

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 04-O-11788-RAH
)	(04-O-11949; 04-O-13836;
JERALD SCOTT BENNETT,)	04-O-13934); 05-N-00453;
)	06-C-10047; 08-O-12962
Member No. 123450,)	(Cons.)
)	
A Member of the State Bar.)	DECISION AND ORDER SEALING
)	CERTAIN DOCUMENTS
_____)	

INTRODUCTION

In this consolidated disciplinary proceeding, respondent Jerald Scott Bennett (“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 four years, that execution of that period of suspension be stayed, and that he be placed on probation for four years subject to certain conditions, including a two-year period of suspension.

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

PERTINENT PROCEDURAL HISTORY

On November 9, 2004, the State Bar of California's Office of the Chief Trial Counsel ("Office of the Chief Trial Counsel") filed a Notice of Disciplinary Charges ("NDC") against respondent in case nos. 04-O-11788 (04-O-11949; 04-O-13836; 04-O-13934). Respondent sought to participate in the State Bar Court's ADP.

On February 28, 2005, this matter was referred to the ADP. On March 4, 2005, respondent contacted the State Bar's Lawyer Assistance Program ("LAP") to assist him with his mental health issue.

On April 13, 2005, the Office of the Chief Trial Counsel filed a second NDC against respondent, in case no. 05-N-00453. On June 8, 2005, this matter was also referred to the ADP.

On June 20, 2005, respondent submitted a declaration to the court, which established a nexus between respondent's mental health issue and the charges in this matter. On September 2, 2005, respondent signed a LAP Participation Plan.

The parties entered into a Stipulation Re Facts and Conclusions of Law ("Stipulation") in September 2005. The Stipulation set forth the factual findings, legal conclusions and mitigating and aggravating circumstances involved in case nos. 04-O-11788 (04-O-11949; 04-O-13836; 04-O-13934) and 05-N-00453.

Following briefing by the parties, the court issued a Confidential Statement of Alternative Dispositions and Orders dated December 9, 2005, formally advising the parties of (1) the discipline which would be 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 dispositions, respondent and his counsel 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 December 28, 2005.

Approximately 17 months later, the Review Department of the State Bar Court ("Review Department") received notification - in case no. 06-C-10047 - that respondent pled guilty to criminal charges involving moral turpitude. On August 9, 2007, the Review Department, issued an order referring case no. 06-C-10047 to the Hearing Department for a hearing, decision, and discipline recommendation.

In February 2008, the parties entered into an addendum to the Stipulation. In this addendum, the parties incorporated case no. 06-C-10047. On April 16, 2008, respondent submitted a supplemental nexus declaration to the court, which established a nexus between respondent's mental health issue and the charges in all the then-pending matters.

On May 9, 2008, the court issued an order enrolling respondent as an inactive member of the State Bar pursuant to Business and Professions Code section 6233.² This order was effective May 8, 2008.

Following supplemental briefing by the parties, the court issued an Amended Confidential Statement of Alternative Dispositions and Orders dated June 12, 2008. That same day, the court issued an order consolidating case no. 06-C-10047 with case nos. 04-O-11788 (04-O-11949; 04-O-13836; 04-O-13934) and 05-N-00453.

After agreeing to the alternative dispositions, respondent and his counsel executed an Agreement and Order Amending Contract and Waiver for Participation in the State Bar Court's ADP. On June 30, 2008, the court lodged: (1) the Amended Confidential Statement of Alternative Dispositions and Order; (2) the addendum to the Stipulation and its accompanying

² All further references to section(s) are to the Business and Professions Code, unless otherwise stated.

order; and (3) the Agreement and Order Amending Contract and Waiver for Participation in the State Bar Court's ADP.

Approximately three months later, on October 7, 2008, the Office of the Chief Trial Counsel filed a third NDC against respondent, in case no. 08-O-12962. This matter was subsequently referred to the ADP.

In September 2009, the parties entered into a second addendum to the Stipulation. In this addendum, the parties incorporated case no. 08-O-12962. On October 30, 2009, respondent submitted a second supplemental nexus declaration to the court, which established a nexus between respondent's mental health issue and the charges in this matter.

Following supplemental briefing by the parties, the court issued an Order Amending Amended Confidential Statement of Alternative Dispositions and Orders dated January 5, 2010. That same day, the court issued an order consolidating case no. 08-O-12962 with case nos. 04-O-11788 (04-O-11949; 04-O-13836; 04-O-13934) 05-N-00453; 06-C-10047 (Cons.).

After agreeing to the alternative dispositions, respondent executed a Further Agreement and Order Further Amending Contract and Waiver for Participation in the State Bar Court's ADP. On January 12, 2010, the court lodged: (1) the Order Amending Amended Confidential Statement of Alternative Dispositions and Orders; (2) the second addendum to the Stipulation and its accompanying order; and (3) the Further Agreement and Order Further Amending Contract and Waiver for Participation in the State Bar Court's ADP.

