

**STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO**

In the Matter of	)	<b>Case No. 03-C-04482-PEM</b>
<b>LORRAYNE D. GARNER,</b>	)	
<b>Member No. 226107,</b>	)	
A Member of the State Bar.	)	<b>DECISION AND ORDER SEALING DOCUMENTS</b>
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**I. Introduction**

In this disciplinary proceeding, respondent **Lorrayne D. Garner** stipulated to a misdemeanor conviction of Penal Code section 487(a) (grand theft) and that circumstances surrounding her conviction involved moral turpitude.

On April 10, 2006, this court accepted respondent as a participant in the State Bar Court’s Alternative Discipline Program (ADP).<sup>1</sup> (Rules Proc. of State Bar, rules 800-807.)<sup>2</sup>

On October 22, 2007, respondent requested that she be terminated from ADP because she could no longer abide by the terms of the Lawyer Assistance Program (LAP) participation plan.

Accordingly, pursuant to rule 803 and in light of respondent’s request for termination from ADP, the court hereby recommends that respondent be suspended from the practice of law for three years, that execution of the suspension be stayed, and that respondent be placed on probation for three years on conditions that include restitution, if any, and her actual suspension for two years and until respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness

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<sup>1</sup>This program is also known as the State Bar Court’s Program for Respondents with Substance Abuse and Mental Health Issues and formerly known as the Pilot Program.

<sup>2</sup>References to rule are to the Rules of Procedure of the State Bar, unless otherwise stated.

to practice and present learning and ability in the law pursuant to standard 1.4 (c)(ii), Standards for Attorney Sanctions for Professional Misconduct (Standards).

## **II. Significant Procedural History**

### **A. Respondent's Acceptance into the Alternative Discipline Program**

By minute order filed July 29, 2004, the State Bar Court Review Department classified respondent's misdemeanor conviction for grand theft in violation of Penal Code section 487(a) as a crime involving moral turpitude. Pursuant to rule 951(a) of the California Rules of Court and Business and Professions Code section 6102, ordered respondent suspended from the practice of law pending the final disposition of the proceedings. Following receipt of evidence that respondent's conviction had become final, the Review Department referred the matter to the Hearing Department for a hearing and a decision recommending the discipline to be imposed.

On August 27, 2004, this court filed a Notice of Hearing on Conviction. On October 14, 2004 respondent filed a response to the Notice of Hearing on Conviction.

Pursuant to rule 424, of the Rules of Procedure of the State Bar of California (Rules of Procedure) respondent and her counsel and the State Bar entered into a stipulation for respondent's transfer to inactive enrollment under Business and Professions Code 6007, subdivision(b)(3). On January 15, 2006, respondent was enrolled as an inactive member.

On April 10, 2006, the court approved a stipulation as to facts and conclusions of law (Stipulation) submitted by the parties for purposes of respondent's participation in the ADP. (Rules Proc. of State Bar, rule 802(a).) On the same day, this court issued its Confidential Statement of Dispositions (April 10, 2006 statement). Following the execution of a Contract and Waiver for Participation in the State Bar Court's Alternative Discipline Program (Contract), this court accepted respondent into the ADP on April 10, 2006.

Respondent's eligibility and acceptance into the ADP was based on, among other things: 1) her participation in the LAP; 2) the stipulation as to facts and conclusions of law 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 April 10, 2006 decision. (Rules Proc. of State Bar, rule 802.) The terms and conditions of participation were set forth in the Contract,

which respondent signed on April 10, 2006.

Specifically, paragraph 14 of the Contract provides as follows:

Respondent acknowledges and agrees that Respondent's participation in the ADP may be terminated by the Court for non-compliance with the ADP requirements, including but not limited to the following: (a) positive urinalysis tests on multiple occasions; (b) missed treatment or group meetings; (c) allegations of additional misconduct which occurred after Respondent was accepted into the ADP; or (d) failure to comply with the terms of this Contract.

#### **B. Respondent's Termination from the Alternative Discipline Program**

On October 17, 2007, LAP reported that respondent tested positive for marijuana on three different dates. On October 22, 2007, respondent requested that she be terminated from LAP and ADP because she disagreed with the recommendations of LAP. On October 22, 2007, the court terminated respondent from the ADP based upon her request.

### **III. Findings of Fact and Conclusions of Law**

Respondent was admitted to the practice of law in California on July 7, 2003, and has been a member of the State Bar of California at all times relevant to this proceeding.

