

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos.: 02-O-13169 (02-O-14846;
	)	02-O-16040; 03-O-00383;
	)	03-O-02063; 03-O-02097);
	)	05-O-01155 (05-O-03129;
JOHN A. HURLEY,	)	06-O-10036); 06-O-10124;
	)	06-O-14591 (07-O-11863);
	)	07-O-15029; 08-O-10694
	)	(08-O-10945); 08-O-14550 (Cons.)
Member No. 145907,)	
	)	DECISION AND ORDER SEALING
	)	CERTAIN DOCUMENTS
)	
A Member of the State Bar.)	
_____)	

INTRODUCTION

In this original disciplinary proceeding, respondent John A. Hurley (respondent) was accepted for participation in the State Bar Court’s Alternative Discipline Program (ADP).¹ As the court has now found that respondent has successfully completed the ADP, the court will recommend to the Supreme Court that respondent be suspended from the practice of law in California for four (4) years, that execution of that period of suspension be stayed, and that he be placed on probation for four (4) years subject to certain conditions, including a three (3) year period of suspension (with credit given for the period of inactive enrollment under Business and

¹ The ADP was formerly known as the Pilot Program for Respondents with Substance Abuse or Mental Health Issues.

Professions Code section 6233²), and he will remain suspended until he: (1) pays specified restitution; and (2) provides proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.

PERTINENT PROCEDURAL HISTORY

On October 29, 2003, the State Bar of California's Office of the Chief Trial Counsel (State Bar) filed a Notice of Disciplinary Charges (NDC) against respondent in case nos. 02-O-13169 (02-O-14846; 02-O-16040; 03-O-00383; 03-O-02063; 03-O-02097). This matter was initially assigned to the Honorable Pat McElroy.

Also on October 29, 2003, respondent contacted the State Bar's Lawyer Assistance Program (LAP) to assist him with his mental health issues.

On December 15, 2003, Judge McElroy filed an order referring case nos. 02-O-13169 (02-O-14846; 02-O-16040; 03-O-00383; 03-O-02063; 03-O-02097) to the State Bar Court's Alternative Discipline Program (ADP) before the Honorable Robert M. Talcott for evaluation of respondent's eligibility for participation in the program.

Effective April 1, 2004, this disciplinary matter was reassigned to the undersigned judge.

On May 7, 2004, respondent entered into a long-term Participation Agreement with the LAP.

In furtherance of his participation in the ADP, respondent submitted a declaration to the court which established a nexus between respondent's mental health issues and his misconduct in this matter.

² Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

The parties also entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) which set forth the factual findings, legal conclusions, and mitigating and aggravating circumstances with respect to case nos. 02-O-13169 (02-O-14846; 02-O-16040; 03-O-00383; 03-O-02063; 03-O-02097). The stipulation was received by the court on December 17, 2004.

Following briefing by the parties, the court advised 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 the alternative possible dispositions, the court memorialized in writing these alternative dispositions in a Confidential Statement of Alternative Dispositions and Orders (Confidential Statement); respondent and his counsel executed the Contract and Waiver for Participation in the State Bar Court's ADP; the court signed an order approving the parties' Stipulation; the court accepted respondent for participation in the ADP;³ and respondent's period of participation in the ADP began on September 16, 2005.

The State Bar filed a NDC against respondent in case nos. 05-O-01155 (05-O-03129; 06-O-10036) on March 30, 2006.

An NDC was filed against respondent by the State Bar on May 23, 2006, in case no. 06-O-10124.

Respondent and the State Bar entered into an addendum to the Stipulation on May 11, 2007. The addendum related to case nos. 05-O-01155 (05-O-03129; 06-O-10036) and case no. 06-O-10124. The addendum was received by the court on May 11, 2007.