Respondent participated successfully in both the LAP and the State Bar Court's ADP. On May 26, 2010, after receiving a Certificate of One Year of Participation in the LAP - Mental

Health and a satisfactory evaluation from a mental health professional, the court filed an order finding that respondent has successfully completed the ADP.³

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties' Stipulation and addenda, including the court's orders approving the Stipulation and addenda, is attached hereto and hereby incorporated by reference, as if fully set forth herein. Respondent stipulated in these seven disciplinary matters to the following violations:

Rule 4-200(A) of the Rules of Professional Conduct of the State Bar of California⁴ in one matter [charging and collecting an illegal fee];

Section 6068, subdivision (i) in one matter [failure to cooperate in a disciplinary investigation];

Section 6068, subdivision (k), in one matter [failure to comply with all conditions of probation disciplinary];

Section 6103 in one matter [disobeying a court order];

Section 6106 in two matters [moral turpitude]; and

Sections 6125 and 6126 in three matters [unauthorized practice of law].

In aggravation, respondent's misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(ii).)⁵

³ That same day, the court issued an order granting respondent's motion to terminate his period of involuntary inactive enrollment which commenced on May 8, 2008.

⁴ Unless otherwise indicated, all further references to rule(s) refer to the Rules of Professional Conduct of the State Bar of California.

⁵ All further references to standard(s) or std. are to this source.

In addition, respondent has one prior record of discipline. (Std. 1.2(b)(i).)⁶ On October 12, 2004, the California Supreme Court issued an order (S126672) suspending respondent from the practice of law for two years, stayed, and that he be actually suspended for one year and until restitution. In this matter respondent was found culpable of failing to competently perform; improperly representing clients with potentially conflicting interests; failing to refund unearned fees; failing to promptly return all client papers and property; failing to render an accounting; failing to communicate; failing to cooperate with a disciplinary investigation; and committing acts constituting moral turpitude.

In mitigation, the court considers the extreme emotional difficulties respondent was suffering from at the time of the misconduct, and his successful completion of the ADP. (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, 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 parties, 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(a), 2.3, 2.4(b), 2.6, and 3.2, and *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83; *Farnham v. State Bar* (1976) 17 Cal.3d 605; *In the Matter of Mason* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639; *In the Matter of Trousil* (Review Dept. 1990) 1 Cal.

⁶ Pursuant to Evidence Code section 452, subdivision (h), the court takes judicial notice of respondent's membership records.

State Bar Ct. Rptr. 229; *Chefsky v. State Bar* (1984) 36 Cal.3d 116; *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527; *In re Demergian* (1989) 48 Cal.3d 284; *In re Vaughn* (1985) 38 Cal.3d 614; *Abbott v. State Bar* (1977) 19 Cal.3d 249; *In the Matter of Spait* (1996) 3 Cal. State Bar Ct. Rptr. 511; *Chasteen v. State Bar* (1985) 40 Cal.3d 586; and *Waysman v. State Bar* (1986) 41 Cal.3d 452.

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 Amended Confidential Statement of Alternative Dispositions and Orders, and Order Amending Amended Confidential Statement of Alternative Dispositions and Orders.

DISCIPLINE

Recommended Discipline

It is hereby recommended that respondent **Jerald Scott Bennett**, State Bar Number 123450, be suspended from the practice of law in California for four years, that execution of that period of suspension be stayed, and that he be placed on probation⁷ for a period of four years subject to the following conditions:

1. Respondent Jerald Scott Bennett is suspended from the practice of law for the first two years of probation (with credit given for the period of inactive enrollment pursuant to Business and Professions Code section 6233 which commenced on May 8, 2008, and ended on May 26, 2010).⁸
2. Respondent Jerald Scott Bennett must also comply with the following additional conditions of probation:

⁷ 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.)

⁸ Upon granting relief from this period of involuntary inactive enrollment, the court found respondent provided satisfactory proof of his rehabilitation, present fitness to practice, and present learning and ability in the general law.

- 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 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;

- h. Respondent must comply with all provisions and conditions of his Participation Plan/Agreement 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 Plan/Agreement 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; and
- i. Within one (1) year of the effective date of the discipline herein, respondent must supply 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, and passage of the test given at the end of that session.

At the expiration of the period of probation, if Jerald Scott Bennett has complied with all conditions of probation, the four-year period of stayed suspension will be satisfied and that suspension will be terminated.⁹

Multistate Professional Responsibility Examination

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (“MPRE”) as he provided to the court proof of passage of the MPRE given in March 2010.

⁹ It is recommended that respondent receive credit for the period of his inactive enrollment under section 6233 toward his period of suspension imposed in this matter. If such recommendation is adopted by the Supreme Court, respondent will not serve any period of suspension after the effective date of the Supreme Court’s order imposing discipline in this matter. It is therefore not recommended that respondent be ordered to comply with rule 9.20 of the California Rules of Court.

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 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

RICHARD A. HONN
Judge of the State Bar Court