

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case Nos.: 03-O-01010 (03-O-01107);
)	05-O-04949; 06-O-11409 (Cons.)
JON MICHAEL ALEXANDER,)	
)	DECISION; ORDER SEVERING CASE
Member No. 129207,)	NO. 04-N-10577; ORDER SEALING
)	CERTAIN DOCUMENTS
A Member of the State Bar.)	
_____)	

INTRODUCTION

In this consolidated disciplinary proceeding, respondent Jon Michael Alexander (respondent) was accepted for participation in the State Bar Court's Alternative Discipline Program (ADP).¹ As the court has now found that respondent has successfully completed the ADP, the court will recommend to the Supreme Court that respondent be suspended from the practice of law in California for two (2) years, that execution of that period of suspension be stayed, and that he be placed on probation for three (3) years subject to certain conditions, including a 60-day suspension with credit for his period of inactive enrollment under Business and Professions Code section 6233.

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¹ The ADP was formerly known as the Program for Respondents with Substance Abuse or Mental Health Issues.

PERTINENT PROCEDURAL HISTORY

Prior to the filing of formal disciplinary charges in this matter, respondent contacted the State Bar's Lawyer Assistance Program (LAP) to assist him with his substance abuse issues and signed a LAP Participation Plan on April 12, 2005.

On December 22, 2005, the State Bar of California's Office of the Chief Trial Counsel (State Bar) filed a Notice of Disciplinary Charges (NDC) against respondent on in case nos. 03-O-01010 (03-O-01107); 04-N-10577.² At the request of both parties, the court referred the matter to the ADP for evaluation of respondent's eligibility for participation in the program.

In furtherance of his participation in the ADP, respondent submitted a statement to the court on February 17, 2006, which established a nexus between respondent's substance abuse issues and his misconduct in this matter.

The parties entered into a First Amended Stipulation Re Facts and Conclusions of Law (First Amended Stipulation) in case nos. 03-O-01010 (03-O-01107); 05-O-04949; 06-O-11409³ on July 31, 2006. The First Amended Stipulation sets forth the factual findings, legal conclusions and mitigating and aggravating circumstances in this matter.⁴

Following the written submission of the State Bar's discipline recommendations in August 2006,⁵ the court issued a Confidential Statement of Alternative Dispositions and Orders dated November 6, 2006, formally advising the parties of (1) the discipline which would be

² Thereafter, the court granted the State Bar's request to dismiss case no. 04-N-10577 without prejudice. Accordingly, case no. 04-N-10577 is ordered severed from case nos. 03-O-01010 (03-O-01107); 04-N-10577; 05-O-04949; 06-O-11409 (Cons.).

³ Although the caption of the First Amended Stipulation also contained case no. 04-N-10577, the State Bar requested the dismissal of that case without prejudice.

⁴ The First Amended Stipulation was lodged on November 6, 2006, and on that same date, the court executed an order approving the parties' First Amended Stipulation.

⁵ Respondent did not provide the court with written alternative discipline recommendations in this matter.

recommended to the Supreme Court if respondent successfully completed the ADP and (2) the discipline which would be recommended if respondent failed to successfully complete, or was terminated from, the ADP. After agreeing to those alternative possible dispositions, respondent executed the Contract and Waiver for Participation in the State Bar Court's ADP; the court accepted respondent for participation in the ADP; and respondent's period of participation in the ADP began on November 6, 2006.

Respondent thereafter participated successfully in both the LAP and the State Bar Court's ADP. At respondent's request, he was enrolled inactive under Business and Professions Code section 6233⁶ effective December 15, 2006 through February 12, 2007. On February 24, 2010, after receiving a one-year certificate of participation in the LAP dated February 3, 2010, certifying that the LAP is not aware of the use of any unauthorized substances by respondent for at least one year prior to the date of the certificate, the court filed an order finding that respondent has successfully completed the ADP.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties' First Amended Stipulation, including the court's order approving the First Amended Stipulation, is attached hereto and hereby incorporated by reference, as if fully set forth herein. In this consolidated original disciplinary matter, respondent stipulated to violations of rule 3-110(A) of the Rules of Professional Conduct of the State Bar of California⁷ [failure to competently perform legal services]; section 6068, subdivision (m) [failure to respond to reasonable client status inquires and failure to inform client of significant development in client's legal matter] (two matters); sections 6068, subdivision (a), 6125 and 6126 [engaging in the unauthorized practice of law and/or advertising or holding himself out as practicing or entitled to

⁶ Unless otherwise indicated, all further references to section(s) are to this source.

