

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

In the Matter of)	Case No. 03-O-00048; 03-O-00814;
)	03-O-02774; 03-O-04372;
KURT A. KISSINGER,)	05-O-00591; Inv. No. 04-O-14463
)	
Member No. 144984,)	DECISION AND ORDER FILING AND
)	SEALING CERTAIN DOCUMENTS
<u>A Member of the State Bar.</u>)	

INTRODUCTION/PERTINENT PROCEDURAL HISTORY

This disciplinary matter involving respondent Kurt A. Kissinger (respondent) arises from misconduct involving five separate clients and respondent's failure to comply with conditions of his probation in a prior disciplinary matter.

After the filing of certain formal disciplinary charges by the Office of the Chief Trial Counsel of the State Bar of California (State Bar) in 2004,¹ respondent sought to participate in the State Bar's Lawyer Assistance Program (LAP) and the State Bar Court's Alternative Discipline Program (ADP).²

In September 2004, respondent contacted the LAP to assist him with his mental health issue(s), and on January 10, 2005, respondent executed a Participation Plan/Agreement with the LAP.

In the Fall of 2004, following a settlement conference, respondent's disciplinary matter was referred to the ADP.

¹Formal disciplinary charges were also filed against respondent in case no. 05-O-00591 on March 4, 2005.

²Also known as the State Bar Court's Program for Respondent's with Substance Abuse and/or Mental Health Issues. (Rules Proc. of State Bar, rules 800-807.)

In April 2004, the parties entered into a stipulation regarding facts and conclusions of law in this matter. The parties also submitted to the court a joint brief on the issue of discipline.

On June 17, 2005, respondent submitted a declaration to the court which established that at the time of his misconduct, respondent was suffering from mental health issue(s). Respondent's declaration and the stipulated facts established a casual connection between respondent's mental health issue(s) 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(s) and his misconduct in this matter, i.e., that his mental health issue(s) directly caused the misconduct set forth in this matter.

On August 5, 2005, the court lodged its Statement on Alternative Dispositions and Orders, setting forth the recommended discipline if respondent successfully completed the court's ADP or was terminated or failed to successfully complete the court's ADP. On that same day, respondent entered into a Contract and Waiver for Participation in the State Bar Court's ADP; the court executed an order approving the parties' stipulation which was then lodged with the court; and respondent was accepted as a participant in the ADP.

Effective April 27, 2006, respondent's participation in the LAP was terminated. A LAP Closed Case report, dated May 1, 2006, noted that LAP had closed respondent's case due to participant withdrawal based on respondent's disagreement with LAP recommendations.

On May 3, 2006, the court ordered respondent to appear in-person on May 22, 2006, to show cause why he should not be terminated from the ADP in light of the fact that his participation in the LAP was terminated, and further to show cause why the high level of discipline set forth in the Statement on Alternative Dispositions and Orders should not be imposed.

Thereafter, the court issued an order on May 23, 2006, terminating respondent from the ADP effective May 22, 2006, as a result of his failure to participate in the LAP.

In June 2006, respondent sought reconsideration of his termination from the ADP. The State Bar opposed reconsideration of the court's order terminating respondent from the ADP.

The court held a status conference on June 30, 2006, with respect to the reconsideration of the order terminating respondent from the ADP. On July 17, 2006, the court issued a status

conference order noting that a ruling on respondent's motion for reconsideration would be deferred until respondent was readmitted into the LAP.³ In addition, respondent's case condition was changed back to "PGM (Program)" status as of May 22, 2006.

On May 15, 2007, the court issued an order requiring respondent to show cause in writing on or before June 4, 2007, as to why he should not be enrolled inactive or subject to other practice restrictions pursuant to Business and Professions Code section 6233 as a condition of his continued participation in the ADP, as a result of his failure to pay timely restitution as set forth in the ADP Contract and the failure to timely comply with the court's order regarding the motion to modify the restitution requirement. Respondent timely filed a response to the May 15, 2007, order to show cause.

In an order filed July 30, 2007, the court noted that respondent had shown good cause that he should not be enrolled inactive or be subject to any other appropriate practice restrictions pursuant to Business and Professions Code section 6233. In addition, respondent's restitution schedule was modified.

On September 7, 2007, the court issued an order requiring respondent to show cause, in writing, on or before September 24, 2007, as to why he should not be either enrolled inactive or be subject to other appropriate practice restrictions pursuant to Business and Professions Code section 6233, as a condition of his continued participation in the ADP, or terminated from the ADP, as a result of his failure to: (1) comply with his obligations under the ADP, including payment of restitution as set forth in the ADP Contract; and (2) comply with court orders regarding notification of his financial condition.

