

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

In the Matter of)	Case No. 04-C-10494-RAH
)	
GEOFFREY WILLIAM NEWMAN,)	DECISION AND ORDER FILING AND
)	SEALING CERTAIN DOCUMENTS
Member No. 183811,)	
)	
<u>A Member of the State Bar.</u>)	

INTRODUCTION/PERTINENT PROCEDURAL HISTORY

This disciplinary matter involving respondent Geoffrey William Newman (respondent) arises out of the following acts of misconduct: misdemeanor convictions for violations of Penal Code sections 182(a)(1) and 653f(a) and Business and Professions Code section 6152(a)(1) in March 2004. (*People v. Newman*, San Bernardino County Superior Court case no. FSB042824.) These convictions involve moral turpitude and constitute misconduct warranting discipline.

After the filing of formal disciplinary charges, respondent sought to participate in the State Bar's Lawyer Assistance Program (LAP) to assist him with his substance abuse issues.

After the Office of the Chief Trial Counsel of the State Bar of California (State Bar) transmitted the record of respondent's conviction to the State Bar Court and the matter was referred to the Hearing Department, respondent sought admission to the State Bar Court's Alternative Discipline Program (ADP)¹ before the undersigned judge.

On November 1, 2004, respondent submitted a nexus statement to the court which

¹The ADP was formerly known as the State Bar Court's Pilot Program for Respondents with Substance Abuse or Substance abuse issues and the State Bar Court's Program for Respondent's with Substance Abuse or Substance abuse issues. The ADP is also known as the State Bar Court's Program for Respondent's with Substance Abuse and/or Substance abuse issues. (Rules Proc. of State Bar, rules 800-807.)

established that at the time of his misconduct, respondent was suffering from substance abuse issues.

On April 18, 2005, the court received the parties' Stipulation Re Facts and Conclusions of Law in this matter. Respondent's statement and the stipulated facts establish a causal connection between respondent's substance abuse issues and the misconduct found in this disciplinary proceeding. As such, the court found that respondent had adequately established a nexus between the substance abuse issues and his misconduct in this matter, i.e., that his substance abuse issues directly caused the misconduct set forth in this matter.

After receiving the parties' briefs regarding the level of discipline, on September 12, 2005, the court lodged its Amended Statement of Alternative Dispositions and Orders setting forth the recommended discipline if respondent successfully completed or was terminated from the court's ADP. On that same day, respondent entered into a Contract and Waiver for Participation in the State Bar Court's ADP (Contract); the parties' Stipulation Re Facts and Conclusions of Law and the order approving the stipulation was lodged with the court; and respondent was accepted for participation in the ADP effective September 1, 2005.

Thereafter, respondent participated successfully in both the State Bar's LAP and the court's ADP.

By order filed September 20, 2007, respondent was enrolled inactive pursuant to Business and Professions Code section 6233 effective November 1, 2007. The December 19, 2007, order terminated the inactive enrollment and restored respondent to active status effective December 31, 2007.

The LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program dated March 17, 2008, which reflects that respondent has complied with the requirements set forth in the LAP Participation Agreement/Plan for at least one year prior to that date, and that during this time period, no unauthorized substances had been detected and that LAP was not aware of the use of any unauthorized substances.

On June 29, 2007, respondent submitted to the court a statement regarding his early termination from the ADP, supplemented by a declaration filed September 4, 2007.

On March 25, 2008, the court filed an order following a March 21, 2008 status conference

which set forth that respondent has successfully completed the ADP.

The court orders that the parties' Stipulation Re Facts and Conclusions of Law, and the order approving the stipulation, lodged September 12, 2005, be filed in this matter.

Accordingly, the court now issues this decision recommending that the Supreme Court impose on respondent the discipline set forth below in this decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

In accordance with applicable Supreme Court case law, an attorney's rehabilitation from alcoholism or other substance abuse problems can be accorded significant mitigating 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*, *supra*, 50 Cal.3d at p. 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.) However, the Supreme Court has also held that, absent a finding of rehabilitation, emotional problems are not considered a mitigating factor. (*Kaplan v. State Bar* (1991) 52 Cal.3d 1067, 1072-1073; *In re Naney*, *supra*, 51 Cal.3d at p. 197.)

Respondent has been participating in the LAP since February 2004 and has successfully completed the ADP. Respondent's successful completion of the ADP, which required his successful participation in the LAP, as well as the Certificate of One Year Participation in the Lawyer Assistance Program from LAP, qualify as clear and convincing evidence that respondent no longer

suffers from the substance abuse issues which led to his misconduct. Accordingly, it is appropriate to consider respondent's successful completion of the ADP as a further mitigating circumstance. (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.)

Prior to respondent being accepted for participation in the ADP, the State Bar and the respondent 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 aggravating and mitigating circumstances with respect to this disciplinary proceeding and respondent's statement regarding the nexus between his substance abuse issues 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 the ADP. Respondent thereafter entered into a contract to participate in the ADP and was accepted for participation in the ADP.

Thereafter, respondent successfully participated in the ADP and, as set forth in the March 25, 2008, status conference order, the court found that respondent successfully completed the ADP. Accordingly, the court will recommend to the Supreme Court the imposition of the discipline set forth in the court's Amended Statement of Alternative Dispositions and Orders if respondent successfully completed the ADP.

RECOMMENDED DISCIPLINE

IT IS HEREBY RECOMMENDED that respondent Geoffrey William Newman be suspended from the practice of law in the State of California for a period of two years and until he shows proof satisfactory to 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, that execution of such suspension be stayed, and that respondent be placed

on probation for a period of two years on the following conditions:

1. Respondent must be actually suspended from the practice of law for the first 60 days of the period of probation. Credit toward the period of actual suspension shall be given for the period of inactive enrollment which commenced on November 1, 2007 and terminated on December 31, 2007;
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. 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;

6. Respondent must comply with all provisions and conditions of his Participation Agreement with the Lawyer Assistance Program (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;
7. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully, all inquiries 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;
8. If respondent has not already done so as part of his participation in the Alternative Discipline Program, 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 Requirement (MCLE), and respondent will not receive MCLE credit for attending Ethics School (Rules Proc. of State Bar, rule 3201).
9. Respondent shall comply with all conditions of probation imposed in the underlying criminal matter and shall so declare under penalty of perjury in conjunction with any quarterly report required to be filed with the Office of Probation;

10. These probation conditions will commence on the effective date of the Supreme Court's final disciplinary order in this proceeding;
11. 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 years and until he shows proof satisfactory to 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 will be satisfied and that suspension will be terminated.

It is further recommended that if respondent has not already done so as part of his participation in the Alternative Discipline Program, within one year after the effective date of the Supreme Court's final disciplinary order in this matter, respondent must 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) and provide satisfactory proof of his passage of the MPRE to the Office of Probation within said year.²

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 court 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.

²When 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 951(b), California Rules of Court, and rule 321(a)(1) and (3), 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: June 18, 2008

RICHARD A. HONN
Judge of the State Bar Court