On January 28, 2008, the court issued an order enrolling respondent as an inactive member of the State Bar pursuant to section 6233 effective April 23, 2008, and until further

³ Upon respondent's entry into the ADP, case no. 04-PM-15010 was ordered dismissed.

order of the court.⁴ Respondent was also ordered to comply with the requirements set forth in rule 9.20 of the California Rules of Court as modified by the court.

On April 23, 2008, the court ordered case nos. 05-O-01155 (05-O-03129; 06-O-10036) and case no. 06-O-10124 consolidated with case nos. 02-O-13169 (02-O-14846; 02-O-16040; 03-O-00383; 03-O-02063; 03-O-02097).

Pursuant to an order filed on April 25, 2008, case nos. 05-O-01155 (05-O-03129; 06-O-10036) and case no. 06-O-10124 were incorporated into the ADP along with case nos. 02-O-13169 (02-O-14846; 02-O-16040; 03-O-00383; 03-O-02063; 03-O-02097)

The parties' addendum relating to case nos. 05-O-01155 (05-O-03129; 06-O-10036) and 06-O-10124 was lodged on June 25, 2008.

In light of the additional misconduct set forth in case nos. 05-O-01155 (05-O-03129; 06-O-10036) and 06-O-10124, the court advised the parties of (1) the increased discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP and (2) the increased discipline which would be recommended if respondent failed to successfully complete, or was terminated from, the ADP. After agreeing to the increased alternative possible dispositions, the court memorialized in writing those increased alternative dispositions in an Order Amending Confidential Statement of Alternative Dispositions and Orders (Order Amending Confidential Statement) which was lodged on June 25, 2008. That same day, respondent executed an Agreement and Order Amending Contract and Waiver for Participation in the State Bar Court's ADP; Further Order which was also lodged on June 25, 2008.

The State Bar filed a NDC against respondent in case nos. 06-O-14591 (07-O-11863) on June 25, 2008.

⁴ Respondent will remain enrolled inactive under section 6233 until the effective date of the Supreme Court order imposing discipline in this matter.

On August 8, 2008, the court filed an order extending respondent's participation in the ADP until further order of the court, even though he was close the completing three years in the ADP. Respondent's participation in the ADP was extended in an effort to accommodate the parties' desire to incorporate other matters into this proceeding.

Thereafter, the State Bar filed a NDC against respondent in case no. 07-O-15029 on September 9, 2008. A further NDC was filed against respondent by the State Bar in case nos. 08-O-10694 (08-O-10945) on October 15, 2008.

On April 6, 2009, case nos. 06-O-14591 (07-O- 11863); 07-O-15029; 08-O-10694 (08-O-10945) were consolidated.

The parties entered into a second addendum to the Stipulation on October 2, 2009, pertaining to case nos. 06-O-14591 (07-O-11863); 07-O-15029; 08-O-10694 (08-O-10945) and unfiled matter 08-O-14550.

In 2010, respondent submitted another nexus statement to the court.

In light of the additional misconduct set forth in case nos. 06-O-14591 (07-O-11863); 07-O-15029; 08-O-10694 (08-O-10945) and unfiled matter 08-O-14550, the court again advised the parties of (1) the further increased discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP and (2) the further increased discipline which would be recommended if respondent failed to successfully complete, or was terminated from, the ADP. After agreeing to the further increased alternative possible dispositions: (1) the court filed an order consolidating case nos. 06-O-14591 (07-O-11863); 07-O-15029; 08-O-10694 (08-O-10945) and 08-O-14550 with case nos. 02-O-13169 (02-O-14846; 02-O-16040; 03-O-00383; 03-O-02063; 03-O-02097); 05-O-01155 (05-O-03129; 06-O-10036); 06-O-10124; (2) the court memorialized in writing those further increased alternative dispositions in an Order Further Amending Confidential Statement of Alternative Dispositions and Orders (Order Further

Amending Confidential Statement) which was lodged on June 15, 2010; (3) respondent executed a Further Agreement and Order Further Amending Contract and Wavier for Participation in the State Bar Court's ADP which was also lodged on June 15, 2010; and (4) the court signed an order approving the parties' second addendum to the Stipulation, and the second addendum to the Stipulation was filed on June 15, 2010.

