

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case Nos. 03-O-02401-PEM;
	)	(04-O-15650)
<b>G. SCOTT CHRISTENSON,</b>	)	
	)	
<b>Member No. 135434,</b>	)	<b>DECISION AND ORDER SEALING</b>
	)	<b>DOCUMENTS</b>
A Member of the State Bar.	)	

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**I. Introduction**

In this disciplinary proceeding, respondent **G. Scott Christenson** stipulated to professional misconduct in two client matters, including failing to perform services competently, failing to communicate with client, failing to render an accounting and failing to return unearned fees.

In September 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>

However, respondent has recently been terminated from the State Bar Court’s ADP because of his failure to comply with its requirements.

Accordingly, pursuant to rule 803 and in light of his admitted misconduct, the court hereby recommends that respondent be suspended from the practice of law for one year, that execution of the suspension be stayed, and that respondent be placed on probation for three years on conditions that include his actual suspension for 120 days and until he has made restitution.

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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.

## **II. Significant Procedural History**

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

On March 30, 2006, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed a Notice of Disciplinary Charges against respondent.

On September 5, 2006, the court approved a Stipulation re Facts and Conclusions of Law (Stipulation) and accepted respondent into the ADP. On the same day, respondent executed a Contract and Waiver for Participation in the State Bar Court's Alternative Discipline Program (Contract). This court also issued its Confidential Statement of Alternative Dispositions (September 2006 Statement).

Respondent's eligibility and acceptance into the ADP was based on, among other things: 1) his participation in the LAP; 2) the stipulation as to facts and conclusions of law he entered with the State Bar; 3) the nexus evidence he provided; and 4) his agreement to accept the court's low and high levels of recommended discipline set forth in the September 2006 Statement. (Rules Proc. of State Bar, rule 802.)

Respondent agreed to fulfill all of the requirements set forth by the ADP Judge as conditions for respondent's ongoing participation in the ADP.

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

On December 10, 2007, the court held an order to show cause (OSC) hearing on whether respondent should be terminated from the ADP because he was not in compliance with the conditions of the ADP. At the hearing, the court ordered respondent to comply with his restitution requirements by December 17, 2007, or he would be terminated from the ADP. At the December 18, 2007 status conference, respondent had yet to provide proof of restitution.

Therefore, by order filed December 19, 2007, the court terminated respondent from the ADP based upon his noncompliance with the conditions of the ADP. The court also ordered the Stipulation to be filed and now issues this decision recommending the high level of discipline set forth in the September 2006 Statement.

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

Respondent was admitted to the practice of law in California on August 15, 1988, and has been a member of the State Bar of California at all times since.

The Stipulation is attached and hereby incorporated by reference, as if fully set forth herein. The Stipulation set forth the factual findings, legal conclusions and aggravating and mitigating circumstances in this matter.

In summary, respondent stipulated to seven violations of professional misconduct involving two client matters.<sup>3</sup> The parties also stipulated to certain aggravating and mitigating factors.

Regarding mitigation, extreme emotional difficulties or physical disabilities suffered by the attorney at the time of the professional misconduct may be considered mitigating. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e)(iv).)<sup>4</sup> 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 there was a sufficient connection between respondent's mental health problems and his stipulated misconduct. (Rules Proc. of State Bar, rule 802(c).) Respondent was enrolled in the State Bar's Lawyer Assistance Program (LAP) in February 2005 in a five-year commitment to his recovery program. However, respondent's conduct before this court while participating in the ADP prevent the court from making

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<sup>3</sup>Specific violations were: rules 3-110(A), 3-700(D)(2), and 4-100(B)(3) of the Rules of Professional Conduct and Business and Professions Code section 6068, subdivision (m).

<sup>4</sup>All further references to standards are to this source.

a finding that respondent has established his sustained rehabilitation by clear and convincing evidence. Therefore, the court will not give respondent any mitigation credit for his participation in the LAP or the ADP.

Furthermore, although the parties stipulated that respondent was candid and cooperative with the State Bar during its resolution of these matters, the mitigating force of this factor is dramatically reduced based on respondent's termination from the ADP. (Std. 1.2(e)(v).)

#### **IV. Discussion**

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; std. 1.3.)

After considering the Stipulation, scope of respondent's acts of misconduct, the mitigating and aggravating circumstances, the standards, the relevant case law, and respondent's declaration regarding the nexus between his mental health issues and his misconduct in this matter, the court had advised respondent and the State Bar of the low and high levels of discipline which would be recommended to the Supreme Court, depending on whether respondent successfully completed the ADP or was terminated from the ADP. The recommended discipline was set forth in the September 2006 Statement.

Accordingly, because respondent was terminated from the ADP in December 2007, the court hereby recommends the high level of discipline to the Supreme Court.

#### **V. Recommendation**

**It is hereby recommended** that respondent **G. Scott Christenson** be suspended from the practice of law in the State of California for one year, that execution of such suspension be stayed and that respondent be placed on probation for three years on the following conditions:

1. Respondent must be actually suspended from the practice of law for the first 120 days of the period of probation and until he makes restitution to (1) Alejandro and Trinidad Vera in the amount of \$10,000 plus 10% interest per annum from August 1, 2002; and to (2) Jesse Noble

in the amount of \$1,500 plus 10% interest per annum from May 15, 2004 (or to the Client Security Fund to the extent of any payment from the fund to Alejandro and Trinidad Vera and Jesse Noble, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnishes satisfactory proof thereof to the State Bar's Office of Probation. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d);

2. Respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;
3. 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;
4. 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;
5. Within 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;

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, unless he previously completed the course within the prior two years (Rules Proc. of State Bar, rule 290);
8. Respondent must obtain psychiatric or psychological treatment from a duly licensed psychiatrist, psychologist or clinical social worker at respondent's own expense at a minimum of one time per week, and must furnish evidence to the Office of Probation that he is so complying with each quarterly report. Treatment must continue for the period of probation or until a motion to modify this condition is granted and the ruling becomes final;
9. 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
10. 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 one year will be satisfied and that suspension will be terminated.

It is also recommended that if respondent is actually suspended for two years or more, he must remain actually suspended until he provides proof to the satisfaction of the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.

It is further 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.)

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) since he took and passed it on March 10, 2007.

#### **VI. 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.

#### **VII. 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. Pursuant to Business and Professions Code section 6234, subdivision (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, all other documents not previously filed are to remain confidential and sealed.

**IT IS FURTHER ORDERED** that the 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: March \_\_\_\_, 2008

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