

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 02-O-13607-RAH (03-O-00568);
)	05-O-02934-RAH (Consolidated.)
JOSEPH TRENK,)	
)	
Member No. 101459,)	DECISION AND ORDER SEALING
)	CERTAIN DOCUMENTS
<u>A Member of the State Bar.</u>)	

1. INTRODUCTION

On October 3, 2003, the Office of the Chief Trial Counsel of the State Bar of California (OCTC) filed a notice of disciplinary charges (NDC) against respondent **JOSEPH TRENK**¹ in case number 02-O-13607-RAH.²

On July 6, 2004, respondent contacted the State Bar of California's Lawyer Assistance Program (LAP) to assist him with his mental health issue. Thereafter, case number 02-O-13607-RAH was referred for evaluation for transfer to the State Bar Court's Alternative Discipline Program (ADP).

¹ Respondent was admitted to the practice of law in the State of California on December 1, 1981, and has been a member of the State Bar since that time.

² Case number 02-O-13607 was initially assigned to State Bar Court Judge Joann M. Remke on October 7, 2003. However, on November 7, 2005, that case was reassigned to the undersigned State Bar Court Judge Richard A. Honn for all purposes.

On January 11, 2005, respondent signed a Participation Plan with LAP. Then, on March 4, 2005, the court received a declaration from respondent regarding the nexus between his mental health issue and his misconduct.

On November 7, 2005, OCTC filed an NDC against respondent in case number 05-O-02934-RAH. Case number 05-O-02934-RAH was also referred for evaluation for transfer to the ADP. Later, case number 05-O-02934-RAH was consolidated with case number 02-O-13607-RAH for all purposes.

In early 2006, the parties submitted, to the court, a Stipulation Re Facts and Conclusions of Law (Stipulation) in the consolidated proceeding. (Rules Proc. of State Bar, rules 132, 802(a), 803(a).) Thereafter, on June 20, 2006, the court signed an order modifying the Stipulation and approving the Stipulation as modified. Both the Stipulation and the order modifying and approving the Stipulation as modified were lodged on June 20, 2006.

Also, on June 20, 2006, the court signed and lodged a Confidential Statement of Alternative Dispositions and Orders (Confidential Statement) in which it found that there was sufficient evidence of a nexus between respondent's mental health issue and his misconduct. In the Confidential Statement, the court also set forth the discipline the court will recommend to the Supreme Court for the misconduct set forth in the Stipulation (1) if respondent successfully completes the ADP and (2) if respondent fails to successfully complete the ADP.

Finally, on June 20, 2006, a Contract and Waiver for Participation in the State Bar Court's ADP (Contract), which is signed by respondent and his then counsel of record, was also lodged.

On June 27, 2006, the court filed an order accepting respondent into the ADP with a start date of June 20, 2006. Thereafter, respondent participated in the LAP and the ADP. Respondent

successfully completed the ADP no later than December 11, 2009. Thus, on December 11, 2009, the court took the matter under submission for decision. (See order filed February 10, 2010.)

2. FINDINGS OF FACT AND CONCLUSIONS OF LAW ON MISCONDUCT

The court adopts the facts and conclusions of law that are set forth in the Stipulation as its findings of fact and conclusions of law.³ Briefly, those facts and conclusions establish the following misconduct and aggravation. In addition, the record in this proceeding establishes the following mitigation.

A. Case Number 02-O-13607-RAH

Count 1 – Unauthorized Practice of Law

Respondent willfully violated his duty, under Business and Professions Code section 6068, subdivision (a),⁴ to obey the law by deliberately engaging in the unauthorized practice of law in violation of section 6126, subdivision (b). On April 26, 2002, while respondent was suspended from the practice of law under the Supreme Court's February 1, 2002 disciplinary order in case number S102297 (State Bar Court case number 98-O-00585) (Supreme Court's February 1, 2002 order), respondent signed and filed, for one of his clients, an acknowledgment of satisfaction of judgment in the Los Angeles Superior Court.

Count 2 – Probation Violations

Respondent willfully violated his duty, under section 6103, to obey court orders requiring him to do acts connected with or in the course of his profession, which he ought in good faith to do when he failed to comply with the probation conditions imposed on him under the Supreme

³ The Stipulation, including the court's order modifying and approving the Stipulation as modified, is attached hereto and incorporated by reference as if it were fully set forth herein.

⁴ Unless otherwise noted, all further statutory references are to the Business and Professions Code.

Court's February 1, 2002 order.⁵ Specifically, respondent submitted 8 of his 12 probation reports late (e.g., respondent submitted his first report 17 months' late). In addition, respondent submitted proof of a law office management plan more than a year late.

B. Case Number 05-O-02934-RAH

Respondent willfully violated his duty, under section 6068, subdivision (k), "To comply with all conditions attached to any disciplinary probation." Respondent again failed to comply with the probation conditions imposed on him under the Supreme Court's February 1, 2002 order. Specifically, respondent failed to comply with the restitution condition under which he was required to pay \$2,750 plus interest to a former client (or to the Client Security Fund if it has paid).

C. Aggravation and Mitigation

Aggravation

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).)⁶ First, in 1997, respondent was publicly reprimanded for failing to perform, to return a client's file, and to cooperate with a State Bar disciplinary investigation. Second, in 1998, respondent was placed on nine months' stayed suspension for failing to communicate and to perform in three client matters and for failing to comply with a court order.

Third, in 2000, respondent was actually suspended from the practice of law for 30 days and until he complied with the conditions attached to his 1997 public reprimand. Fourth, under the Supreme Court's February 1, 2002 order, respondent was placed on two years' stayed suspension

⁵ Of course, in original disciplinary proceedings such as the present proceeding, probation violations are more appropriately charged as violations of section 6068, subdivision (k), which specifically provides that an attorney has a duty "To comply with all conditions attached to any disciplinary probation. . . ." (Accord, Rules Proc. of State Bar, rule 560.)