As of October 9, 2007, respondent had not responded as ordered to the court's order to show cause. The State Bar therefore filed a request on October 9, 2007, that respondent be terminated from the ADP forthwith, as he had not requested a hearing nor responded to the September 7, 2007,

³On June 21, 2006, respondent signed a LAP Evaluation Plan. Although respondent was readmitted to the LAP, respondent's motion for reconsideration is now moot in light of the court's November 2, 2007, order terminating respondent from the ADP due to his failure to comply with court orders and his failure to comply with his obligations under the ADP.

order to show cause.

On October 26, 2007, the court held a status conference in this matter. As respondent was not in compliance with the conditions of the court's ADP, the court terminated respondent from the ADP, and the parties' Stipulation Re Facts and Conclusions of Law was filed. On November 2, 2007, the court issued an order terminating respondent from the ADP, and this matter was submitted for decision.

The LAP closed respondent's case on December 3, 2007, due to participant withdrawal as respondent had discontinued contact with the LAP.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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 being accepted for participation in the ADP, the parties submitted a joint brief to the court on the appropriate discipline in this matter. After reviewing the parties' brief and considering the standards and case law cited therein, the parties' stipulation setting forth the facts, conclusions of law, and the aggravating and mitigating circumstances with respect to this disciplinary proceeding, and respondent's declaration regarding the nexus between his mental health issue(s) and his misconduct in this matter, the parties were advised of the discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP and the discipline which would be recommended if respondent was terminated from or did not successfully complete the ADP. Thereafter, the Contract to participate in the ADP, which was executed by respondent on August 5, 2005, was lodged with the court, and respondent was accepted for participation in the ADP.

Less than nine months later, respondent's participation in the LAP was terminated, and respondent was terminated from the ADP effective May 22, 2006, as a result of his failure to participate in the LAP. Thereafter, respondent sought reconsideration of his termination from the ADP. The court deferred ruling on the motion for reconsideration until respondent was readmitted into the LAP⁴; however, respondent's case condition was changed back to "PGM (Program)" status as of May 22, 2006.

Nevertheless, on September 7, 2007, the court issued an order requiring respondent to show cause, in writing, on or before September 24, 2007, as to why he should not be either enrolled inactive or be subject to other appropriate practice restrictions pursuant to Business and Professions Code section 6233, as a condition of his continued participation in the ADP, or terminated from the ADP, as a result of his failure to: (1) comply with his obligations under the ADP, including payment of restitution as set forth in the ADP Contract; and (2) comply with court orders regarding notification of his financial condition.

On October 9, 2007, the State Bar filed a request that respondent be terminated from the ADP forthwith, as he had not requested a hearing nor responded to the September 7, 2007, order to show cause.

On October 26, 2007, the court held a status conference in this matter. As respondent was not in compliance with the conditions of the court's ADP, the court terminated respondent from the ADP.

Accordingly, the court will recommend to the Supreme Court the imposition of the discipline set forth in the court's Statement on Alternative Dispositions and Orders in the event respondent did not successfully complete the ADP.

RECOMMENDED DISCIPLINE

IT IS HEREBY RECOMMENDED that respondent **KURT A. KISSINGER** be suspended from the practice of law in the State of California for a period of two (2) years, that execution of such suspension be stayed, and that respondent be placed on probation for a period of three (3) years on

⁴Respondent was readmitted to the LAP.

the following conditions:

1. Respondent must be actually suspended from the practice of law for the first one (1) year of the period of probation;
2. Respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
3. Within thirty (30) days after the effective date of discipline, respondent must contact the State Bar's 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. Within ten (10) calendar days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone number, respondent must report such change in writing to both the Office of Probation and to the Membership Records Office of the State Bar;
5. If respondent has not been terminated from the LAP prior to his successful completion of the LAP, respondent must comply with all provisions and conditions of his Participation Agreement/Plan with the 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. However, if respondent has successfully completed the LAP, he need not comply with this condition;
6. If respondent has been terminated from the LAP prior to his successful completion of the LAP, respondent must obtain psychiatric or psychological help/treatment from a duly licensed psychiatrist, psychologist or clinical social worker at respondent's own expense a

minimum of two times per month and must furnish evidence to the Office of Probation that respondent is so complying with each quarterly report. Help/treatment should commence immediately, and in any event, no later than thirty (30) days after the effective date of the Supreme Court's final disciplinary order in this matter. Treatment must continue for the period of probation or until a motion to modify this condition is granted and that ruling become final.

