

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case Nos. 02-O-12884-PEM; 02-C-13218;
)	03-C-03058; 03-C-04659;
COLLEEN MARIE QUINN,)	03-O-01003 (03-O-02645; 03-O-
)	03494); 03-O-01971; ¹ 04-C-10041;
Member No. 87608,)	04-C-15787 (Cons.)
)	
A Member of the State Bar.)	DECISION AND ORDER SEALING
)	DOCUMENTS
)	

I. Introduction

In this conviction referral and disciplinary proceeding, respondent **Colleen Marie Quinn** stipulated to (1) three felony and one misdemeanor convictions involving obtaining controlled substance by fraud and driving under the influence, which did not involve moral turpitude; (2) professional misconduct in three client matters, including failing to obtain informed written consent, failing to deposit funds in client trust account, obtaining an illegal fee, failing to communicate with a client, failing to perform services competently and failing to promptly refund unearned fees; and (3) unauthorized practice of law.

In January 2005, this court accepted respondent as a participant in the State Bar Court’s Alternative Discipline Program (ADP), as a result of case Nos. 02-O-12884; 02-C-13218;

¹ Case No. 03-O-01971 was inadvertently omitted on the heading of the parties’ stipulation re facts and conclusions of law, lodged in January 2005. But because its facts and conclusions of law were stipulated to on page 6 of the stipulation, the error was de minimis.

03-C-03058; 03-C-04659; 03-O-01003 (03-O-02645; 03-O-03494); 03-O-01971; and 04-C-10041. In May 2006, respondent continued to participate in the ADP, as a result of an additional conviction referral matter (case No. 04-C-15787). (Rules Proc. of State Bar, rules 800-807.)

But respondent has recently been terminated from the State Bar Court's ADP, as she had requested, because of her inability to comply with its requirements.

Therefore, pursuant to rule 803 and in light of her admitted misconduct, the court recommends that respondent be suspended from the practice of law for four years, that execution of the suspension be stayed, and that respondent be placed on probation for five years on conditions that include her actual suspension for three years and until she has shown proof satisfactory to the State Bar Court of her rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.

II. Significant Procedural History

A. Respondent's Acceptance into the Alternative Discipline Program

1. Case Nos. 02-O-12884; 02-C-13218; 03-C-03058; 03-C-04659; 03-O-01003; 03-O-02645; 03-O-03494; 03-O-01971; and 04-C-10041

On January 31, 2005, the court approved a Stipulation re Facts and Conclusions of Law (2005 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 Program for Respondents with Substance Abuse or Mental Health Issues (2005 contract). This court also issued a Decision re Alternative Recommendations for Degree of Discipline (2005 decision).

2. Case No. 04-C-15787

On May 22, 2006, the court approved an addendum to the 2005 stipulation in case No. 04-C-15787.

Consequently, the court accepted respondent into the ADP in relation to these cases and consolidated the conviction referral and disciplinary matters. On May 22, 2006, the court lodged an Amended Confidential Statement of Alternative Dispositions and Orders (Amended Statement).

Respondent's eligibility and acceptance into the ADP was based on, among other things: 1) her participation in the State Bar's Lawyer Assistance Program (LAP); 2) the 2005 stipulation as to facts and conclusions of law and its addendum which she entered with the State Bar; 3) the nexus evidence she provided; and 4) her agreement to accept the court's low and high levels of recommended discipline set forth in the 2005 decision and the Amended 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.

B. Respondent's Termination from the Alternative Discipline Program

On June 22, 2009, the court issued an order to show cause of the court's intent to terminate respondent from participation in the ADP if she was not in compliance with the conditions of the 2005 contract and was not participating in the LAP.

At the June 29, 2009 status conference, respondent appeared and determined that she could no longer comply with the ADP's requirements.

On July 1, 2009, respondent was therefore terminated from the ADP based upon her noncompliance with the conditions of the ADP and her failure to participate in the LAP. As a result, the 2005 stipulation and its addendum were filed on the same day.

The court now issues this decision recommending the high level of discipline set forth in the 2005 decision.

III. Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on November 29, 1979, and has been a member of the State Bar of California at all times since.

The 2005 stipulation and its addendum are attached and hereby incorporated by reference, as if fully set forth herein. The stipulation and addendum set forth the factual findings, legal conclusions and aggravating and mitigating circumstances in this consolidated matter.

Pursuant to the stipulation, the court dismissed case Nos. 02-O-12884 and 03-C-04659 without prejudice in the interests of justice.

In brief, respondent stipulated to four criminal convictions involving obtaining controlled substance by fraud and driving under the influence; to professional misconduct in three client matters; and to the unauthorized practice of law. The parties also stipulated to certain aggravating and mitigating factors.

In accordance with applicable Supreme Court case law, an attorney's rehabilitation from substance abuse problems can be accorded significant mitigating weight if it is established that (1) the abuse was addictive in nature; (2) the abuse causally contributed to the misconduct; and (3) the attorney has undergone a meaningful and sustained period of rehabilitation. (*Harford v. State Bar* (1990) 52 Cal.3d 93, 101; *In re Billings* (1990) 50 Cal.3d 358, 367.)

Here, in accepting respondent into the ADP, the court found that respondent had suffered from substance abuse and that there was a sufficient connection between respondent's substance abuse problems and the stipulated misconduct. (Rules Proc. of State Bar, rule 802.) Respondent was enrolled in the State Bar's LAP in April 2004 in a five-year commitment to her recovery program. But, now, she no longer participates in the LAP. Respondent's conduct before this court while participating in the ADP and her termination from that program prevent the court

from making a finding that respondent has established her sustained rehabilitation by clear and convincing evidence. Therefore, the court will not give respondent any mitigation credit for her participation in the LAP or the ADP.