⁶ All further references to standards are to this source.

and seventy-five days' actual suspension for failing to perform (two counts), improperly withdrawing from employment, failing to refund an unearned fee, failing to obey a court order (three counts), failing to obey the law, and failing to communicate.

Respondent demonstrated indifference towards rectification for the consequences of the misconduct found in the present proceeding. (Std. 1.2(b)(v).)

Respondent's misconduct in the present proceeding evidences multiple acts of wrongdoing. (Std. 1.2(b)(ii).)

Mitigation

At the time respondent engaged in the misconduct found in the present proceeding, he was suffering from a mental health issue. Respondent's mental health issue directly caused or contributed to the foregoing misconduct. Case law holds that extreme emotional difficulties are a mitigating factor where expert testimony establishes that the emotional difficulties were directly responsible for the misconduct, provided that the attorney also establishes, by clear and convincing evidence, that he or she no longer suffers from the 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; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 701-702.) Moreover, the Supreme Court has held that, absent a finding of rehabilitation, emotional difficulties are not a mitigating factor. (*Kaplan v. State Bar* (1991) 52 Cal.3d 1067, 1072-1073; *In re Naney, supra*, 51 Cal.3d at p. 197.)

As noted above, respondent successfully completed the ADP no later than December 11, 2009. Respondent's successful completion of the ADP required his successful participation in the LAP. Moreover, this court was presented with satisfactory evidence from a mental health professional as to respondent's mental health stability. In short, the record contains clear and convincing evidence that respondent no longer suffers from the mental health issue that led to his

misconduct. Accordingly, respondent is entitled to significant mitigation for his successful completion of the ADP. (Std. 1.2(e)(iv).)

4. DECISION

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. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

After reviewing and considering (1) respondent's and OCTC's briefs on the issue of discipline, (2) the standards, (3) the Stipulation (which sets forth the facts, conclusions of law, and aggravating factors), and (4) respondent's declaration regarding the nexus between his mental health issue and his misconduct, the court signed and lodged the Confidential Statement, which advised the parties of the discipline that the court would recommend to the Supreme Court if respondent successfully completed the ADP and if respondent failed to successfully complete the ADP. In determining the appropriate discipline to recommend if respondent successfully completed the ADP, the court considered the discipline recommended by the parties, the standards, and case law. In particular, the court considered standards 1.2, 1.3, 1.4, 1.5, 1.6, 1.7(a), 1.7(b), and 2.6 and the case law cited in the parties' briefs, including *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229.

After agreeing to the discipline which the court would recommend to the Supreme Court if respondent successfully completed or if he failed to successfully complete the ADP, respondent executed the Contract to participate in the ADP and began his period of participation in the ADP.

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Respondent thereafter participated in and successfully completed the ADP. Accordingly, the court will recommend to the Supreme Court the imposition of the discipline set forth in the court's Confidential Statement if respondent successfully completed the ADP.⁷

5. DISCIPLINE RECOMMENDATION

IT IS HEREBY RECOMMENDED that respondent **JOSEPH TRENK**, State Bar Number 101459, be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that he be placed on probation for a period of three years subject to the following conditions:

1. Joseph Trenk is suspended from the practice of law for the first 90 days of probation.
2. Joseph Trenk must also comply with the following additional conditions of probation:
 - a. Joseph Trenk must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
 - b. Within 10 days of any change, Joseph Trenk 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 30 days after the effective date of discipline, Joseph Trenk must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Joseph Trenk must meet with the probation deputy either in person or by telephone. Joseph Trenk must promptly meet with the probation deputy as directed and upon request;
 - d. Joseph Trenk must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10. Under penalty of perjury, Joseph Trenk must state whether he has complied with

⁷ Because respondent completed his law office management/organization plan and his restitution conditions during his participation in the ADP, the court has not included them in probation conditions recommended below.

the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Joseph Trenk 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 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 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, Joseph Trenk must answer fully, promptly and truthfully, any inquiries of the Office of Probation which are directed to him personally or in writing relating to whether he is complying or has complied with the probation conditions;
 - f. Within one year of the effective date of the discipline herein, Joseph Trenk must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School and of his passage of the test given at the end of that session;
 - g. Joseph Trenk must comply with all provisions and conditions of his Participation Agreement/Plan with the Lawyer Assistance Program (LAP) and must provide the Office of Probation with certification of completion of the LAP. Joseph Trenk must immediately report any non-compliance with any provision(s) or condition(s) of his Participation Agreement/Plan to the Office of Probation. Joseph Trenk 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 his 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. Joseph Trenk will be relieved of this condition upon providing to the Office of Probation satisfactory certification of completion of the LAP; and
3. The probation period will begin on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.) And, at the expiration of the period of probation, if Joseph Trenk has complied with all the terms of probation, the order of the Supreme Court suspending him from the practice of law for one year will be satisfied and that suspension will be terminated.

6. PROFESSIONAL RESPONSIBILITY EXAMINATION

It is further recommended that Joseph Trenk be required to 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 to 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).)

7. RULE 9.20

The court further recommends that Joseph Trenk be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.

8. COSTS

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that those costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

9. DIRECTION RE PARTIES' STIPULATION AND DECISION & ORDER SEALING CERTAIN DOCUMENTS

The court directs a court case administrator to file the parties' Stipulation Re Facts and Conclusions of Law and 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 their 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 must be given a copy of this order sealing the documents by the person making the disclosure.

IT IS SO ORDERED.

Dated: December 20, 2010.

RICHARD A. HONN
Judge of the State Bar Court