On June 18, 2010, the State Bar filed a motion for the issuance of an order to show cause (OSC) as to why respondent should not be terminated from the ADP. The court denied the State Bar's motion in an order filed on July 13, 2010.⁵

After respondent was accepted for participation in the ADP in September 2005, respondent participated in both the LAP and the State Bar Court's ADP. On August 17, 2010, after receiving a satisfactory recommendation from a mental health professional, the court filed an order finding that respondent has successfully completed the ADP. This matter was submitted for decision on August 13, 2010, and the Stipulation and the addendum to the Stipulation were filed on that same day.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties' Stipulation, addendum to Stipulation, and second addendum to Stipulation, including the court's orders approving the Stipulation and the second addendum to Stipulation, are attached hereto and hereby incorporated by reference, as if fully set forth herein. Respondent stipulated in these sixteen original disciplinary matters to the following violations:

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⁵ Thereafter, the State Bar filed a petition on August 4, 2010, seeking interlocutory review of the court's order denying the State Bar's motion for the issuance of an OSC. In an order filed on August 17, 2010, the Review Department of the State Bar Court summarily denied the State Bar's petition for interlocutory review.

Rule 3-700(D)(2) of the Rules of Professional Conduct of the State Bar of California⁶ in eleven matters [failure to (promptly) refund unearned fees];

Rule 3-110(A) in ten matters [failure to perform legal services with competence];

Section 6068, subdivision (c) in one matter [failure to maintain action, proceedings or defenses only as appear legal or just];

Rule 3-700(A)(2) in seven matters [improper withdrawal from employment or abandonment];

Rule 4-100(B)(3) in two matters [failure to maintain complete records/render appropriate accounts];

Rule 3-700(D)(1) in five matters [failure upon termination to promptly release client papers/property upon request];

Section 6068, subdivision (m) in seven matters [failure to keep client informed of significant development(s)/failure to promptly respond to reasonable client status inquires];

Section 6068, subdivision (i) in seven matters [failure to cooperate/participate in State Bar disciplinary investigation];

Section 6103 in two matters [disobedience/violation of court order];

Section 6068, subdivision (o)(3) in one matter [failure to report imposition of sanctions to State Bar];

Section 6068, subdivision (o)(2) in one matter [failure to timely report malpractice judgment to State Bar]; and

Sections 6125, 6126 and 6068, subdivision (a) in one matter [unauthorized practice of law].

⁶ Unless otherwise indicated, all further references to rule(s) refer to the Rules of Professional Conduct of the State Bar of California.

In aggravation, respondent has four prior records of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i).)⁷

A. Effective January 29, 1997, respondent was privately reprovved in case no. 95-O-18438; 96-O-03552 (Cons.) for violating rules 3-700(D)(1) and 4-100(B)(4) and section 6068, subdivisions (i), (m), and (o)(3).⁸

B. Effective March 6, 1998, respondent was privately reprovved with conditions in case no. 96-O-07276 for violating rules 3-110(A), 3-700(D)(1) and 3-700(D)(2).

C. Effective October 21, 2000, respondent was publicly reprovved with duties in case no. 97-O-10067 for violating rule 3-310 and section 6068, subdivision (a).

D. Effective April 17, 2003, respondent was suspended for two years and until rehabilitation; execution of the suspension was stayed; and respondent was placed on probation for three years with conditions and actually suspended for 60 days in case no. 01-H-03520 (S112156) for violating rule 1-110 and section 6103.

As additional factors in aggravation, the parties stipulated that respondent's misconduct harmed significantly a client, the public or the administration of justice (std. 1.2(b)(iv)); respondent's misconduct was surrounded by or followed by dishonesty, bad faith, overreaching, concealment or other violations of the Rules of Professional Conduct or the State Bar Act (std. 1.2(b)(iii)); respondent demonstrated indifference toward atonement for or rectification of the consequences of his misconduct (std. 1.2(b)(v)); respondent displayed a lack of cooperation and candor to the victims of his misconduct or the State Bar during the disciplinary investigation (std.

