 955 violation, but also upon the
9 Court's conclusion that the attorney had failed to competently perform legal services and had
10 improperly withdrawn from employment in another matter.

11 In the present case, Respondent was involuntarily enrolled as an inactive member of the State
12 Bar effective February 3, 2001, as a result of the entry of his default in State Bar Court case Nos. 99-
13 O-13639, 00-O-12088, 00-O-12411(cons.). He was not entitled to practice law from February 3,
14 2001, to January 7, 2005. In his declaration dated April 23, 2003, and submitted to the court in
15 support of his participation in the *Alternative Discipline Program*, respondent states that by February
16 2001 he discontinued practicing law completely and began focusing on his recovery from substance
17 abuse. By the end of April 2001, Respondent began working in the computer industry. The
18 Supreme Court's order imposing a requirement of complying with rule 955 was filed on October 10,
19 2001.⁵ Respondent had no clients, opposing counsel, courts or others to notify of his suspension at
20 that time. While this did not relieve respondent of the obligation to file a compliance affidavit
21 pursuant to rule 955(c) (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341), as the above cases indicate,
22 the failure to file the compliance affidavit is often treated far differently from the failure to provide
23 the required notification to clients, opposing counsel and the courts. Moreover, Respondent has now
24 filed his affidavit of compliance pursuant to rule 955(c).

25 Respondent's addiction impacted his ability to meet the day-to-day responsibilities of life,
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28 ⁵The parties stipulated that Respondent did not have actual notice of the Supreme Court order as a result of his failure to update his membership records address.

1 resulted in poor judgment, and contributed to his professional misconduct in the underlying matter
2 and in his failure to timely file a rule 955 compliance affidavit in this matter. Thus, respondent's
3 misconduct was attributable to his addiction, which he has taken significant steps to address based
4 on a successful three-year recovery program.

5 Respondent has not used any drugs since August 2002. Moreover, he signed a LAP
6 Participation Agreement on April 2, 2003, and has been in full compliance with the program since
7 that date. As part of the recommended probation conditions in this matter, respondent will be
8 required to continue to comply with his LAP Participation Agreement for two additional years.

9 Respondent also successfully completed the court's Alternative Discipline Program after 24
10 months of participation. The program requires extensive monitoring by the court over a prolonged
11 period of time and provides the court with evidence that respondent has taken the steps necessary
12 to maintain his recovery as recommended by the LAP. In addition, while participating in the court's
13 Program, respondent took measures to maintain his learning and ability in the law, including
14 complying with the mandatory continuing legal education requirements of the State Bar; passing the
15 Multistate Professional Responsibility Examination; and passing the State Bar Ethics School.

16 Respondent's substantial and successful efforts at recovery over the past three years establish
17 compelling mitigating circumstances. Based on respondent's participation in the Alternative
18 Discipline Program and his commitment to his recovery, the court is provided with substantial
19 evidence that the purposes of the disciplinary system are being adequately addressed in this case, i.e.,
20 the protection of the public, the courts and the legal profession; the maintenance of high professional
21 standards by attorneys; and the preservation of public confidence in the legal profession. Therefore,
22 upon consideration of the standards and the case law set forth above, and the strong mitigating
23 circumstances in this case, the court concludes that a six-month period of actual suspension, with
24 credit for the period of time that respondent was on involuntary inactive enrollment, is appropriate.

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1 **V. DISCIPLINARY RECOMMENDATIONS**

2 **IT IS HEREBY RECOMMENDED** that respondent Jeffrey Greenwald be suspended for
3 two years and until he shows proof satisfactory to the State Bar Court of his rehabilitation, present
4 fitness to practice and present learning and ability in the general law pursuant to standard 1.4(c)(ii)
5 of the Standards for Attorney Sanctions for Professional Misconduct, that execution of such
6 suspension be stayed and that respondent be placed on probation for a period of two years on the
7 following conditions:

