

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of)	Case No. 02-O-15048
MARK S. SIMONIAN)	DECISION AND DISCIPLINE ORDER;
Member No. 96969,)	ORDER FILING AND SEALING CERTAIN
A Member of the State Bar.)	DOCUMENTS

INTRODUCTION/PERTINENT PROCEDURAL HISTORY

This disciplinary matter involving respondent Mark S. Simonian (respondent) arises out of the following acts of misconduct: holding himself out to the court as entitled to practice law and actually practicing law when he was not an active member of the State Bar and failing to cooperate in a disciplinary investigation.

On February 4, 2004, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed formal disciplinary charges against respondent.¹ Respondent filed a response to the disciplinary charges. Thereafter, on June 7, 2004, Judge McElroy referred this matter to the State Bar Court's Alternative Discipline Program (ADP)² before the undersigned judge.

On June 22, 2004, respondent contacted the State Bar's Lawyer Assistance Program (LAP) to assist him with his mental health issue, and on November 5, 2004, respondent executed a Participation Agreement with the LAP.

¹This matter was originally assigned to the Honorable Pat E. McElroy.

²The ADP was formerly known as the State Bar Court Pilot Program for Respondents with Substance Abuse or Mental Health Issues. The ADP is also known as the State Bar Court's Program for Respondents with Substance Abuse and/or Mental Health Issues. (Rules Proc. of State Bar, rules 800-807.)

On May 27, 2005, the court received a brief from respondent regarding the appropriate discipline in this matter.

On July 8, 2005, the parties executed a Stipulation Re Facts and Conclusions of Law, and the court received the State Bar's brief on the issue of discipline and respondent's revised declaration which, along with a physician's report, established that at the time of his misconduct, respondent was suffering from a mental health issue. Respondent's declaration, the physician's report, and the stipulated facts establish a causal connection between respondent's mental health issue and the misconduct found in this disciplinary proceeding. As such, the court found that respondent had adequately established a nexus between his mental health issue and his misconduct in this matter, i.e., that his mental health issue directly caused the misconduct set forth in this matter.

On October 13, 2005, the court lodged its Confidential Statement of Alternative Dispositions and Orders setting forth the recommended discipline if respondent successfully completed or was terminated from the court's ADP. On that same day, respondent entered into a Contract and Waiver for Participation in the State Bar Court's ADP (Contract); the parties' Stipulation Re Facts and Conclusions of Law and the order approving the stipulation was lodged with the court; and respondent was accepted for participation in the ADP commencing on October 13, 2005.

Thereafter, respondent participated successfully in both the State Bar's LAP and the court's ADP.

The LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program dated June 25, 2007, which reflects that respondent has complied with the requirements set forth in the LAP Participation Agreement/Plan for at least one year prior to June 25, 2007, and that during this time period, respondent has maintained mental health stability and has participated successfully in the LAP.

On June 28, 2007, the court received a statement from respondent regarding his progress in the ADP and his request for early release from the program.

On March 6, 2008, the court filed an order setting forth that respondent has successfully completed the ADP.

Accordingly, the court now issues this decision and order imposing on respondent the

discipline set forth below in this decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties' stipulation, including the court's order approving the stipulation, is attached hereto and is hereby incorporated by reference, as if fully set forth herein. The stipulation sets forth the factual findings, legal conclusions and certain aggravating and mitigating circumstances in this matter.

However, in addition to the mitigating circumstance set forth in the parties' stipulation, the court finds that at the time respondent engaged in the misconduct for which he has been found culpable, respondent was suffering from a mental health issue, and respondent's mental health issue directly caused the misconduct in this proceeding. Supreme Court and Review Department case law establish that extreme emotional difficulties are a mitigating factor where expert testimony establishes that these emotional difficulties were directly responsible for the misconduct, provided that the attorney has also established, through clear and convincing evidence, that he or she no longer suffers from such 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.) However, the Supreme Court has also held that, absent a finding of rehabilitation, emotional problems are not considered a mitigating factor. (*Kaplan v. State Bar* (1991) 52 Cal.3d 1067, 1072-1073; *In re Naney, supra*, 51 Cal.3d at p. 197.)

