

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: 03-J-00261
	)	
<b>ELSA LEYVA</b>	)	<b>DECISION AND DISCIPLINE ORDER OF</b>
	)	<b>PUBLIC REPROVAL; ORDER SEALING</b>
<b>Member No. 112835</b>	)	<b>CERTAIN DOCUMENTS</b>
	)	
<u>A Member of the State Bar.</u>	)	

**Pertinent Procedural History**

This matter arises out of an order of the United States Court of Appeal for the Ninth Circuit indefinitely suspending respondent **Elsa Leyva** (Respondent) from the practice of law before the Ninth Circuit. (*In re Elsa Leyva*, U.S. Ct. of Appeals for the Ninth Circuit, Case No. 01-80030; order issued October 10, 2002.) Respondent thereafter contacted the State Bar of California’s Lawyer Assistance Program (LAP) to assist her with her substance abuse and mental health issues.

In August 2005, the State Bar and Respondent entered into a pre-filing Stipulation Re Facts and Conclusions of Law, which, among other things, set forth the misconduct leading to the Ninth Circuit’s order. In September 2005, Respondent entered into a Participation Agreement with the LAP. On November 22, 2005, Respondent submitted to the court a declaration regarding the nexus between her substance abuse and mental health issues and her misconduct.

On May 23, 2006, the court lodged the Confidential Statement of Alternative Dispositions and Orders (Statement), the Contract and Waiver for Participation in the State Bar Court's Alternative Discipline Program (Contract),<sup>1</sup> and the parties' Stipulation Re Facts and Conclusions of Law.

On May 23, 2006, Respondent was accepted into the ADP.

In January 2010, the court received a qualifying recommendation under Rule 804 from Respondent's mental health professional.

On February 3, 2010, the court issued an order finding that Respondent has successfully completed the ADP, and the matter was submitted for decision on that same date. Thereafter, in April 2010, the matter was reassigned to the undersigned judge.

On April 27 and May 3, 2010, at the request of the undersigned, the court received from LAP a Certificate of One Year Participation in the Lawyer Assistance Program and a 12-month substance free certificate. (Rule 804.) These certificate report that Respondent has complied with the requirements set forth in her LAP Participation Agreement/Plan for at least one year prior to the date of the certificate, and that LAP is not aware of the use of any unauthorized substances during that time period and that Respondent has maintained mental health stability and has participated successfully in the LAP.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

#### **Jurisdiction**

Respondent was admitted to the practice of law in the State of California on February 7, 1984, and has been a member of the State Bar of California at all times thereafter.

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<sup>1</sup> The Contract was executed by respondent on this date.

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In this matter, Respondent stipulated that her misconduct, as determined by the Ninth Circuit's order, warrants the imposition of discipline in the State of California under the laws and rules in effect in California at the time the misconduct was committed. Respondent also stipulated that her misconduct in the federal court constituted violations of (1) rule 3-110(A) of the Rules of Professional Conduct of the State Bar of California<sup>2</sup> by failing to timely prosecute criminal appeals in the early 1990s and again in 2001, and (2) section 6103 of the California Business and Professions Code<sup>3</sup> by failing to comply with court orders requiring her to withdraw from all cases in the Ninth Circuit. Respondent further stipulated that the disciplinary proceedings in federal court case No. 01-80030 provided her with fundamental constitutional protections and that her misconduct in this matter is governed by the terms of Business and Professions Code section 6049.1, due to her misconduct in another jurisdiction. The Stipulation Re Facts and Conclusions of Law (Stipulation), which was lodged on May 23, 2006 and filed on February 3, 2010, is attached hereto and is incorporated by reference, as if fully set forth herein.

**Mitigation/Aggravation**

In aggravation, Respondent's misconduct harmed significantly a client, the public or the administration of justice. (Std. 1.2(b)(iv).)

In mitigation, the parties stipulated that Respondent had no prior discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,<sup>4</sup> std. 1.2(e)(i).) Respondent also displayed candor and cooperation with the State Bar during the disciplinary proceedings. (Std. 1.2(e)(v).)