- 8 1. Respondent is actually suspended from the practice of law for a period of six months. Credit
9 toward the period of actual suspension will be given for the period of involuntary inactive
10 enrollment which commenced on June 16, 2003 and ended on July 2, 2004;
- 11 2. During the period of probation, respondent must comply with the provisions of the State Bar
12 Act and the Rules of Professional Conduct;
- 13 3. Respondent must comply with all provisions and conditions of his Participation Agreement
14 with the State Bar Lawyer Assistance Program as initially agreed to and as the State Bar
15 Lawyer Assistance Program may change or modify those conditions thereafter. Upon the
16 request of the Office of Probation of the State Bar, respondent must provide the Office of
17 Probation with all necessary waivers to allow the Lawyer Assistance Program to report
18 respondent's compliance with his Participation Agreement to the Office of Probation.
19 Revocation of any of these waivers is a violation of this condition;
- 20 4. Within ten (10) days of any change in the information required to be maintained on the
21 membership records of the State Bar pursuant to Business and Professions Code section
22 6002.1, subdivision (a), including his current office address and telephone number, or if no
23 office is maintained, the address to be used for State Bar purposes, respondent must report
24 such change in writing to the Membership Records Office of the State Bar and to the Office
25 of Probation;
- 26 5. Respondent must submit written quarterly reports to the Office of Probation on each January
27 10, April 10, July 10 and October 10 of the period of probation. Under penalty of perjury,
28 respondent must state whether he has complied with the State Bar Act, the Rules of

1 Professional Conduct, and all of these probation conditions during the preceding calendar
2 quarter. If the first report will cover less than thirty (30) days, that report must be submitted
3 on the reporting due date for the next calendar quarter and must cover the extended period.
4 In addition to all quarterly reports, respondent must submit a final report, containing the same
5 information required by the quarterly reports. The final report must be submitted no earlier
6 than twenty (20) days before the last day of the probation period and no later than the last day
7 of said period;

8 6. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and
9 truthfully, any inquiries of the Office of Probation that are directed to respondent personally
10 or in writing, relating to whether respondent is complying or has complied with these
11 probation conditions;

12 7. The period of probation will commence on the effective date of the Order of the Supreme
13 Court imposing discipline in this proceeding;

14 8. At the expiration of the period of this probation, if respondent has complied with all the
15 terms and conditions of probation, the Order of the Supreme Court suspending respondent
16 from the practice of law for two (2) years will be satisfied and that suspension will be
17 terminated.

18 Respondent took and passed the Multistate Professional Responsibility Examination (MPRE)
19 in November 2004. As a result, it is unnecessary to impose an additional MPRE requirement as part
20 of the disposition of this proceeding.

21 In addition, during his participation in the Alternative Discipline Program, respondent
22 attended the State Bar Ethics School and passed the test given at the end of that session. As a result,
23 it is unnecessary to impose an additional Ethics School requirement as part of the disposition of this
24 proceeding.

25 Likewise, since respondent filed a compliance affidavit pursuant to rule 955(c) of the
26 California Rules of Court during this proceeding, and it is not recommended that respondent receive
27 any additional actual suspension time in light of the time he spent on involuntary inactive, it is *not*
28 recommended that he be required to comply with the requirements of rule 955 of the California

1 Rules of Court.

2 **VI. COSTS**

3 It is further recommended that costs be awarded to the State Bar pursuant to section 6086.10
4 and that such costs be made payable in accordance with section 6140.7.

5 **VII. ORDER SEALING DOCUMENTS**

6 In the course of determining respondent's eligibility for participation in the State Bar Court's
7 Alternative Discipline Program, and while respondent was participating in the Program, various
8 documents were submitted to the court for review under confidential cover, including reports and
9 evaluations by mental health professionals. Pursuant to rule 806 of the Rules of Procedure of the
10 State Bar of California all information concerning the nature and extent of a respondent's treatment
11 is absolutely confidential and is not be disclosed to the public absent an express written waiver by
12 the respondent.

13 In order to maintain the confidentiality of the nature and extent of respondent's treatment,
14 the court finds that it is necessary to seal those documents that discuss respondent's substance abuse
15 and mental health issues.

16 In light of the foregoing,

17 **IT IS HEREBY ORDERED** that pursuant to rules 23 and 806 of the Rules of Procedure
18 of the State Bar of California the following documents are to remain confidential and sealed:

- 19 1. All reports and evaluations by mental health professionals;
20 2. All information concerning the nature and extent of respondent's treatment provided by the
21 LAP, including, but not limited to, participation reports, application agreements and
22 participation agreements;
23 3. Respondent's declaration in support of participation in the Pilot Program submitted on April
24 24, 2003.

