

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos.: <b>04-C-15249; 05-N-04969 (Cons.)</b>
	)	
<b>DONALD ELLIOTT ARNOLD,</b>	)	<b>DECISION AND ORDER SEALING</b>
	)	<b>CERTAIN DOCUMENTS</b>
<b>Member No. 202148,</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

After the transmittal to the State Bar Court of the records of the October 14, 2004, conviction of respondent Donald Elliott Arnold (respondent) for violating Health and Safety Code section 11350(a) [possession of a controlled substance], a felony, the Review Department of the State Bar Court issued an order on June 15, 2005, in case no. 04-C-15249, placing respondent on interim suspension effective July 22, 2005, pending final disposition of this matter.<sup>1</sup> Respondent was also ordered to comply with rule 955 of the California Rules of Court (rule 955), and to perform the acts specified in paragraphs (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of respondent’s interim suspension.<sup>2</sup>

On December 14, 2005, respondent contacted the State Bar of California’s Lawyer Assistance Program (LAP) to assist him with his substance abuse and mental health issues.

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<sup>1</sup> Respondent’s interim suspension, however, was terminated on February 2, 2007.  
<sup>2</sup> Rule 955 has now been renumbered rule 9.20.

On December 20, 2005, after respondent failed to timely file the compliance affidavit required by rule 955, subdivision (c), the Office of the Chief Trial Counsel of the State Bar of California (OCTC) filed a Notice of Disciplinary Charges (NDC) against respondent in case no. 05-N-04969. This matter was originally assigned to the Honorable Robert M. Talcott.

On March 2, 2006, Judge Talcott referred case no. 05-N-04969 to the State Bar Court's Alternative Discipline Program (ADP).

Respondent submitted a declaration to the court which was received on April 17, 2006, establishing a nexus between his substance abuse and mental health issues and his misconduct in this matter.

On May 30, 2006, OCTC filed with the court a supplemental transmittal of the records of respondent's October 14, 2004, conviction, including evidence of the finality of respondent's conviction.

The Review Department filed an order in case no. 04-C-15249 on June 1, 2006, referring this matter to the Hearing Department of the State Bar Court for a hearing and decision as to whether the facts and circumstances surrounding respondent's violation of Health and Safety Code section 11350, subdivision (a), a felony, of which respondent was convicted, involved moral turpitude or other misconduct warranting discipline, and if so found, the discipline to be imposed.

A Notice of Hearing on Conviction in case no. 04-C-15249 was filed against respondent on June 21, 2006, and the matter was also assigned to Judge Talcott.

Respondent executed a Participation Plan with the LAP on July 19, 2006.

On July 25, 2006, Judge Talcott issued an order consolidating case nos. 04-C-15249 and 05-N-04969 for all purposes.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) in this consolidated matter in October 2006. The Stipulation was received by the court on October 12, 2006.

Effective November 17, 2006, this consolidated matter was reassigned to the undersigned judge.

On December 12, 2006, respondent executed the Contract and Wavier for Participation in the State Bar Court's ADP (Contract). On that same date, the court executed an order approving the parties' Stipulation and executed the Confidential Statement of Alternative Dispositions and Orders (Confidential Statement) which set forth 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 failed to successfully complete, the ADP. The Contract, Stipulation, and Confidential Statement were lodged on December 12, 2006.

On January 5, 2007, the court issued an order finding that respondent is accepted into the ADP, and that the start date of respondent's participation in the ADP is December 12, 2006.

Respondent thereafter participated in both the State Bar's LAP and the court's ADP, and on October 26, 2009, the court issued an order finding that respondent has successfully completed the ADP. On that same date, the parties' stipulation was filed, and this matter was submitted for decision.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

With respect to case no. 04-C-15249, respondent stipulated that on August 19, 2004, he was stopped by a sheriff's deputy due to a malfunctioning headlight. The officer noticed that respondent exhibited symptoms of being under the influence of a central nervous system

stimulant. Respondent admitted that he had a pipe and cocaine in the vehicle which was later located by the officer, and respondent was arrested. Respondent pled guilty to a felony violation of Health and Safety Code section 11350(a) [possession of a controlled substance] and was placed in the deferred entry of judgment program for a period of time during which he was to comply with certain requirements related to drug abuse rehabilitation. However, after missing several court appearances and bench warrants having been issued, respondent appeared in court and was sentenced to 36-months' formal probation under the terms and conditions of Proposition 36, a program to treat defendants with drug and/or alcohol addiction. Thereafter, on three separate occasions, respondent failed to appear for a mandatory court appearance. Each time, a bench warrant was issued, and respondent was terminated from the Proposition 36 program. However, each time, respondent was later reinstated to the Proposition 36 program. Respondent stipulated that the facts and circumstances surrounding his conviction did not involve moral turpitude but did involve other misconduct warranting discipline.