Respondent has been participating in the LAP since November 2004 and has successfully completed the ADP. Respondent's successful completion of the ADP, which required his successful participation in the LAP, as well as the Certificate of One Year Participation in the Lawyer Assistance Program from LAP, qualify as clear and convincing evidence that respondent no longer suffers from the mental health issue which led to his misconduct. Accordingly, it is appropriate to consider respondent's successful completion of the ADP as a further mitigating circumstance. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(e)(iv).)

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.)

Prior to respondent being accepted for participation in the ADP, the State Bar and the respondent submitted briefs to the court on the appropriate discipline in this matter. After reviewing the parties' respective briefs and considering the standards and case law cited therein, the parties' stipulation setting forth the facts, conclusions of law, and aggravating and mitigating circumstances with respect to this disciplinary proceeding, the physicians's report, and respondent's declaration regarding the nexus between his mental health issue and his misconduct in this matter, the parties were advised of the discipline which would be imposed by the State Bar Court if respondent successfully completed the ADP and the discipline which would be recommended to the Supreme Court if respondent was terminated from the ADP. Respondent thereafter entered into a contract to participate in the ADP and was accepted for participation in the ADP.

Thereafter, respondent successfully participated in the ADP and, as set forth in the court's March 6, 2008, order, the court found that respondent successfully completed the ADP. Accordingly, the court will order the imposition of the discipline set forth in the court's Confidential Statement of Alternative Dispositions and Orders if respondent successfully completed the ADP.

DISCIPLINE ORDER

IT IS HEREBY ORDERED that respondent **MARK S. SIMONIAN** is hereby privately reprovved. Pursuant to the provisions of rule 270(a) of the Rules of Procedure of the State Bar of California (Rules of Procedure), the private reprovval will be effective when this decision becomes final. Furthermore, pursuant to rule 9.19(a) of the California Rules of Court and rule 271 of the Rules of Procedure, the court finds that the interests of respondent and the protection of the public will be served by the following specified conditions being attached to the private reprovval imposed in this matter. Failure to comply with any conditions attached to this reprovval may constitute cause for a separate proceeding for wilful breach of rule 1-110 of the Rules of Professional Conduct of the State Bar of California (Rules of Professional Conduct). Respondent is hereby ordered to comply with the following conditions attached to his private reprovval for a period of two years following the effective date of the private reprovval imposed in

this matter:

1. During the reprobation period, respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
2. 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.
3. 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.
4. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the reprobation period. 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 the reprobation 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 reprobation period and no later than the last day of the reprobation period.
5. Subject to assertion of applicable privileges, respondent must answer fully,

promptly and truthfully any inquires 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 reproval conditions.

6. Within one (1) year after 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.
7. Respondent must comply with all provisions and conditions of respondent's 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 respondent's 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 respondent's LAP Participation Agreement, respondent will be relieved of this condition, provided satisfactory proof of respondent's successful completion of respondent's LAP Participation Agreement has been provided to the Office of Probation.

Respondent must provide proof of passage of the Multistate Professional Responsibility Examination (MPRE), administered by the National Conference of Bar Examiners, to the Office of Probation within one year after the effective date of this private reproval. **Failure to pass the MPRE results in actual suspension without further hearing until passage. (But see Cal. Rules of Court, rule 9.10(b); Rules Proc. of State Bar, rule 321(a) & (c).)**

ORDER FILING AND SEALING CERTAIN DOCUMENTS

The court orders a court case administrator to file the parties' Stipulation Re Facts and Conclusions of Law lodged on October 13, 2005, including the court's order approving the

stipulation, and this Decision and Discipline Order; Order Filing and Sealing Certain Documents. Thereafter, pursuant to rule 806(c) of the Rules of Procedure, all other documents not previously filed in this mater will be 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: June 3, 2008

RICHARD A. HONN
Judge of the State Bar Court