25 **IT IS FURTHER ORDERED** that the foregoing protected and sealed material will only be
26 disclosed to: (1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State
27 Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when
28 necessary for their official duties. Protected material will be marked and maintained by all

1 authorized individuals in a manner calculated to prevent improper disclosure. All persons to whom
2 protected material is disclosed will be given a copy of this order sealing the documents by the person
3 making the disclosure.

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Dated: July 26, 2005


JOANN M. REMKE
Judge of the State Bar Court

State Bar Court of the State Bar of California
Hearing Department: Los Angeles San Francisco
PILOT PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE AND MENTAL HEALTH ISSUES

Counsel for the State Bar Robin B. Haffner, #149481 Office of Chief Trial Counsel The State Bar of California 180 Howard Street San Francisco, CA 94105 (415)538-2000	Case Number(s) 02-N-11589 CONFIDENTIAL PUBLIC MATTER	(for Court use) LODGED JUN 18 2003 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO FILED
Counsel for Respondent Jeffrey H. Greenwald 75 Conejo Drive Millbrae, CA 94030 (In Propria Persona)	Submitted to Pilot Program Judge JUN 20 2005 STIPULATION RE FACTS AND CONCLUSIONS OF LAW STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of JEFFREY H. GREENWALD Bar # 178377 A Member of the State Bar of California (Respondent)		

A. Parties' Acknowledgments:

(1) Respondent is a member of the State Bar of California, admitted December 5, 1995
(Date)

(2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, if Respondent is not accepted into the Lawyer Assistance Program, this stipulation will be rejected and will not be binding on Respondent or the State Bar.

(3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." This stipulation consists of 10 pages.

(4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts".

(5) Conclusions of law, drawn from and specifically referring to the facts, are also included under "Conclusions of Law."

(6) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.

(7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§ 6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

Note: All information required by this form and any additional information which cannot be provided in the space provided, shall be set forth in the text component (attachment) of this stipulation under specific headings, i.e., "Facts", "Dismissals", "Conclusions of Law."

B. Aggravating Circumstances (Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b).) Facts supporting aggravating circumstances are required.

(1) Prior Record of Discipline [see standard 1.2(f)]

- (a) State Bar Court Case # of prior case 99-0-13639; 00-0-12088; 00-0-12411
- (b) Date prior discipline effective October 10, 2001
- (c) Rules of Professional Conduct/State Bar Action violations 00-0-12411: RPC 3-110(A) & 3-700(D)(2); B&P 6068(i) & 6068(m) 99-0-13639: RPC 3-110(A) & B&P 6068(m) 00-0-12088: RPC 3-110(A); B&P 6068(b) & 6068(i)
- (d) Degree of prior discipline 2 years suspension, stayed; 60 days actual, and until restitution
- (e) If Respondent has two or more incidents of prior discipline, use space provided below or under "Prior Discipline"

- (2) Dishonesty: Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) Trust violation: Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) Harm: Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) Indifference: Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) Lack of Cooperation: Respondent displayed a lack of candor and cooperation to the victims of his/her misconduct or the State Bar during disciplinary investigation or proceedings.
- (7) Multiple/Pattern of Misconduct: Respondent's current misconduct evidences multiple acts of wrong doing or demonstrates a pattern of misconduct.
- (8) No aggravating circumstances are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) No Prior Discipline: Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) No Harm: Respondent did not harm the client or person who was the object of the misconduct.
- (3) Candor/Cooperation: Respondent displayed spontaneous candor and cooperation to the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) Remorse: Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) Restitution: Respondent paid \$ _____ on _____ in restitution to _____ without the threat of force of disciplinary, civil or criminal proceedings.
- (6) Delay: These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) Good Faith: Respondent acted in good faith.
- (8) Emotional/Physical Difficulties: At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish were directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drugs or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) Severe Financial Stress: At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) Family Problems: At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) Good Character: Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) Rehabilitation: Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) No mitigating circumstances are involved.

Additional mitigating circumstances:

See attachment.

Respondent enters into this stipulation as a condition of his/her participation in the Pilot Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Pilot Program Contract.

If the Respondent is not accepted into the Pilot Program or does not sign the Pilot Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Pilot Program, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement Re: Discipline shall be imposed or recommended to the Supreme Court.

