

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

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| In the Matter of |) | Case No.: 02-O-12281 (02-O-15122) |
| |) | |
| JOHN ST. JOHN, |) | DECISION AND ORDER SEALING |
| |) | CERTAIN DOCUMENTS |
| Member No. 54642, |) | |
| |) | |
| <u>A Member of the State Bar.</u> |) | |

On or before May 15, 2003, respondent John St. John (respondent) contacted the State Bar of California's Lawyer Assistance Program (LAP) to assist him with his substance abuse and mental health issues. Respondent executed a Participation Agreement with the LAP on September 19, 2003.

Respondent also sought to participate in the State Bar Court's Alternative Discipline Program (ADP). On September 14, 2005, respondent submitted a declaration to the court establishing a nexus between his substance abuse and mental health issues and his misconduct.

Respondent executed an amendment to his LAP Participation Agreement on October 20, 2005.

The parties entered into a Stipulation Re Facts and Conclusions of Law in early July 2005, which was received by the court on July 8, 2005.

On December 19, 2005, 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),¹ and the parties' Stipulation Re Facts and Conclusions of Law, and respondent participation in the ADP commenced on this date.²

On January 5, 2007, the court issued an order which modified both the Contract and the Confidential Statement of Alternative Dispositions and Orders.

Effective July 15, 2009, respondent withdrew from participation in the LAP, as financial circumstances prevented his continued participation. The court thereafter received notice that the LAP had closed respondent's case due to his withdrawal from the program due to financial difficulties.

Thereafter, on August 3, 2009, the court issued an order terminating respondent from the ADP;³ the parties' Stipulation Re Facts and Conclusions of Law was filed; and this matter was submitted for decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent stipulated in case no. 02-O-12281 that he was employed to represent clients in a personal injury matter, yet he failed to competently perform the legal services for which he was employed, resulting in the dismissal of his clients' case(s) and judgment being entered against his clients.⁴ In addition, he also failed to inform his clients of significant developments

¹ The Contract was executed by respondent on this date.

² On December 20, 2005, the court issued an order finding that respondent is accepted into the ADP, and that the start date of respondent participation in the ADP is December 19, 2005.

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"

⁴ Although the parties did not stipulate to the specific rule violation for this misconduct, the court finds that such misconduct supports a finding of a willful violation of rule 3-110(A) of the Rules of Professional Conduct of the State Bar of California.

in their matter(s) in violation of section 6068, subdivision (m) of the Business and Professions Code.⁵

In mitigation, the parties stipulated that respondent had no prior record of discipline since his admission in 1972; respondent was candid and cooperative with the State Bar; respondent participated in the LAP; there had been no reports of additional misconduct by respondent since he contacted the LAP; and the State Bar delayed in finalizing the stipulation which delayed respondent's enrollment in the ADP.

In aggravation, respondent's misconduct significantly harmed his clients. In addition, respondent wrote a disrespectful letter to the judge who reported his misconduct to the State Bar.⁶

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.)

⁵ The parties did not stipulate to facts and culpability with respect to case no. 02-O-15122. Rather, the parties stipulated that upon respondent's successful completion of the ADP and payment of full restitution to certain specified individuals, the State Bar would dismiss the case without prejudice in the interests of justice. After considering this matter further, the court will recommend in this decision that respondent pay restitution to certain specified individuals but will dismiss case no. 02-O-15122 without prejudice in the interests of justice, even though respondent has been terminated from the ADP.

⁶ Respondent, at the State Bar's request, wrote a letter of apology to the judge.

On August 30, 2005, the State Bar submitted its discipline recommendation to the court.⁷ After reviewing the State Bar's discipline recommendation and considering the Standards for Attorney Sanctions for Professional Misconduct (standard(s)) and case law cited therein, 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 substance abuse and 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 State Bar, as well as standards 1.2, 1.3, 1.4, 1.5, 1.6, and 2.4(b), and *In the Matter of Sullivan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 608.

After agreeing to the disposition which the court would impose or 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, respondent withdrew from participation in the LAP effective July 15, 2009, due to financial difficulties, and the LAP closed respondent's case. As such, on August 3, 2009, the court issued an order terminating respondent from the ADP.

⁷ Respondent did not submit a discipline recommendation to the court.

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 JOHN ST. JOHN, State Bar Number 54642, 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 three (3) years subject to the following conditions:

1. Respondent John St. John is suspended from the practice of law for the first thirty (30) days of probation.⁸
2. Respondent John St. John 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

⁸ 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.)

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 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;
- 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;
- g. Respondent must abstain from use of any alcoholic beverages, and cannot use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription;
- h. Respondent must select a licensed medical laboratory approved by the Office of Probation. Respondent must furnish to the laboratory blood and/or urine samples as may be required to show that respondent has abstained from alcohol and drugs. The samples must be furnished to the laboratory in such a manner as may be specified by the laboratory to ensure specimen integrity. Respondent must cause the laboratory to provide to the Office of Probation, at the respondent's expense, a screening report on or before the tenth (10) day of each month of the probation period, containing an analysis of respondent's blood and/or urine obtained not more than ten (10) days previously;
- i. 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 one (1) time 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; and

- j. Respondent must make restitution to Kristin Anderson/Donald Pierce in the amount of \$5,815 plus 10% interest per annum from July 1, 2005 (or to the Client Security Fund to the extent of any payment from the fund to Kristin Anderson/Donald Pierce, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnish satisfactory proof thereof to the State Bar's Office of Probation. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d).

With each written quarterly report required herein, respondent must provide to the Office of Probation satisfactory proof of all restitution payments made by him during that quarter or applicable reporting period;

To the extent that respondent has paid any restitution prior to the effective date of the Supreme Court's final disciplinary order in this proceeding, respondent will be given credit for such payments provided satisfactory proof of such is or has been shown to, or verified by, the Office of Probation.

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

It is also recommended that John St. John 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.

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 E. McELROY
Judge of the State Bar Court