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<sup>2</sup> Unless otherwise indicated, all further references to rule(s) refer to the Rules of Professional Conduct of the State Bar of California.

<sup>3</sup> Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

<sup>4</sup> Future references to standard(s) or std. are to this source.

Furthermore, at the time Respondent engaged in her misconduct, she was suffering from substance abuse and mental health issues that directly caused or contributed to the misconduct forming the basis of this proceeding. Supreme Court case law establishes that an attorney's rehabilitation from alcoholism or other substance abuse problems may be accorded significant 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.) Similarly, Supreme Court and Review Department case law establish 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; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 701-702.)

Respondent recognized the wrongfulness of her conduct and took steps to address the underlying substance abuse and mental health issues that contributed to her misconduct. In that effort, she has now successfully completed the ADP. Her successful completion of the ADP provides clear and convincing evidence that she no longer suffers from the substance abuse and mental health issues that led to her prior misconduct. Accordingly, it is appropriate to consider Respondent's successful completion of the ADP as a mitigating circumstance in this matter. (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.)

At the time Respondent was being considered for possible inclusion in ADP, the court advised the parties of the disposition of this matter if Respondent successfully completed the ADP. That discipline, as set forth more fully below, was a public reproof with various conditions of reproof. In determining the appropriateness of that discipline, the court considered the discipline recommended by the parties, as well as the applicable standards and case law. In particular, the court considered standards 1.2, 1.3, 1.5, 1.6, 2.4(b) and 2.6, and *Chasteen v. State Bar* (1985) 40 Cal.3d 586, *King v. State Bar* (1990) 52 Cal.3d 307, *In the Matter of Respondent G* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 175, *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703, and *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862. Because Respondent has now successfully completed the ADP, the court will impose the lower discipline set forth in the court's Confidential Statement of Alternative Dispositions. and Orders.<sup>5</sup>

## DISCIPLINE ORDER

It is hereby ordered that respondent **Elsa Leyva** is hereby publicly reproofed. Pursuant to the provisions of rule 270(a), the public reproof 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 of the State Bar of California, the court finds that the interests of Respondent

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<sup>5</sup> The Confidential Statement of Alternative Dispositions and Orders was lodged with the court on May 23, 2006, and filed on February 3, 2010.

and the protection of the public will be served by the following specified conditions being attached to the public reproof imposed in this matter. Failure to comply with any condition attached to this public reproof may constitute cause for a separate proceeding for willful breach of rule 1-110 of the Rules of Professional Conduct of the State Bar of California. Respondent is hereby ordered to comply with the following conditions attached to her public reproof for three years (“period of reproof”) following the effective date of the public reproof:

1. Respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
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 reproof. 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 reproof, 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 period of reproof. Under penalty of perjury, Respondent must state whether she has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of reproof during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against her 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;
5. Subject to the assertion of applicable privileges, Respondent must answer fully, promptly, and truthfully any inquiries of the Office of Probation which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the reproof conditions;
6. 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;

7. Respondent must comply with all provisions and conditions of her Participation Agreement/Plan with the Lawyer Assistance Program (LAP) and must provide the Office of Probation with certification of completion of the LAP. Respondent must immediately report any non-compliance with any provision(s) or condition(s) of her Participation Agreement/Plan 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 her compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. Respondent will be relieved of this condition upon providing to the Office of Probation satisfactory certification of completion of the LAP.

Respondent must take and pass the Multistate Professional Responsibility Examination (MPRE) within one year of the effective date of the disciplinary order in this matter and provide proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

### **COSTS**

Costs are 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. One-half of the costs must be paid with Respondent's membership fees for each of the years 2011 and 2012. If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately. Respondent must also reimburse the Client Security Fund to the extent that the misconduct in this matter results in payment of funds and such payment is enforceable as provided under Business and Professions Code section 6140.5.

### **DIRECTION RE DECISION AND ORDER SEALING CERTAIN DOCUMENTS**

The court directs a court case administrator to file this Decision and Discipline Order; 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 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: May \_\_\_\_\_, 2010

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DONALD F. MILES  
Judge of the State Bar Court