4-15-2003
Date

Jeffrey H. Greenwald
Respondent's Signature

Jeffrey H. Greenwald
Print Name

6/16/03
Date

Kurt Melchior
Respondent's Counsel Signature

KURT MELCHIOR
Print Name

5/19/03
Date

Robin B. Haffner
Deputy Trial Counsel's Signature

Robin B. Haffner
Print Name

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Jeffrey H. Greenwald

CASE NUMBER(S): 02-N-11589-PEM ET AL.

FACTS AND CONCLUSIONS OF LAW.

1. Statement of Facts

On October 10, 2001 the California Supreme Court filed order no. S099692 (hereinafter, "955 Order"). The 955 Order included a requirement that RESPONDENT comply with Rule 955, California Rules of Court, by performing the acts specified in subdivisions (a) and (c) within 30 and 40 days, respectively, after the effective date of the Supreme Court Order. Specifically, the 955 Order required RESPONDENT to comply with Rule 955(a) by notifying all clients and any co-counsel of his suspension, delivering to all clients any papers or other property to which the clients are entitled, refunding any unearned attorney fees, notifying opposing counsel and adverse parties of his suspension and filing a copy of said notice with the court, agency, or tribunal before which the litigation is pending. RESPONDENT was further required to comply with Rule 955(c) by filing with the Clerk of the State Bar Court an affidavit showing that she fully complied with those provisions of the order entered pursuant to Rule 955.

The Supreme Court Order became effective on November 9, 2001, thirty days after the 955 Order was entered. Thus, RESPONDENT was ordered to comply with subdivision (a) of Rule 955 of the California Rules of Court no later than on or about March 9, 2002, and was ordered to comply with subdivision (c) of Rule 955 no later than on or about March 19, 2002.

On or about October 10, 2001, the Clerk of the Supreme Court of the State of California served upon RESPONDENT a copy of the 955 Order.

On or about November 19, 2001, the Probation Unit of the Office of the Chief Trial Counsel of the State Bar of California sent to RESPONDENT at his official State Bar Membership Records address a true and accurate copy of the 955 Order. This mailing was sent with adequate postage by

regular mail via the United States Postal Service. The mail was returned to the Probation Unit by postal authorities, with the stamped notation, "Forwarding order expired, Insufficient address."

By on or about March 29, 2002, RESPONDENT failed to file with the clerk of the State Bar Court a declaration of compliance with Rule 955(c), California Rules of Court.

On February 26, 2003, RESPONDENT filed with the Clerk of the State Bar Court a declaration of compliance with Rule 955(c), California Rules of Court.

2. Conclusions of Law

By not filing a declaration of compliance regarding Rule 955 in conformity with the requirements of Rule 955(c) in a timely manner, RESPONDENT failed to comply with the provisions of Order No. S097697, requiring compliance with Rule 955, California Rules of Court.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was May 2, 2003.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of April 15, 2003 the estimated prosecution costs in this matter are approximately \$922.00. Respondent acknowledges that this figure is an estimate only and that it does not include State Bar Court costs which will be included in any final cost assessment. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

AUTHORITIES SUPPORTING DISCIPLINE.

The discipline for rule 955 violations is generally disbarment. (*Lyndon v. State Bar* (1988) 45 Cal.3d 1181; *Bercovich v. State Bar* (1990) 50 Cal.3d 116; *Powers v. State Bar* (1988) 44 Cal.3d. 337.)

AGGRAVATING CIRCUMSTANCES.

PRIOR DISCIPLINE.

Respondent has prior discipline. On October 10, 2001, by way of Supreme Court Order no. S099692, respondent received two years of suspension, stayed, with sixty days suspension and until he paid restitution to client William Ikon in the sum of \$1,600 plus interest at the rate of ten percent per annum.

MITIGATING CIRCUMSTANCES.

ADDITIONAL MITIGATING CIRCUMSTANCES.

As soon as the State Bar Lawyer's Assistance Program (LAP) started accepting applicants, Respondent signed a pre-enrollment assessment agreement on June 17, 2002. Respondent was then assessed and monitored for a period of time by the LAP. At the conclusion of the LAP evaluation, on September 20, 2002, Respondent met with its Evaluation Committee, and then entered into a long-term participation agreement with LAP on October 16, 2002.

Respondent did not have actual notice of the 955 order. However, this was due to the fact that he failed to update Membership Records with his address pursuant to Business and Professions Code section 6002.1.

