

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No. <b>02-O-12364-RAP</b>
	)	
<b>SHERYL LYNNE HAMMER,</b>	)	
	)	<b>DECISION AND ORDER SEALING</b>
<b>Member No. 143588,</b>	)	<b>DOCUMENTS</b>
	)	
A Member of the State Bar.	)	
	)	

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**I. INTRODUCTION**

In this original disciplinary proceeding, respondent **Sheryl Lynne Hammer** was accepted for participation in the State Bar Court’s Alternative Discipline Program (ADP). Respondent has successfully completed the ADP. (Rules Proc. of State Bar, rules 800-807.) Accordingly, respondent is hereby publicly reprovved with conditions for two years.

**II. PERTINENT PROCEDURAL HISTORY**

Following the filing of a Notice of Disciplinary Charges (NDC) against respondent by the State Bar of California’s Office of the Chief Trial Counsel (State Bar) on February 28, 2006, respondent requested referral for evaluation of her eligibility for participation in the ADP.

Respondent had contacted the State Bar’s Lawyer Assistance Program (LAP) to assist with her mental health issues and signed a LAP Participation Plan on January 10, 2007.

Respondent submitted an amended nexus declaration to the court on August 13, 2007,

which established a nexus between respondent's mental health issues and her misconduct in this matter.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation). The Stipulation, filed September 9, 2010, sets forth the factual findings, legal conclusions, and mitigating and aggravating circumstances in this matter.

The court issued a Confidential Statement of Alternative Dispositions and Orders, dated March 6, 2008, formally advising 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 the Contract and Waiver for Participation in the State Bar Court's ADP; the court accepted respondent for participation in the ADP; and respondent's period of participation in the ADP began on March 5, 2008.

Respondent thereafter participated successfully in both the LAP and the ADP. On September 10, 2010, after receiving a Certificate of One Year of Participation in the Lawyer Assistance Program – Mental Health, the court filed an order finding that respondent has successfully completed the ADP.

### **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. Respondent stipulated to willfully violating: (1) Rule 3-300 of the Rules of Professional Conduct of the State Bar of California by entering into a business transaction with a client, Herbert Kidwell, without advising him to seek the advice of an independent lawyer; and (2) Business and Professions Code section 6103 by failing to address a court order in the Estate of Herbert Kidwell.

In aggravation, respondent committed multiple acts of misconduct. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(ii).)<sup>1</sup>

In mitigation, respondent has no prior record of discipline. (Std. 1.2(e)(i).) In addition, it is appropriate to consider respondent's successful completion of the ADP as a further mitigating circumstance in this matter. (Std. 1.2(e)(iv).)

#### IV. 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, the court considered the discipline recommended by the parties, as well as certain standards and case law. In particular, the court considered standards 1.2, 1.3, 1.4, 1.5, 1.6, 2.6 and 2.8.

Because respondent has now successfully completed the ADP, the court imposes the discipline set forth in the Statement if respondent successfully completed the ADP.

#### V. DISCIPLINE

##### A. Public Reproval with Conditions Attached

Therefore, respondent **Sheryl Lynne Hammer** is hereby publicly reproved with the following conditions for two years (Rules Proc. of State Bar, rule 271):

1. During the reproval period, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;
2. Within 10 days of any change in the information required to be maintained on the

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<sup>1</sup> All further references to standard(s) or std. are to this source.

State Bar's membership records pursuant to Business and Professions Code section 6002.1, subdivision (a), including her current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report any such change in writing to the Membership Records Office of the State Bar and to the Office of Probation;

3. Respondent must submit written quarterly probation reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of reprobation. Under penalty of perjury, respondent must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions set forth in this Decision during the preceding calendar quarter. If the first report will cover less than 30 days, that report must be submitted on the reporting due date for the next calendar quarter and must cover the extended period. In addition to all quarterly reports, respondent must submit a final report, containing the same information required by the quarterly reports. The final report must be submitted no earlier than 20 days before the last day of the period of reprobation and no later than the last day of said period;
4. 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 reprobation. 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 reprobation, respondent must promptly meet with the probation deputy as directed and upon request;
5. 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 these reproof conditions;

6. Respondent must make restitution to the Estate of Herbert Kidwell or to the proper authority, as determined by the Office of Probation, in the amount of \$15,000 (or to the Client Security Fund to the extent of any payment from the fund to said proper authority, plus interest and costs, in accordance with Business and Professions Code section 6140.5); and furnish satisfactory proof of payment 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). Respondent must pay the restitution at the rate of a minimum of \$500 per month by the 15th day of each month commencing the month after the effective date of this reproof order, with the remaining balance due and payable no later than 60 days prior to the termination of her reproof period. To the extent that respondent has paid any restitution prior to the effective date of this reproof order, she would be given credit for such payment(s), provided satisfactory proof of such is or has been shown to the Office of Probation. With each written quarterly report required herein, respondent must provide to the Office of Probation satisfactory proof of all restitution payments made by her during that quarter or applicable reporting period;
7. Respondent must comply with all provisions and conditions of her Participation Agreement/Plan 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 Agreement/Plan 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 her 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;

8. Within one 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 Ethics School, given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015-2299, and passage of the test given at the end of that session. Arrangements to attend Ethics School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education Requirement (MCLE), and respondent will not receive MCLE credit for attending Ethics School (Rules Proc. of State Bar, rule 3201); and
9. These conditions attached to the reproof will commence when this decision becomes final. (Rules Proc. of State Bar, rule 270.)

**B. Multistate Professional Responsibility Exam**

Respondent must take and pass the Multistate Professional Responsibility Examination within one year. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) Failure to pass the MPRE within the specified time results in actual suspension by the Review Department, without further hearing, until passage. (But see Cal. Rules of Court, rule 951(b), and Rules Proc. of State

Bar, rule 3201(a)(1) and (3).)

**C. Costs**

Costs are awarded to the State Bar pursuant to Business and Professions Code section 6086.10, and 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 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 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: November 23, 2010.

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RICHARD A. PLATEL  
Judge of the State Bar Court