

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of) Case No.: **02-O-10193; 04-O-12831 (Cons.)**
)
WILLIAM PAUL LUCKE,) **DECISION AND ORDER SEALING**
) **CERTAIN DOCUMENTS**
)
Member No. 51030,)
)
A Member of the State Bar.)

On December 3, 2004, respondent William Paul Lucke (respondent) contacted the State Bar of California’s Lawyer Assistance Program (LAP) to assist him with his mental health issues.

On January 11, 2005, the State Bar of California, Office of the Chief Trial Counsel (State Bar), filed a Notice of Disciplinary Charges (NDC) against respondent in case no. 02-O-10193. Thereafter, respondent filed a request to participate in the State Bar Court’s Alternative Discipline Program (ADP), and on March 8, 2005, the court issued an order referring this matter to the court’s ADP.¹

Respondent executed a Participation Plan with the LAP on May 12, 2005.

Respondent submitted a declaration to the court on November 30, 2005, establishing a nexus between his mental health issues and his misconduct.

¹ This program was earlier referred to as the Program for Respondent’s with Substance Abuse or Mental Health Issues.

In February 2006, the parties entered into a Stipulation Re Facts and Conclusions of Law in case no(s). 02-O-10193; 04-O-12831 which was received by the court on February 24, 2006.

On May 17, 2006, the court lodged its Confidential 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's participation in the ADP commenced on this date.

The LAP Evaluation Committee terminated respondent from the LAP effective August 7, 2009. The court thereafter received notice that the LAP had closed its file pertaining to respondent.

Thereafter, on August 21, 2009, the court issued an order following a status conference held on August 19, 2009, terminating respondent from the ADP.³ The parties' Stipulation Re Facts and Conclusions of Law was also filed on August 21, 2009.⁴

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In this proceeding, respondent stipulated to misconduct in two client matters. In the first client matter, respondent represented a minor in a civil complaint. The case settled, but respondent failed to established a Special Needs Trust Fund for the minor client for more than four years after receipt of the settlement funds and failed to invest the minor's settlement funds in a structured settlement annuity for more than four years as required by the Order Approving

² The Contract was executed by respondent on May 17, 2006, and by his counsel on May 18, 2006.

³ Respondent's ADP Contract stated, "Respondent understands that eligibility for participation in the ADP is contingent upon Respondent's acceptance and participation in the Lawyer Assistance Program Respondent understands that, if Respondent's participation in the LAP is terminated without successfully completing the LAP, Respondent's participation in the ADP will be terminated and discipline will be imposed or recommended" (ADP Contract, p. 2, ¶ 5.)

⁴ This matter was submitted for decision on August 19, 2009, following the status conference.

Compromise of Minor's Claim. He also failed to inform the minor's parent that he had not funded the annuity until January 2001. With respect to this matter, respondent stipulated that he recklessly and repeatedly failed to perform legal services with competence in violation of rule 3-110(A) of the Rules of Professional Conduct of the State Bar of California⁵ and failed to inform his client of a significant event in her daughter's matter in violation of Business and Professions Code section 6068, subdivision (m)⁶.

In the second client matter, respondent was employed to represent a husband and wife in a medical malpractice case related to an injury suffered by the husband. Respondent filed a lawsuit on behalf of the husband but thereafter failed to conduct any discovery, failed to prepare the husband or his treating physicians for their depositions, and failed to depose the defendants or any witnesses. He also failed to deposit costs in a client trust account. Respondent stipulated that he violated rule 3-110(A) by failing to perform competently the legal services for which he was employed and violated rule 4-110(A) by failing to deposit advanced costs in a client trust account.

In aggravation, respondent engaged in multiple acts of misconduct, and respondent's misconduct caused significant harm in the matter involving the minor, as the delay in funding the annuity resulted in a reduction in the lifetime monthly payment the minor would receive.

In mitigation, respondent's 1999 heart attack contributed to the delay in his management of both client matters; respondent's good character was attested to by several character references; respondent cooperated fully with the State Bar in resolving these matters; respondent had no prior record of discipline and had been admitted to practice law for 24 years before he engaged in misconduct; respondent entered into, and paid in full, a civil settlement to the

⁵ Unless otherwise indicated, all further references to rule(s) refer to this source.