With respect to case no. 05-N-04969, as set forth earlier, the Review Department issued an order on June 15, 2005, placing respondent on interim suspension effective July 22, 2005 pending final disposition of this matter, and ordering respondent to comply with rule 955 of the California Rules of Court, and to perform the acts specified in paragraphs (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of respondent's interim suspension. A copy of the Review Department's order was properly served on respondent at his State Bar membership records address in June 2005; however, respondent had failed to update his State Bar membership address after he left his old law firm in the summer of 2004. When respondent became aware that the State Bar had sent mail to his old law firm, respondent contacted the State Bar. Two days later, on December 14, 2005, respondent came to the State Bar's offices and his rule 955 declaration was completed and filed with the State Bar Court on that day. Respondent

stipulated that he willfully violated Business and Professions Code section 6103 by willfully disobeying a court order by failing to timely file his rule 955 compliance affidavit with the State Bar Court.

In mitigation, the parties stipulated that respondent has no prior record of discipline (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e)(i)), and he was candid and cooperative with the victims of his misconduct and to the State Bar during disciplinary investigation and proceedings (std. 1.2(e)(v)). There are no aggravating circumstances.

The parties' stipulation as to 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 as to facts and conclusions of law set forth the factual findings, legal conclusions, and mitigating circumstances in this matter.

Supreme Court and Review Department case law establish that extreme emotional difficulties are a mitigating factor where expert testimony establishes that these 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.)

Furthermore, at the time respondent engaged in his misconduct, he was suffering from a substance abuse issue, and respondent's substance abuse issue directly caused or contributed to the misconduct which forms the basis for this proceeding. Supreme Court case law establishes

that an attorney's rehabilitation from alcoholism or other substance abuse problems can be accorded significant 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* (1990) 50 Cal.3d 358, 367.)

Respondent executed a Participation Plan with the LAP on July 19, 2006. The LAP issued a certificate of one-year participation in the LAP reflecting that the LAP is not aware of the use of any unauthorized substances by respondent for at least one year prior to October 1, 2009. In addition, the LAP issued a certificate of one-year participation in the LAP which reflects that respondent has satisfied the requirements set forth in his LAP Participation Plan for at least one year prior to October 19, 2009, and that for at least one year prior to that date, respondent has maintained mental health stability and has participated successfully in the LAP.

Respondent also successfully completed the ADP. Respondent's successful completion of the ADP, which required his successful participation in the LAP, as well as the certificates from the LAP, qualify as clear and convincing evidence that respondent no longer suffers from the substance abuse and mental health issues which led to his misconduct. Accordingly, it is appropriate to consider respondent's successful completion of the ADP as a mitigating circumstance in this matter. (Std. 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.)

After reviewing the parties' joint brief on the issue of discipline, which was received by the court on October 12, 2006, and considering the Standards for Attorney Sanctions for Professional Misconduct and case law cited therein, the parties' stipulation setting forth the facts, conclusions of law, and the mitigating circumstances in this matter, and respondent's declaration regarding the nexus between his substance abuse and mental health issues and his misconduct, the court advised the parties 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 failed to successfully complete, the ADP.

In determining the appropriate discipline to recommend in this matter if respondent successfully completed 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, 2.6, and 3.4, and the case law cited in the parties' joint discipline brief, including *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108; *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527; and *Shapiro v. State Bar* (1990) 51 Cal.3d 251.

After agreeing to the discipline which the court would recommend to the Supreme Court if respondent successfully completed or was terminated from, or failed to successfully complete, the ADP, respondent executed the Contract to participate in the ADP and began his participation in the ADP.

Thereafter, respondent successfully participated in the ADP and, as set forth in the court's October 26, 2009, order, the court found that respondent has successfully completed the ADP. 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 if respondent successfully completed the ADP.

## RECOMMENDED DISCIPLINE

**IT IS HEREBY RECOMMENDED** that respondent **DONALD ELLIOTT ARNOLD**, State Bar Number 202148, be suspended from the practice of law in California for one (1) year, that execution of that period of suspension be stayed, and that he be placed on probation for a period of three (3) years<sup>3</sup> subject to the following conditions:

1. Respondent Donald Elliott Arnold is suspended from the practice of law for the first six (6) months of probation (with credit given for the period of interim suspension which commenced on July 22, 2005 and ended on February 2, 2007).
2. Respondent Donald Elliott Arnold 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 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

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<sup>3</sup> 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.)



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 conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation; and
- h. 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.

It is also recommended that, at the expiration of the period of probation, if Donald Elliott Arnold has complied with all conditions of probation, the one (1) year period of stayed suspension will be satisfied and that suspension will be terminated.

It is further recommended that Donald Elliott Arnold 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).)<sup>4</sup>

**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 of the State Bar of California (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 disclosure. All persons to whom protected material is disclosed will be given a copy of this order sealing the documents by the

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<sup>4</sup> As respondent will receive credit for his period of interim suspension toward his period of suspension, he will not serve any period of suspension after the effective date of the Supreme Court order in this matter. Accordingly, it is not recommended that respondent comply with rule 9.20 (formerly rule 955) of the California Rules of Court.

person making the disclosure.

**IT IS SO ORDERED.**

Dated: December \_\_\_\_\_, 2009

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RICHARD A. HONN  
Judge of the State Bar Court