STATE BAR ETHICS SCHOOL.

Because respondent has agreed to attend State Bar Ethics School as part of this stipulation, respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

OTHER CONDITIONS NEGOTIATED BY THE PARTIES.

Respondent will adhere to the provisions of the Lawyers Assistance Program Participation Agreement, dated April 2, 2003. Respondent understands that the Agreement is subject to revisions from time to time and he agrees to the revisions.

FINANCIAL CONDITIONS, RESTITUTION.

Pursuant to Supreme Court Order S099692 dated October 10, 2001 (prior discipline), respondent must make restitution to William Ikon or the Client Security Fund if it has paid, in the principal amount of \$1,600 plus interest at the rate of 10% per annum from October 10, 2001, and furnish satisfactory evidence of restitution to the Probation Unit.

Respondent shall include in each quarterly report required herein satisfactory evidence of all restitution payments under Order No. S099692 made by him or her during that reporting period.

Neither this Stipulation, nor participation in the Attorney Diversion and Assistance Program precludes or stays the independent review and payment of applications for reimbursement filed against the Respondent pursuant to the Rules of Procedure, Client Security Fund Matters.

Respondent admits that the aforementioned facts are true and that he/she is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

ORDER

Finding this stipulation to be fair to the parties, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

The stipulation as to facts and conclusions of law is APPROVED.

The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.

See attached modification.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; 2) this court modifies or further modifies the approved stipulation; or 3) Respondent is not accepted for participation in the Pilot Program or does not sign the Pilot Program Contract. (See rules 135(b) and 802(b), Rules of Procedure.)

The effective date of the disposition is the effective date of the Supreme Court order herein, normally 30 days after the file date of the Supreme Court Order. (See rule 953(a), California Rules of Court.)

Date

6/16/03

John M. Benson
Judge of the State Bar Court

IN THE MATTER OF JEFFERY GREENWALD
Case No. 02-N-11589

COURT'S MODIFICATIONS TO STIPULATED FACTS,
CONCLUSIONS OF LAW AND DISPOSITION

1. On attachment page 1, under "Facts and Conclusions of Law," in the first paragraph under "Statement of Facts," the second full sentence shall be deleted and the following shall be inserted in its place:

"The 955 Order included a requirement that, if Respondent is actually suspended for 90 days or more, he comply with rule 955 of the California Rules of Court, and that he perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 days, respectively, after the effective date of the order."

2. On attachment page 1, under "Facts and Conclusions of Law," in the second paragraph under "Statement of Facts," after the first full sentence, the following shall be inserted:

"Respondent remained actually suspended for 90 days or more."

3. On attachment page 2, under "Conclusions of Law," the following sentence shall be inserted at the end of the paragraph:

"Thus, Respondent wilfully violated Business and Professions Code section 6103."

4. On attachment page 4, under "Financial Conditions, Restitution," pursuant to the prior Supreme Court order, Respondent is required to make restitution to William Ikon or the Client Security Fund if it has paid, in the principal amount of \$1,600 plus interest at the rate of 10% per annum from **December 13, 1999**. Thus, the reference to interest from "October 10, 2001" shall be deleted from that paragraph and "December 13, 1999" shall be inserted.

Respondent shall remain actually suspended pursuant to the Supreme Court order in Case No. S099692 (State Bar Court Case Nos. 99-O-13639; 00-O-12088; 00-O-12411(cons.)) until he provides satisfactory proof of full restitution to the Probation Unit of the State Bar, and until the State Bar Court grants a motion to terminate his actual suspension pursuant to rule 205 of the Rules of Procedure of the State Bar.

Dated: June 16, 2003


JOANN M. REMKE
Judge of the State Bar Court

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on July 26, 2005, I deposited a true copy of the following document(s):

DECISION AND ORDER SEALING DOCUMENTS, filed July 26, 2005

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING, filed June 20, 2005

in a sealed envelope for collection and mailing on that date as follows:

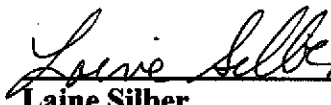
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**JEFFREY H. GREENWALD
75 CONEJO DR
MILLBRAE CA 94030 2819**

- [X] by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

CYDNEY BATCHELOR, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 26, 2005.



Laine Silber
Case Administrator
State Bar Court