

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	<b>Case No. 02-O-11437-PEM</b>
	)	(02-O-13866; 05-O-00739)
<b>JONATHAN DANIEL NEWMAN,</b>	)	
	)	(1) <b>DECISION;</b>
<b>Member No. 47353,</b>	)	(2) <b>ORDER OF INVOLUNTARY</b>
	)	<b>INACTIVE ENROLLMENT; AND</b>
A Member of the State Bar.	)	(3) <b>ORDER SEALING DOCUMENTS</b>
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**I. Introduction**

In this disciplinary proceeding, respondent **Jonathan Daniel Newman** stipulated to professional misconduct in two client matters and trust account violations, including failing to perform services competently, failing to maintain client funds, misappropriation of \$81,437 in client funds, and committing multiple acts of moral turpitude and dishonesty.

In August 2007, this court accepted respondent as a participant in the State Bar Court’s Alternative Discipline Program (ADP). (Rules Proc. of State Bar, rules 800-807.)

However, respondent has recently consented to his termination from the ADP because of allegations of additional misconduct which occurred after he was accepted into the ADP.

Accordingly, pursuant to rule 803 and in light of his admitted misconduct, the court hereby recommends that respondent be disbarred from the practice of law.<sup>1</sup>

## **II. Significant Procedural History**

### **A. Respondent's Acceptance into the Alternative Discipline Program**

After the filing of formal disciplinary charges by the Office of the Chief Trial Counsel of the State Bar of California (State Bar) on January 3, 2007, respondent sought to participate in the State Bar's Lawyer Assistance Program (LAP) and the State Bar Court's ADP. On August 16, 2007, the court approved a Stipulation re Facts and Conclusions of Law (Stipulation) and accepted respondent into the ADP. On the same day, respondent executed a Contract and Waiver for Participation in the State Bar Court's Alternative Discipline Program (Contract). This court also issued its Confidential Statement of Alternative Dispositions (August 2007 Statement).

Respondent's eligibility and acceptance into the ADP was based on, among other things: 1) his participation in the LAP; 2) the stipulation as to facts and conclusions of law he entered with the State Bar; 3) the nexus evidence he provided; and 4) his agreement to accept the court's low and high levels of recommended discipline set forth in the August 2007 Statement. (Rules Proc. of State Bar, rule 802.)

Respondent agreed to fulfill all of the requirements set forth by the ADP Judge as conditions for respondent's ongoing participation in the ADP.

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<sup>1</sup> On July 23, 2008, respondent tendered a written resignation with charges pending from membership in the State Bar of California and relinquishment of the right to practice law. The resignation is currently pending before the Board of Governors of the State Bar. Under California Rules of Court, rule 9.21, no resignation is effective unless and until it is accepted by the Supreme Court after consideration and recommendation by the Board of Governors of the State Bar.

## **B. Respondent's Termination from the Alternative Discipline Program**

At a status conference on July 21, 2008, respondent consented to his termination from the ADP because of allegations of additional misconduct (case No. 07-O-13017) which occurred after he was accepted into the ADP. By order filed July 22, 2008, the court terminated respondent from the ADP based upon his noncompliance with the conditions of the ADP. The court also ordered the Stipulation to be filed and now issues this decision recommending the high level of discipline set forth in the August 2007 Statement.

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

Respondent was admitted to the practice of law in California on August 24, 1970, and has been a member of the State Bar of California at all times since.

The Stipulation is attached and hereby incorporated by reference, as if fully set forth herein. The Stipulation set forth the factual findings, legal conclusions and aggravating and mitigating circumstances in this matter.

In summary, respondent stipulated to nine counts of professional misconduct involving two client matters and his client trust account. The parties also stipulated to certain aggravating and mitigating factors.

Regarding mitigation, extreme emotional difficulties or physical disabilities suffered by the attorney at the time of the professional misconduct may be considered mitigating. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e)(iv).) The Supreme Court has held 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.)

However, the Supreme Court also has held that, absent a finding of rehabilitation, emotional problems are not considered to be a mitigating factor. (*Kaplan v. State Bar* (1991) 52 Cal.3d 1067, 1072-1073; *In re Naney, supra*, 51 Cal.3d at p. 197.)

Here, in accepting respondent into the ADP, the court found that respondent had suffered from alcoholism and that there was a sufficient connection between respondent's problems and the stipulated misconduct. (Rules Proc. of State Bar, rule 802(c).) Respondent was enrolled in the State Bar's Lawyer Assistance Program (LAP) in March 2007 in a five-year commitment to his recovery program. However, respondent's conduct before this court while participating in the ADP and his termination from that program prevent the court from making a finding that respondent has established his sustained rehabilitation by clear and convincing evidence. Therefore, the court will not give respondent any mitigation credit for his participation in the LAP or the ADP.

#### **IV. Discussion**

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession and maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

After considering the Stipulation, scope of respondent's acts of misconduct, the mitigating and aggravating circumstances, the standards, the relevant case law, and respondent's declaration regarding the nexus between his substance abuse issues and his misconduct in this matter, the court had advised respondent and the State Bar of the low and high levels of discipline which would be recommended to the Supreme Court, depending on whether respondent successfully completed the ADP or was terminated from the ADP. The recommended discipline was set forth in the August 2007 Statement.

Accordingly, because respondent was terminated from the ADP in July 2008, the court hereby recommends the high level of discipline to the Supreme Court.

#### **V. Recommendation**

It is hereby recommended that respondent **Jonathan Daniel Newman** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

If respondent has not previously done so pursuant to his resignation with charges pending filed July 23, 2008, with the State Bar Court (Cal. Rules of Court, rule 9.21), it is also recommended that the Supreme Court order respondent to comply with California Rules of Court, rule 9.20(a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter. Willful failure to comply with the provisions of rule 9.20 may result in denial of reinstatement or criminal conviction.

#### **VI. Costs**

The court recommends 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.

#### **VII. Order Regarding Inactive Enrollment**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that respondent be involuntarily enrolled as an inactive member of the State Bar of California effective three days after service of this decision and order by mail (Rules Proc. of State Bar, rule 220(c)).

#### **VIII. Order Sealing Documents**

In the course of determining respondent's eligibility for participation in the State Bar Court's Alternative Discipline Program, and while respondent was participating in the Program,

various documents were submitted to the court for review under confidential cover. Pursuant to Business and Professions Code section 6234, subdivision (a), and rule 806 of the Rules of Procedure of the State Bar of California, all information concerning the nature and extent of a respondent's treatment is absolutely confidential and is not to be disclosed to the public absent an express written waiver by the respondent.

In light of the foregoing,

**IT IS HEREBY ORDERED** that, pursuant to rules 23 and 806, all other documents not previously filed are to remain confidential and sealed.

**IT IS FURTHER ORDERED** that the 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: October \_\_\_\_, 2008

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**PAT McELROY**  
Judge of the State Bar Court