⁷ Unless otherwise indicated, all further references to rule(s) refer to the Rules of Professional Conduct of the State Bar of California.

practice or otherwise practicing law when not an active member of the State Bar of California] (two matters); rule 3-700(D)(1) [failure to promptly release client file on request]; rule 3-700(D)(1) [failure to promptly refund unearned fees]; and rule 5-300(B) [improper communication to a judge upon the merits of a contested matter pending before such judge].

In aggravation, respondent has two prior records of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(iii).)⁸ Effective April 13, 1996, respondent was privately reprimanded in case no. 93-C-17720 for violating section 6068, subdivision (a) based on a misdemeanor violation of Vehicle Code section 14601 [driving with a suspended driver's license]. Effective December 18, 2003, respondent was suspended for two years; the execution of that suspension was stayed; and respondent was actually suspended for six months and until he paid restitution and until the court granted a motion pursuant to rule 205 of the Rules of Procedure of the State Bar of California (Rules of Procedure). Discipline was imposed in that matter for violations of sections 6068, subdivision (i) [failure to cooperate in disciplinary investigation or proceeding], section 6068, subdivision (j) [failure to comply with requirements of section 6002.1], section 6106 [moral turpitude, dishonesty or corruption], section 6125 [necessity of active membership in State Bar], section 6126 [unauthorized practice or advertising as a misdemeanor] and rule 3-700(D)(2) [failure to promptly refund an unearned fee].

Further aggravating circumstances include the fact that respondent's misconduct involved multiple acts (std. 1.2(b)(ii)); significant harm to a client (std. 1.2(b)(iv)); and respondent was 21 days late in filing his rule 955 affidavit⁹ (std. 1.2(b)(iii)).

⁸ All further references to standard(s) or std. are to this source.

⁹ Rule 955 refers to rule 955 of the California Rules of Court. Rule 955 has been renumbered 9.20. This is the misconduct which formed the basis of case no. 04-N-10577 which has been dismissed without prejudice.

In mitigation, respondent was cooperative and candid with the State Bar. (Std. 1.2(e)(v).) Respondent also suffered emotional and family problems due to his mother's poor health. Respondent became his mother's primary caretaker for several years. The stress of trying to manage his law practice and take care of his mother exacerbated respondent's substance abuse issues. (Std. 1.2(e)(iv).) Respondent also suffered severe financial losses (std. 1.2(e)(iv)); suffered physical problems as a result of a broken neck (std. 1.2(e)(iv)); has participated in numerous pro bono and community service activities (std. 1.2(e)(vi)); delay occurred in processing these matters which was not attributable to respondent (std. 1.2(e)(ix)); respondent sought treatment for his substance abuse issues voluntarily before he began participating in the LAP; respondent entered into a long-term participation plan with the LAP; post-misconduct, respondent remained in compliance with the LAP despite suffering a serious physical injury necessitating surgery and extensive rehabilitation; respondent demonstrated remorse by agreeing to refund fees to a client although he performed some legal services and had already paid some restitution at the time he entered into the First Amended Stipulation (std. 1.2(e)(vii)).

Furthermore, it is appropriate to consider respondent's successful completion of the ADP as a further mitigating circumstance in this matter. (Std. 1.2(e)(iv).) Respondent has been a model participant in the ADP. Since his acceptance into the ADP, respondent has been in full compliance with all terms and conditions of the program as it relates to his sobriety. Respondent has been sober since March 2003 and has been committed to, and has actively participated in, his recovery from substance abuse issues since that time. He has also become involved in the larger recovery community. Respondent's efforts to give back to his community have been extensive. He helps others who are struggling with addiction. He presently administers and directs all 12-Step meetings and programs for juveniles in the County of Del Norte. He speaks to children monthly at Juvenile Hall about the danger of drugs. In 2007, he was appointed by the Superior