⁷ All further references to standard(s) or std. are to this source.

⁸ Neither the parties' Stipulation nor the second addendum fully sets forth the violations or case nos. associated with this prior record of discipline. Accordingly, the court takes judicial notice under Evidence Code section 452(d) of respondent's prior record of discipline in case nos. 95-O-18438; 96-O-03552 (Cons.).

1.2(b)(vi)); and respondent's misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct (std. 1.2(b)(ii)).

In mitigation, the parties stipulated that respondent displayed spontaneous cooperation and candor to the State Bar during proceedings. (Std. 1.2(e)(v).) 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).)

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 further alternative discipline recommendations if respondent successfully completed the ADP or was terminated from, or failed to successfully complete, 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, 1.7(b), 2.2(b), 2.4(a), 2.4(b), 2.6, and 2.10 and *Bledsoe v. State Bar* (1991) 52 Cal.3d 1074; *Bernstein v. State Bar* (1990) 50 Cal.3d 221; *Young v. State Bar* (1990) 50 Cal.3d 1204; *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1; *In re Billings* (1990) 50 Cal.3d 358; *Walker v. State Bar* (1989) 49 Cal.3d 1107; *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071; *Pineda v. State Bar* (1989) 49 Cal.3d 753; and *Coombs v. State Bar* (1989) 49 Cal.3d 679.

Because respondent has now successfully completed the ADP, this court, in turn, now recommends to the Supreme Court the imposition of the lower level of discipline, set forth more fully below.

DISCIPLINE

Recommended Discipline

It is hereby recommended that respondent John A. Hurley, State Bar Number 145907, be suspended from the practice of law in California for four (4) years, that execution of that period of suspension be stayed, and that he be placed on probation⁹ for a period of four (4) years subject to the following conditions:

1. Respondent John A. Hurley is suspended from the practice of law for a minimum of three (3) years (with credit given for inactive enrollment, which was effective April 23, 2008 [Bus. & Prof. Code, § 6233]), and he will remain suspended until the following requirements are satisfied:
 - A. He makes restitution to Ruby Carson in the amount of \$7,000 plus 10 percent interest per year from May 1, 2002 (or reimburses the Client Security Fund, to the extent of any payment from the fund to Ruby Carson, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles;
 - B. He makes restitution to Yao Youshi in the amount of \$2,000 plus 10 percent interest per year from November 1, 2001 (or reimburses the Client Security Fund, to the extent of any payment from the fund to Yao Youshi, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles;
 - C. He makes restitution to Larry Legowski in the amount of \$1,255 plus 10 percent interest per year from January 1, 2003 (or reimburses the Client Security Fund, to the extent of any payment from the fund to Larry Legowski, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles;
 - D. He makes restitution to Joseph Brodeski in the amount of \$1,500 plus 10 percent interest per year from January 1, 2003 (or reimburses the Client Security Fund, to the extent of any payment from the fund to Joseph Brodeski, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles;

⁹ 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.)