The Stipulation approved by the court and lodged on April 10, 2006, is attached and incorporated by reference, as if set forth fully herein.

In summary, respondent stipulated to a misdemeanor conviction of Penal Code section 487(a) (grand theft) and that circumstances surrounding her conviction involved moral turpitude.

### **IV. Aggravation and Mitigation**

The parties also stipulated to certain aggravating and mitigating factors. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2.)<sup>3</sup>

#### **A. Aggravation**

In aggravation, respondent stipulated that her misconduct evidenced multiple acts of wrongdoing or demonstrates a pattern of misconduct. (Stds. 1.2(b)(ii).)

Also respondent stipulated that her conduct was surrounded by bad faith, dishonesty and concealment. (Stds.1.2(b)(iii).)

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<sup>3</sup>All further references to standards are to this source.

## **B. Mitigation**

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

Also in mitigation, the parties stipulated that at the time of the misconduct, respondent suffered from extreme difficulties in her personal life. At the time respondent falsified her time sheets she was married to a citizen of Russia who she says forced her to sign the false time sheets.

Under standard 1.2(e)(iv), extreme emotional difficulties or physical disabilities suffered by the attorney at the time of the professional misconduct may be considered mitigating. The Supreme Court has held that extreme emotional difficulties are a mitigating factor where expert testimony establishes that those 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.) However, the Supreme Court also has held that, absent a finding of rehabilitation, emotional problems are not considered to be a mitigating factor. (*Kaplan v. State Bar* (1991) 52 Cal.3d 1067, 1072-1073; *In re Naney, supra*, 51 Cal.3d at p. 197.)

Here, in accepting respondent into the ADP, the court found that respondent had suffered from a bi-polar disorder and depression complicated by anxiety attacks and that there was a sufficient connection between respondent's problems and the stipulated misconduct. (Rules Proc. of State Bar, rule 802(c).) However, 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.

## **V. Degree of Discipline**

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; standard 1.3.) Standard 1.6(b) provides that the specific discipline for a particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions.

Standard 3.2 provides that the final conviction of a member of a crime which involves moral turpitude, either inherently or in the facts and circumstances surrounding the crimes commission shall result in disbarment unless the most compelling mitigation circumstances predominate. Standard 3.2 further provides that, where disbarment is not imposed, the discipline shall not be less than a two-year actual suspension, irrespective of mitigating circumstances.

[Cases to consider are : *In the Matter of Stamper* 1 Cal.State Bar Ct. Rptr 96; *In re the matter of Lybbert* 2 Cal. State Bar Ct. 297]. Another factor in her favor is that the conviction was unrelated to the practice of law (did not involve a client). An attorney's commission of a crime involving moral turpitude is always a matter of serious consequences but does not all result in disbarment]

Therefore, after considering the scope of respondent's acts of admitted misconduct, all of the mitigating and aggravating circumstances and the relevant case law, the court concludes that the imposition of a two year actual suspension with appropriate conditions is warranted.

## **VI. Recommendation**

**IT IS HEREBY RECOMMENDED** that respondent **Lorrayne Garner** be suspended from the practice of law in the State of California for three 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 three years of the period of probation until respondent show proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii).
2. Respondent must make restitution, if any, as set by the district attorney's office/probation department of the county in which she was convicted.
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 his 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 he 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. 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 him personally or in writing, relating to whether he is complying or has complied with these probation conditions;
7. 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 his attendance at a session of State Bar Ethics School and of passage of the test given at the end of that session;
8. 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
9. 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 two years will be satisfied and that suspension will be terminated.

It is further 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.

It is also recommended that respondent be ordered to comply with the requirements of the California Rules of Court, rule 9.20, and that he 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.)

#### **VII. 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.

#### **VIII. 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, including reports and evaluations regarding respondent's recommended treatment for participation in the Lawyer Assistance Program. Pursuant to Business and Professions Code section 6234(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 of the Rules of Procedure of the State Bar of California, the following documents are to remain confidential and sealed:

1. All reports and evaluations by mental health professionals that were submitted to the court as part of respondent's participation in the Alternative Discipline Program;
2. All information concerning the nature and extent of respondent's treatment provided by the LAP, including, but not limited to, participation reports, application agreements and participation agreements; and
3. Contract and Waiver for Participation in the State Bar Court's Program for Respondents with Substance Abuse or Mental Health Issues.

**IT IS FURTHER ORDERED** that the foregoing 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.

Dated: November , 2007

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**PAT McELROY**  
Judge of the State Bar Court