

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

In the Matter of	)	<b>Case No. 03-O-03236</b>
<b>CAROLYN SUE JANZEN,</b>	)	<b>DECISION AND ORDER FILING AND</b>
<b>Member No. 102998,</b>	)	<b>SEALING CERTAIN DOCUMENTS</b>
<u>A Member of the State Bar.</u>	)	

**INTRODUCTION/PERTINENT PROCEDURAL HISTORY**

This disciplinary proceeding involving respondent Carolyn Sue Janzen (respondent) arises out of one client matter involving the following acts of misconduct: intentionally, recklessly or repeatedly failing to perform legal services with competence; acts involving moral turpitude, dishonesty, or corruption; improper withdrawal from employment; failing to refund unearned fees; and failing to render appropriate accounts to a client regarding client funds in respondent's possession.

After the filing of formal disciplinary charges against respondent by the Office of the Chief Trial Counsel of the State Bar of California (State Bar) on August 3, 2005, respondent sought to participate in the State Bar of California's Lawyer Assistance Program (LAP). On October 26, 2005, respondent contacted the LAP to assist her with her mental health and substance abuse issues, and on April 14, 2006, respondent executed a Participation Plan with the LAP.

Pursuant to an order filed on November 16, 2005, the Honorable Robert M. Talcott<sup>1</sup>

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<sup>1</sup>This matter was originally assigned to Judge Talcott.

referred this matter to the State Bar Court's Alternative Discipline Program (ADP),<sup>2</sup> and a status conference was scheduled with the undersigned judge. Thereafter, this matter was assigned to the undersigned judge for all further proceedings.

On January 3, 2006, respondent submitted a declaration which established that at the time of her misconduct, respondent was suffering from mental health and substance abuse issues. In April 2006, the court received a medical report regarding respondent dated February 15, 2006.

On April 17, 2006, the parties executed a Stipulation Re Facts and Conclusions of Law in this matter. Respondent's declaration, the medical report, and the stipulated facts established a causal connection between respondent's mental health and substance abuse issues and the misconduct found in this disciplinary proceeding. As such, the court finds that respondent adequately established a nexus between her mental health and substance abuse issues and her misconduct in this matter, i.e., that her mental health and substance abuse issues directly caused the misconduct set forth in this matter.

After the parties submitted to the court their respective briefs on the issue of discipline in this matter, the court lodged its Confidential Statement of Alternative Dispositions and Orders on November 20, 2006, setting forth the recommended discipline if respondent successfully completed or was terminated from the court's ADP. Also on November 20, 2006: (1) the court executed an order approving the parties' Stipulation Re Facts and Conclusions of Law, and the stipulation and order approving same were lodged with the court; (2) the Contract and Waiver for Participation in the State Bar Court's ADP (Contract) was executed by respondent, and the Contract was lodged with the court; (3) the court issued an order to the Office of Probation ordering that office to monitor respondent's compliance with the terms and specified conditions set forth in the Contract and to report all non-compliance with such conditions to the court; and (4) respondent was accepted into the ADP.

On December 12, 2006, respondent executed an amendment to her LAP Participation

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<sup>2</sup>Also 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.)

Plan.

On January 11, 2007, the court received a report from the Office of Probation reflecting that respondent had not complied with certain conditions of her ADP Contract.

On January 18, 2007, the court issued an order amending the restitution provision of the Contract signed by respondent on November 20, 2006.

On March 6, 2007, the court received a report from the Office of Probation reflecting that respondent had not complied with a certain condition of her ADP Contract.

On June 28, 2007, the court received a LAP Participation Report reflecting that respondent was not in compliance with the terms of her Participation Plan.

On August 23, September 20, and November 19, 2007, and January 22, 2008, the court received a report from the Office of Probation reflecting that respondent had not complied with a certain condition of her ADP Contract.

On January 31, 2008, the court issued an order terminating respondent from the ADP, and the Stipulation Re Facts and Conclusions of Law was filed on this date.

On February 8, 2008, the court received a LAP report reflecting that respondent was not in compliance with her LAP Participation Plan.

On February 21, 2008, the court received notice that the LAP had closed respondent's case as of that date due to "[p]articipant [w]ithdrawal."