Court as Commissioner to the Juvenile Justice Commission on which he chairs the committee overseeing all operations at the Del Norte County Juvenile Hall. Respondent presently has a successful private practice and has been awarded state and county contracts for Public Defender services, Welfare and Institutions Code 300 Dependency, and Pelican Bay State Prison conflict counsel representation. Respondent has also been nominated to the Board of Directors for the Red Cross and Community Assistance Network. He is also presently Vice-President of the Board of Directors for the Jordan Recovery Center and Trillium House for Women residential recovery facilities. He began a mentoring program for at-risk youth. Respondent is Co-Chairman of the Community Action Committee of the Continuing Del Norte County Meth Summit. He has been the keynote speaker at three meth summits and has helped organize those meetings. He has also been re-elected to the Democratic Central Committee in Del Norte County. Respondent has also been a featured speaker and advisor to the Del Norte Multiple Housing Neighborhood Watch Program. The court therefore finds respondent's successful completion of the ADP as a substantial mitigating factor in this matter.

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney but, rather, to protect the public, preserve public confidence in the legal profession, and maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate alternative discipline recommendations if respondent successfully completed the ADP or was terminated from, or failed to successfully complete, the ADP, the court considered the discipline recommended by the State Bar, as well as certain standards and case law. In particular, the court considered standards 1.2, 1.3, 1.4, 1.5, 1.6, 1.7,

2.4(b), 2.6, and 2.10 and *Chasteen v. State Bar* (1985) 40 Cal.3d 586 and *Farnham v. State Bar* (1988) 47 Cal.3d 429.

Because respondent has now successfully completed the ADP, this court, in turn, now recommends to the Supreme Court the imposition of the lower level of discipline, set forth more fully below, contained in the Confidential Statement.

DISCIPLINE

Recommended Discipline

It is hereby recommended that respondent **Jon Michael Alexander**, State Bar Number 129207, be suspended from the practice of law in California for two (2) years, that execution of that period of suspension be stayed, and that he be placed on probation¹⁰ for a period of three (3) years subject to the following conditions:

1. Respondent Jon Michael Alexander is suspended from the practice of law for the first sixty (60) days of probation (with credit given for the period of inactive enrollment pursuant to Business and Professions Code section 6233 which commenced on December 15, 2006 and ended on February 13, 2007).
2. Respondent Jon Michael Alexander must also comply with the following additional conditions of probation:
 - a. During the probation period, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
 - b. 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;
 - c. 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

¹⁰ The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

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;

- d. 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 him 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;

- e. 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 probation conditions;
- f. 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;
- g. Respondent must comply with all provisions and conditions of his 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 his 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 his 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;

- h. Respondent must abstain from use of any alcoholic beverages, and shall not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription; and
- i. Jon Michael Alexander must make restitution to Raymond L. Buck in the amount of \$6,500 plus 10% interest per annum from January 1, 2003 (or to the Client Security Fund to the extent of any payment from the fund to Raymond L. Buck, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnish 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, subdivision (c) and (d).

Respondent must pay the above-referenced restitution at the rate of \$40 per month beginning the month following the effective date of the order imposing discipline in this matter. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation, respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full. Upon Jon Michael Alexander's failure to timely make any installment payment of restitution, the unpaid balance is due and payable immediately unless relief has been granted under the Rules of Procedure of the State Bar of California. (Rules Proc. of State Bar, rule 286.)

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 of such is or has been shown to the Office of Probation.

- 3. At the expiration of the period of probation, if Jon Michael Alexander has complied with all conditions of probation, the two (2) year period of stayed suspension will be satisfied and that suspension will be terminated.

Multistate Professional Responsibility Examination

It is further recommended that Jon Michael Alexander be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective

date of the Supreme Court's disciplinary order in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

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.

DIRECTION RE DECISION AND ORDER SEALING CERTAIN DOCUMENTS

The court directs a court case administrator to file this Decision and Order Sealing Certain Documents. Thereafter, pursuant to rule 806(c) of the 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 disclosures. 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 ____, 2011

PAT McELROY
Judge of the State Bar Court