If the treating psychiatrist, psychologist or clinical social worker determines that there has been a substantial change in respondent's condition, respondent or the State Bar's Office of Probation or the Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 550 of the Rules of Procedure of the State Bar of California. The motion must be supported by a written statement from the psychiatrist, psychologist, or clinical social worker, by affidavit or under penalty of perjury, in support of the proposed modification.

Upon the request of the Office of Probation, respondent must provide the Office of Probation with medical waivers and access to all of respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation will be confidential and no information concerning them or their contents will be given anyone except members of the Office of the Chief Trial Counsel, the Office of Probation, and the State Bar Court, who are directly involved with maintaining, enforcing or adjudicating this condition;

7. 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 during which these probation conditions are in effect. Under penalty of perjury, respondent must state in each report whether he has complied with the State Bar Act, the Rules of Professional Conduct and all conditions of probation during the preceding calendar quarter. If the first report will cover less than thirty (30) calendar days, that report must be submitted on the reporting 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 twenty (20) calendar days before the last day of the period of probation and no later than the last day of the probation period;

8. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully, all inquires of the Office of Probation which are directed to him personally or in writing relating to whether respondent is complying or has complied with the conditions of his probation;
9. Within one year after the effective date of the Supreme Court's final disciplinary order in this matter, respondent must provide the Office of Probation with satisfactory proof of his attendance at a session of State Bar Ethics School, given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015, and passage of the test given at the conclusion of that session. Arrangements to attend Ethics School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Ethics School (Rules Proc. of State Bar, rule 3201.)
10. Respondent must pay restitution to the following individuals of the amounts set forth below, plus ten percent (10%) interest per annum, accruing from the date specified below, and provide satisfactory proof thereof to the Office of Probation during the period of probation:

<u>Party Owed Restitution</u>	<u>Principal Amount</u>	<u>Interest Accrual Date</u>
Bonnie Strickler-Lynn	\$1,427.00	July 1, 2001
Dieter Ruth	\$2,500.00	July 1, 2003
Carolyn Longbreak	\$2,500.00	July 17, 2002
Forrest Butler, D.C.	\$3,484.11	April 29, 1997
Nancy Khuu	\$2,027.20	June 1, 1998
Tuan and Thang Dong	\$3,500.00	February 12, 1999

If the State Bar's Client Security Fund ("CSF") has reimbursed any of the above individuals for all or any portion of the principal amounts, respondent must also pay

restitution to the CSF of the amount paid, plus applicable interest and costs. Any restitution owed to the CSF is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d). To the extent the CSF has paid only principal amounts, respondent will still be liable for interest payments to said individuals. With each written quarterly report required herein, respondent must provide to the Office of Probation satisfactory proof of all restitution payments made by him during that quarter or period. With respect to restitution owed to Forrest Butler, D.C., Nancy Khuu, and Tuan and Thang Dong, respondent will receive credit for any and all restitution payments made previously pursuant to Supreme Court order S100595 (State Bar Court Case No(s). 99-O-11509, etc.) provided satisfactory proof of such is or has been shown to the Office of Probation. Furthermore, 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 payments provided satisfactory proof is or has been shown to the Office of Probation;

11. These probation conditions will commence on the effective date of the Supreme Court's final disciplinary order in this proceeding;
12. At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for two (2) years will be satisfied and that suspension will be terminated.

The court also recommends that respondent be required to take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) within one (1) year after the effective date of the Supreme Court's final disciplinary order in this matter and that he be ordered to provide satisfactory proof of his passage of the MPRE to the Office of Probation within said year.⁵

⁵When ordered to take and pass the MPRE by the Supreme Court, failure to do so within the specified time results in actual suspension by the Review Department of the State Bar Court, without further hearing, until passage. But see rule 9.10(b), California Rules of Court, and rule

It is further recommended that respondent be ordered to comply with rule 9.20 (formerly rule 955), California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule, within thirty (30) and forty (40) days, respectively, after the effective date of the Supreme Court order herein. **Willful failure to comply with the provisions of rule 9.20 may result in revocation of probation; suspension; disbarment; denial of reinstatement; conviction of contempt; or criminal conviction.**

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.

ORDER FILING AND SEALING CERTAIN DOCUMENTS

The court orders a Case Administrator to file this Decision and Order Filing and 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 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: February ___, 2008

RICHARD A. HONN
Judge of the State Bar Court

321(a)(1) and (3), Rules of Procedure.