⁶ Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

husband and wife involved in the medical malpractice matter (although this was not done until after the State Bar's intervention), and respondent was participating in the LAP.

The parties' stipulation as to 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 as to facts and conclusions of law set forth the factual findings, legal conclusions, and aggravating and mitigating circumstances in this matter.

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney but, rather, to protect the public, 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.)

On March 15, 2006, respondent submitted his discipline recommendations to the court. The State Bar submitted its discipline recommendations to the court on March 17, 2006. After reviewing the parties' discipline recommendations and considering the Standards for Attorney Sanctions for Professional Misconduct (standard(s)) and certain case law, the parties' stipulation setting forth the facts, conclusions of law, and the aggravating and mitigating circumstances in this matter, and respondent's declaration regarding the nexus between his mental health issues 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 is terminated from, or fails to successfully complete, the ADP, the court considered the discipline recommended by the parties, as well as standards 1.2, 1.3, 1.4, 1.5, 1.6, 2.2(b) and 2.4(b) and *In*

the Matter of Respondent C (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 439; *In the Matter of Respondent G* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 175; *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335; *In the Matter of Kopinski* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716; and *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32.

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, the LAP Evaluation Committee terminated respondent from the LAP effective August 7, 2009. As such, on August 21, 2009, the court issued an order terminating respondent from the ADP.

Accordingly, the court will recommend to the Supreme Court the imposition of the discipline set forth in the court's Confidential Statement of Alternative Dispositions and Orders if respondent was terminated from, or failed to successfully complete, the ADP.

RECOMMENDED DISCIPLINE

IT IS HEREBY RECOMMENDED that respondent **WILLIAM PAUL LUCKE**, State Bar Number 51030, be suspended from the practice of law in California for one (1) year, that execution of that period of suspension be stayed, and that he be placed on probation for a period of two (2) years subject to the following conditions:

1. Respondent William Paul Lucke is suspended from the practice of law for the first 60 days of probation.⁷

⁷ 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.)

2. Respondent William Paul Lucke must also comply with the following additional conditions of probation:
 - a. During the probation period, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
 - b. Within ten (10) days of any change, respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California (Office of Probation), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;
 - c. Within thirty (30) days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request;
 - d. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than thirty (30) days, that report must be submitted on the next quarter date, and cover the extended period.

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

- e. Subject to the assertion of applicable privileges respondent must answer fully, promptly and truthfully any inquires of the Office of Probation which are directed to respondent personally or in writing relating to whether respondent is complying or has complied with the probation conditions;
- f. Within one (1) year of the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, and passage of the test given at the end of that session; and

- g. Respondent must obtain psychiatric or psychological help/treatment from a duly licensed psychiatrist, psychologist, or clinical social worker at respondent's own expense a minimum of two (2) times per month and must furnish evidence to the Office of Probation that respondent is so complying with each quarterly report. Help/treatment should commence immediately, and in any event, no later than thirty (30) days after the effective date of the discipline in this matter. Treatment must continue for the period of probation or until a motion to modify this condition is granted and that ruling becomes final.

If the treating psychiatrist, psychologist, or clinical social worker determines that there has been a substantial change in respondent's condition, respondent or the Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 550 of the Rules of Procedure of the State Bar. The motion must be supported by a written statement from the psychiatrist, psychologist, or clinical social worker, by affidavit or under penalty of perjury, in support of the proposed modification.

3. At the expiration of the period of probation, if William Paul Lucke has complied with all conditions of probation, the one (1) year period of stayed suspension will be satisfied and that suspension will be terminated.⁸

It is also recommended that William Paul Lucke take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court's disciplinary order in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

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.

⁸ It is not recommended that respondent pay restitution to Danielle Dermier, as respondent completed restitution to Rae Castillo (on behalf of Danielle Dermier) during his period of participation in the ADP.

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: November _____, 2009

PAT McELROY
Judge of the State Bar Court