

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case Nos. **04-O-11994-RAP; 06-O-11019**
) **(Cons.)**
MARC STEVEN COLEN,)
) **DECISION AND ORDER SEALING**
Member No. 108275,) **DOCUMENTS**
)
A Member of the State Bar.)
)

I. INTRODUCTION

In this original disciplinary proceeding, respondent **Marc Steven Colen** was accepted for participation in the State Bar Court’s Alternative Discipline Program (ADP). Because 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 18 months, that execution of that period of suspension be stayed, and that he be placed on probation for three years subject to certain conditions, including an actual suspension of 30 days.

II. PERTINENT PROCEDURAL HISTORY

A. Case No. 04-O-11994

Following the filing of a Notice of Disciplinary Charges (NDC) against respondent by the State Bar of California’s Office of the Chief Trial Counsel (State Bar) on May 25, 2006,

respondent requested referral for evaluation of his eligibility for participation in the State Bar Court's ADP.

Respondent had contacted the State Bar's Lawyer Assistance Program (LAP) to assist him with his mental health issues and signed a LAP Participation Plan on January 16, 2007.

Respondent submitted two declarations to the court on October 2 and November 29, 2006, which established a nexus between respondent's mental health issues and his misconduct in this matter.

The court issued a Confidential Statement of Alternative Dispositions and Orders (Statement), dated February 27, 2008, 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 possible dispositions, respondent executed the Contract and Waiver for Participation in the State Bar Court's ADP (Contract); the court accepted respondent for participation in the ADP; and respondent's period of participation in the ADP began on February 27, 2008.

B. Case No. 06-O-11019

In 2010, an additional complaint was filed against respondent in case No. 06-O-11019.

Respondent then submitted a Supplementary Nexus Statement to the court establishing a nexus between his mental health issues and his misconduct in this matter.

Respondent agreed to minor amendments to the Contract that was lodged in February 2008. The essential terms of the Contract remained unchanged.

The court then consolidated the two cases, amended the Statement and determined that the alternative dispositions remained the same.

The State Bar and respondent entered into two Stipulations Re Facts and Conclusions of Law (Stipulations). The Stipulations, filed September 30, 2010, set forth the factual findings, legal conclusions, and mitigating and aggravating circumstances in these two matters.

Respondent participated successfully in both the LAP and the State Bar Court's ADP. On September 30, 2010, after receiving a Certificate of One Year of Participation in the Lawyer Assistance Program – Mental Health, the court filed an order finding that respondent has successfully completed the ADP.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties' Stipulations, including the court's orders approving the Stipulations, are attached hereto and hereby incorporated by reference, as if fully set forth herein. Respondent stipulated to willfully violating: (1) Business and Professions Code section 6068, subdivision (e), by breaching his duty of confidentiality; (2) Business and Professions Code section 6090.5, subdivision (a)(2), by requiring a party to withdraw his complaint with the State Bar as a settlement condition; and (3) Rule 3-310(C) of the Rules of Professional Conduct by failing to avoid the representation of adverse interests.

No aggravating circumstances are involved. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i).)¹

In mitigation, respondent has no prior record of discipline since his admission to the practice of law in June 1983. (Std. 1.2(e)(i).) He displayed spontaneous cooperation and candor with the State Bar during the disciplinary investigation and proceedings (std. 1.2(e)(v)). In addition, 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).)

¹ All further references to standard(s) or std. are to this source.

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, 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, 2.6 and 2.10.

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 Statement.

V. RECOMMENDATIONS

A. Recommended Discipline

It is hereby recommended that respondent **Marc Steven Colen**, State Bar Number 108275, be suspended from the practice of law in California for 18 months, that execution of that period of suspension be stayed, and that he be placed on probation² for three years subject to the following conditions:

1. Respondent must be actually suspended from the practice of law for the first 30 days of his probation;
2. 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;
3. 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

² 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.)

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;

4. 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;
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 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;

6. 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;
7. 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; and
8. 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.

At the expiration of the period of probation, if respondent has complied with all conditions of probation, the 18-month period of stayed suspension will be satisfied and that suspension will be terminated.

B. Multistate Professional Responsibility Examination

It is further recommended that respondent 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).)

C. 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.

VI. DIRECTION RE DECISION AND ORDER SEALING DOCUMENTS

The court directs a court case administrator to file this Decision and Order Sealing 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: January _____, 2011

RICHARD A. PLATEL
Judge of the State Bar Court