Furthermore, although the parties stipulated that respondent was candid and cooperative with the State Bar during its resolution of these matters, the mitigating force of this factor is dramatically reduced based on respondent's termination from the ADP. (Std. 1.2(e)(v).)

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 2005 stipulation and its addendum, 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 her substance abuse issues and her 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 2005 decision.

Accordingly, because respondent was terminated from the ADP in July 2009, the court hereby recommends the high level of discipline to the Supreme Court.

V. Recommendation

It is hereby recommended that respondent **Colleen Marie Quinn** be suspended from the practice of law in the State of California for four years, that execution of such suspension be stayed and that respondent be placed on probation for five years on the following conditions:

1. Respondent must be actually suspended from the practice of law for the first three years of the period of probation and until she has shown proof satisfactory to the State Bar Court of her rehabilitation, fitness to practice, and learning and ability in the general law pursuant to standard 1.4(c)(ii);

2. Respondent must make restitution to:

a. Roger and Colette Kilian in the amount of \$2,000² plus 10% interest per annum from June 23, 2003 (or to the Client Security Fund to the extent of any payment from the fund to Roger and Colette Kilian, plus interest and costs, in accordance with Business and Professions Code section 6140.5);

b. William Welding in the amount of \$3,500 plus 10% interest per annum from December 3, 2002 (or to the Client Security Fund to the extent of any payment from the fund to William Welding, plus interest and costs, in accordance with Business and Professions Code section 6140.5);

c. Brian Connors in the amount of \$10,000 plus 10% interest per annum from September 6, 2002 (or to the Client Security Fund to the extent of any payment from the fund to Brian Connors, plus interest and costs, in accordance with Business and Professions Code section 6140.5); and furnishes satisfactory proof of payment thereof to the State Bar's Office of Probation;³

² Under the parties' April 6, 2005 stipulation, the court modified the restitution condition from \$7,680 to \$2,000 on April 12, 2005.

³ According to the Office of Probation, the Client Security Fund (CSF) had reimbursed Kilian, Welding and Connors for all of the above-referenced amounts and respondent owes the CSF the principal amount of \$9,200, plus accrued interest and processing costs, as of June 19, 2009. Therefore, respondent must make restitution to CSF of the remaining balance of \$9,200, plus interests and costs, and provide satisfactory proof of such restitution to the Office of Probation within the probation period.

3. Respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;
4. Within 10 calendar days of any change in the information required to be maintained on the State Bar's membership records pursuant to Business and Professions Code section 6002.1, subdivision (a), including her current office address and telephone or, if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office of the State Bar and to the Office of Probation;
5. Respondent must submit written quarterly reports to the Office of Probation no later than each January 10, April 10, July 10 and October 10 of the period of probation. Under penalty of perjury, respondent must state whether she has complied with the State Bar Act, the Rules of Professional Conduct and the conditions of probation 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 probation period and no later than the last day of such period;
6. Respondent must abstain from use of any alcoholic beverages, and must not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription;
7. Respondent must select a licensed medical laboratory approved by the Office of Probation. Respondent must furnish to the laboratory such blood and/or urine samples as may be required to show that respondent has abstained from alcohol and/or 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 respondent's expense, a screening report on or before the 10th day of each month of the probation period, containing an analysis of respondent's blood and/or urine obtained not more than 10 days earlier;

8. Respondent must maintain with the Office of Probation a current address and a current telephone number at which respondent can be reached. Respondent must return any call from the Office of Probation concerning testing of respondent's blood or urine within 12 hours. For good cause, the Office of Probation may require respondent to deliver respondent's urine and/or blood sample(s) for additional reports to the laboratory no later than six hours after actual notice to respondent that the Office of Probation requires an additional screening report;

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

10. Within one year of the effective date of the Supreme Court's final disciplinary order in this proceeding, respondent must provide to the Office of Probation satisfactory proof of her attendance at a session of State Bar Ethics School and of passage of the test given at the end of that session, unless she previously completed the course within the prior two years (Rules Proc. of State Bar, rule 290);

11. The period of probation will commence on the effective date of the final disciplinary order of the Supreme Court imposing discipline in this proceeding; and

12. At the expiration of the period of this probation, if respondent has complied with all of the terms and conditions of probation, the order of the Supreme Court suspending respondent from the practice of law for three years will be satisfied and that suspension will be terminated.

It is further recommended that respondent be ordered to comply with the requirements of the California Rules of Court, rule 9.20, and that she be ordered to perform the acts specified in

rule 9.20(a) and (c) within 30 and 40 calendar days, respectively, from the effective date of the Supreme Court's final disciplinary order in this proceeding. Failure to comply with rule 9.20 could result in disbarment. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

It is also recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE), administered by the National Conference of Bar Examiners, and to provide proof of passage of the MPRE to the Office of Probation, within one year of the effective date of the Supreme Court's final disciplinary order in this proceeding. Failure to pass the MPRE, and to provide proof of such passage, within the specified time will result in actual suspension by the State Bar Court Review Department, without further hearing, until respondent provides the required proof of passage of the MPRE.

VI. Costs

It is further 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.

VII. 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: September ____, 2009

PAT McELROY
Judge of the State Bar Court