- E. He makes restitution to Tom Bokkes in the amount of \$10,000 plus 10 percent interest per year from August 1, 2002 (or reimburses the Client Security Fund, to the extent of any payment from the fund to Tom Bokkes, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles;
- F. He makes restitution to Kristin Buzzell in the amount of \$5,000 plus 10 percent interest per year from July 1, 2005 (or reimburses the Client Security Fund, to the extent of any payment from the fund to Kristin Buzzell, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles;
- G. He makes restitution to Pontea Davoud in the amount of \$1,000 plus 10 percent interest per year from April 1, 2005 (or reimburses the Client Security Fund, to the extent of any payment from the fund to Pontea Davoud, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles;¹⁰
- H. He makes restitution to Ace, Inc., or its legal successor, in the amount of \$2,500 plus 10 percent interest per year from January 1, 2006 (or reimburses the Client Security Fund, to the extent of any payment from the fund to Ace, Inc., or its legal successor, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles;
- I. He makes restitution to Frederic Meyer, in the amount of \$3,500 plus 10 percent interest per year from January 1, 2006 (or reimburses the Client Security Fund, to the extent of any payment from the fund to Frederic Meyer, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles;
- J. He makes restitution to Carl Steward, in the amount of \$2,500 plus 10 percent interest per year from August 31, 2006 (or reimburses the Client Security Fund, to the extent of any payment from the fund to Carl Steward, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles;
- K. He makes restitution to Georgina Connolly, in the amount of \$2,500 plus 10 percent interest per year from January 1, 2006 (or reimburses the Client Security Fund, to the extent of any payment from the fund to Georgina Connolly, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles;

¹⁰ This represents restitution in the OSC re: child support matter.

- L. He makes restitution to Juan Nava, in the amount of \$5,000 plus 10 percent interest per year from September 18, 2006 (or reimburses the Client Security Fund, to the extent of any payment from the fund to Juan Nava, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles;
 - M. He makes restitution to James D. O'Connor, in the amount of \$4,500 plus 10 percent interest per year from July 18, 2006 (or reimburses the Client Security Fund, to the extent of any payment from the fund to James D. O'Connor, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles;
 - N. He pays the \$8,000 sanctions payable to Medibuy.com ordered by the Orange County Superior Court in *IBO\$, Inc. v. Netinfo, Inc., et al.* on February 14, 2002,¹¹ and furnishes proof to the State Bar's Office of Probation in Los Angeles;
 - O. He pays the \$150 sanction ordered by the Riverside Superior Court on April 3, 2006, and the \$250 sanction ordered by the Riverside Superior Court on May 18, 2006, in *Taufi v. Sorenson, et al.*, Case No. RIC 440037 and furnishes proof to the State Bar's Office of Probation in Los Angeles;¹² and
 - P. John A. Hurley must also provide proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)
2. Respondent John A. Hurley 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;

¹¹ The sanctions were ordered against respondent and IBO\$, jointly and severally.

¹² The following applies to all specified restitution in this disciplinary matter: (1) respondent must not make any restitution payments in cash; (2) any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d); (3) to the extent the Client Security Fund has paid only principal amounts, respondent will still be liable for interest payments to the individuals/entity listed above; and (4) 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 payment(s) provided satisfactory proof of such is, or has been, shown to the Office of Probation.

- 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. Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, respondent must furnish to the monitor such reports as may be requested in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor;
- F. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to respondent personally or in writing relating to whether respondent is complying or has complied with the probation conditions;
- G. 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 Ethics School, and passage of the test given at the end of that session;

- H. Respondent must comply with all provisions and conditions of his Participation Agreement with the Lawyer Assistance Program (LAP) and must immediately report any non-compliance 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 respondent's participation in the LAP and his compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. Upon successful completion of the LAP Participation Agreement, respondent will be relieved of this condition, provided satisfactory proof of his successful completion of his LAP Participation Agreement has been provided to the Office of Probation;
- I. He makes restitution to Pontea Davoud, in the amount of \$13,000 (at the rate of \$500 per month according to the settlement agreement entered into between respondent and Ms. Davoud) plus interest, if any, according to the settlement agreement entered into between respondent and Ms. Davoud (or reimburses the Client Security Fund, to the extent of any payment from the fund to Pontea Davoud, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles;¹³
- J. Unless respondent John A. Hurley has already done so during his period of his participation in the ADP, within ten (10) days after the effective date of the Supreme Court order imposing discipline in this matter, respondent must:
 - 1. Send the client/complaining witness [Alofa Taufi] a letter, notifying him that respondent is required by court order to initiate, pay for, and participate in State Bar Mandatory Fee Arbitration, and that the purpose of the arbitration is to determine whether respondent had earned all fees and/or costs paid by the client to respondent in the following matters:
 - a. *Donna Darnall, conservator by and of Patricia K. Darnall v. Alofa Taufi*, San Bernardino Superior Court Case No. SCSS02497 [\$10,000 advanced fee paid];
 - b. *Alofa Taufi v. Wendy Sorenson, et al.*, Riverside Superior Court Case No. RIC440037 [\$10,000 advanced fee paid];

¹³ This represents restitution in the custody modification matter.