#### **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 sets 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 briefs to the court on the appropriate discipline in this matter. After reviewing the parties' briefs 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 matter, and respondent's declaration regarding the nexus between her substance abuse and mental health issues and her 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 the ADP. Thereafter, the Contract to participate in the ADP, which was executed by respondent on November 20, 2006, was lodged with the court, and respondent's participation period in the ADP commenced.

Thereafter, respondent repeatedly failed to comply with conditions of her ADP Plan and also failed to comply with terms of her LAP Participation Plan, and the court terminated respondent from the ADP pursuant to an order filed on January 31, 2008.

Accordingly, the court will recommend to the Supreme Court the imposition of the discipline set forth in the court's Confidential Statement of Alternative Dispositions and Orders in the event respondent was terminated from the ADP.

#### **RECOMMENDED DISCIPLINE**

**IT IS HEREBY RECOMMENDED** that respondent **CAROLYN SUE JANZEN** be suspended from the practice of law for two years and until she pays restitution and complies with the requirements of standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct as set forth more fully below, that execution of the suspension be stayed, and that respondent be placed on probation for a period of five years<sup>3</sup> on the following conditions:

1. Respondent must be actually suspended from the practice of law in the State of California for a period of nine (9) months and until respondent pays restitution to

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<sup>3</sup>Respondent's probation will commence upon the effective date of the Supreme Court order in this matter. (Cal. Rules of Court, rule 9.18.)

John V. Wankum of the principal amount of \$7,500.00, plus 10 percent (10%) interest per annum accruing on that principal sum from July 21, 1998 (or to the Client Security Fund [CSF] to the extent of any payment from the fund to John V. Wankum, plus interest and costs, in accordance with Business and Professions Code section 6140.5) and provides satisfactory proof thereof to the State Bar's Office of Probation. Any restitution to the Client Security Fund 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 John V. Wankum, as set forth above.

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 payment(s) provided satisfactory proof of such is or has been shown to the Office of Probation.

2. If respondent is actually suspended for two years or more, she must remain actually suspended until she proves to the State Bar Court her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.
3. During the probation period, respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct of the State Bar of California.
4. 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.
5. 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.

6. 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 probation. 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 probation 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.

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 period of probation and no later than the last day of the probation period.

7. Subject to 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 probation conditions.
8. Within one 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 State Bar Ethics School, and passage of the test given at the end of that session.
9. In each quarterly report required herein, respondent must also report her progress

toward payment of the legal malpractice judgment John V. Wankum obtained against her in the amount of \$171,000.00.

10. Respondent must obtain an examination of her mental and physical condition with respect to her substance abuse and mental health issues pursuant to rule 184 of the Rules of Procedure from a qualified practitioner approved by the Office of Probation and must comply with any treatment/monitoring plan recommended following such examination. The examination and any further help/treatment/monitoring recommended by the examining practitioner will be at respondent's own expense. The examination must be conducted no later than thirty (30) days after the effective date of the Supreme Court's final disciplinary order in this matter. Help/treatment/monitoring should commence immediately after said examination and, in any event, no later than thirty (30) days after said examination. With each quarterly report, respondent must furnish to the Office of Probation sufficient evidence, as specified by the Office of Probation, that she is so complying with this condition of probation. Treatment/monitoring must continue for the period of probation or until a motion to modify this condition is granted and that ruling becomes final.

If the examining or treating practitioner 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. The motion must be supported by a written statement from the examining or treating practitioner, 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 and confidentiality waivers and access to all of

respondent's medical records necessary to monitor this probation condition.

Revocation of any medical/confidentiality 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 to 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.

11. 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 Client Trust Accounting School, within the same period of time, 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 end of that session. Arrangements to attend Ethics School Client Trust Accounting 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 Trust Accounting School. (Rules Proc. of State Bar, rule 3201.)

In addition, 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 during the period of actual suspension or within one year, whichever is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. (But see Cal. Rules of Court, rule 9.10(b) (formerly rule 951(b)); Rules Proc. of State Bar, rule 321(a) & (c).)**

Furthermore, respondent must comply with the requirements of rule 9.20 of the California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within thirty (30) and forty (40) calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.



### **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 that a court case administrator 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: April 3, 2008

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RICHARD A. PLATEL  
Judge of the State Bar Court