- c. *State v. Taufi*, San Bernardino criminal matter [advanced fee paid \$5,000]; and
 - d. *In re the Marriage of Taufi*, Riverside Superior Court Case No. RID207756 [advanced fee paid \$5,000].
2. Mail a Request for Arbitration of a Fee Dispute with the filing fee to the State Bar Mandatory Fee Arbitration (FA) Program. The FA Program will notify the client of respondent's initiation of fee arbitration and notify the client/complaining witness of the requirements of the FA Program.

Respondent will timely and fully participate in any resulting fee arbitration and abide by any final arbitration award. Within five (5) days of his receipt of a decision of the arbitrator, respondent must advise the Office of Probation, in writing, of the decision and provide a complete and exact copy of it. If it is found that respondent owes the client/complaining witness any funds, the amount owed must be paid as restitution to the client/complaining witness (or to the Client Security Fund, to the extent of any payment from the fund to any client/complaining witness, in accordance with Business and Professions Code section 6140.5) during respondent's period of probation.

3. Further, respondent:
- a. waives the expiration of any time to resolve this dispute by fee arbitration;
 - b. must not make any claims for further payments from the client beyond that which respondent has already received;
 - c. understands that failure to write the letter, or to initiate, pay for, and participate in fee arbitration upon the client's agreement to do so, or to abide by any final arbitration order may constitute a violation of probation and may result in further discipline;
 - d. must provide such proof of compliance with this condition as requested by the Office of Probation; and
 - e. understands that if he fails to comply, in any manner, with this provision, then during his period of probation, he must make restitution to Alofa Taufi, in the amount of \$30,000 plus 10 percent interest per year from January 1, 2006 (or reimburse the Client Security Fund, to the extent of any payment from the fund to Alofa Taufi, in accordance with Business and Professions Code section 6140.5), and furnish

satisfactory proof to the State Bar's Office of Probation in Los Angeles within the same period.¹⁴

3. At the expiration of the period of probation, if John A. Hurley has complied with all conditions of probation, the four (4) year period of stayed suspension will be satisfied and that suspension will be terminated.

Multistate Professional Responsibility Examination

It is also recommended that John A Hurley be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) during the period of his suspension and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

Rule 9.20, California Rules of Court¹⁵

In its January 28, 2008, order enrolling respondent inactive under section 6233 effective April 23, 2008, respondent was ordered to comply with the requirements set forth in rule 9.20 as modified by the court. However, as there is no evidence that respondent complied with the requirements of rule 9.20 as modified by the court, the court further recommends that respondent John A. Hurley be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within thirty (30) and forty (40) calendar days, respectively, after the effective date of the Supreme Court's final disciplinary order in this matter.

¹⁴ There is no recommendation that respondent return all client papers, files and other property belonging to, and/or relating to, the Meyers, as respondent returned the client file/property during his period of participation in the ADP. Similarly, there is no recommendation that respondent provide an accounting to Pontea Davoud relating to the custody modification matter or a recommendation that he send Ms. Davoud an invitation to engage in fee arbitration if she disputed the fee charged in the custody modification matter, as the parties have entered into a settlement agreement. However, the court will recommend as a condition of probation that respondent comply with the settlement agreement.

¹⁵ Rule 9.20 was formerly rule 955 of the California Rules of Court.

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 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: October _____, 2010

RICHARD A. HONN
Judge of the State Bar Court