

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 04-O-14789-RAP
)	07-J-10362 (Cons.)
BRENDAN PATRICK BRADY)	DECISION AND ORDER SEALING
)	CERTAIN DOCUMENTS
Member No. 106771)	
)	
A Member of the State Bar.)	

INTRODUCTION

After the filing of formal disciplinary charges against respondent Brendan Patrick Brady on October 5, 2006, in case number 04-O-14789, this matter was referred to the State Bar Court’s Alternative Discipline Program (ADP) and assigned to the undersigned judge.

After case number 07-J-10362 was filed on June 27, 2007, it was consolidated with case number 04-O-14789 on July 20, 2007.

In January 2007, respondent contacted the State Bar of California’s Lawyer Assistance Program (LAP) to assist him with his substance abuse issues. On June 20, 2007, he executed a Participation Agreement with the LAP.

On January 29, March 20 and September 5, 2007, respondent submitted declarations establishing a nexus between his substance abuse and mental health issues and his misconduct in this matter.

The parties entered into a Stipulation Re Facts and Conclusions of Law in September 2007.

On February 26, 2008, the court lodged its Confidential Statement of Alternative Dispositions and Orders, the Contract and Waiver for Participation in the State Bar Court's ADP (Contract), and the parties' Stipulation Re Facts and Conclusions of Law. Respondent was accepted into the ADP February 22, 2008.

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

On January 8, 2010, the Office of Probation submitted a report setting forth the current amount of restitution and interest owed by respondent.

The LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program dated January 13, 2010, which reflects that respondent has satisfied all lab testing requirements set forth in the LAP Participation Agreement/Plan for at least one year prior to January 13, 2010, and that during this time period, there were no unauthorized substances detected nor was LAP aware of the use of any unauthorized substances.

On January 13, 2010, the court issued an order finding that respondent has successfully completed the ADP. Thereafter, on that same date, the parties' Stipulation Re Facts and Conclusions of Law was filed, and this matter was submitted for decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In this matter, respondent stipulated to culpability, in two client matters, of violations of Rules of Professional Conduct, rule 3-110(A) (one count) and Business and Professions Code, section 6103 (two counts) and section 6068, subdivisions (i) and (m) (one count each). In mitigation, respondent had no prior record of discipline in 20 years of practice and displayed candor or cooperation. In aggravation, respondent's misconduct resulted in significant harm and

demonstrated indifference toward rectification of or atonement for the consequences of the misconduct.

The parties' Stipulation Re 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 Re Facts and Conclusions of Law sets forth the factual findings, legal conclusions and aggravating and mitigating circumstances in this matter.

Furthermore, at the time respondent engaged in his misconduct, he was suffering from substance abuse issues, and respondent's substance abuse issues 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.)

Furthermore, at the time respondent engaged in the misconduct for which he has been found culpable, respondent was suffering from mental health issues which directly caused the misconduct in this proceeding. 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 executed a Participation Agreement with the LAP on June 20, 2007 and successfully completed the LAP as of January 13, 2010.

Respondent also successfully completed the ADP. Respondent's successful completion of the ADP and the 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 mitigating circumstance in this matter. (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.)

After reviewing the State Bar's brief on the issue of discipline, which was received by the court on October 19, 2007, and respondent's brief on the issue of discipline, which was received by the court on October 23, 2007, and considering the Standards for Attorney Sanctions for Professional Misconduct (standards) and case law cited therein, the parties' stipulation setting forth the facts, conclusions of law, and the aggravating and mitigating circumstances with respect to this disciplinary proceeding, and respondent's declarations 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 did not 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 parties, as well as certain standards and case law. In their briefs, the State Bar sought actual suspension for four months while respondent sought no actual suspension.

The court also considered standards 1.3, 2.4, 2.6 and 2.10 and the case law cited in the parties' discipline briefs, including *In re Silvertown* (2005) 36 Cal.4th 81; *In re Morse* (1995) 11 Cal.4th 184; *King v. State Bar* (1990) 52 Cal.3d 307; *Snyder v. State Bar* (1990) 49 Cal.3d 1302; *Carter v. State Bar* (1988) 44 Cal.3d 1091; *Maltaman v. State Bar* (1987) 43 Cal.3d 924; *Chefsky v. State Bar* (1984) 36 Cal.3d 116; *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229; and *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631.

After agreeing to the discipline that the court would recommend to the Supreme Court if he successfully completed or was terminated from, or failed to successfully complete, the ADP, respondent executed the Contract to participate in the ADP; the Contract was lodged with the court; and respondent's period of participation in the ADP commenced.

Thereafter, respondent successfully participated in the ADP and, as noted above, the court has 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 Brendan Patrick Brady be suspended

from the practice of law for two years; that execution of that suspension be stayed, and that respondent be placed on probation for three years, with the following conditions:

1. Respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
2. 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;
3. 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;
4. 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;

5. 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;

6. Commencing on or before the first (1st) day of the first full calendar month following the effective date of the Supreme Court's final disciplinary order in this matter and continuing thereafter on or before the first (1st) day of each calendar month during his period of probation (until restitution is paid in full), respondent must pay as restitution as follows:

a. At least \$100 per month to Charlene Perrone and Joel Green, or to the Bankruptcy Trustee, (or to the Client Security Fund [CSF] to the extent of any payment from the CSF to Charlene Perrone and Joel Green or to the Bankruptcy Trustee, plus interest and costs, in accordance with Business and Professions Code section 6140.5), as appropriate, to be applied to his obligation to pay as restitution

- the principal sum of \$400 plus interest at the rate of ten percent (10%) per annum from August 24, 2004.
- the principal sum of \$2,850 plus interest at the rate of ten percent (10%) per annum from August 24, 2005.

b. At least \$50 per month to Cecilia Haupt, Regina Phillips or her counsel, (or to the Client Security Fund [CSF] to the extent of any payment from the CSF to Cecilia Haupt, Regina Phillips or her counsel, plus interest and costs, in accordance with Business and Professions Code section 6140.5), as appropriate, to be applied to his

obligation to pay as restitution the principal sum of \$972.50 plus interest at the rate of ten percent (10%) per annum from June 15, 2004.

For each of these obligations, if respondent owes restitution to both a former client (including a bankruptcy trustee or counsel) and to the CSF, respondent must first pay the former client, until paid in full, and then pay the CSF until paid in full.

Any restitution to the CSF is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d).

By the tenth (10th) day of each month during his period of probation, respondent must provide the Office of Probation proof of his payments made for the prior calendar month. Proof of payment will be as determined by and to the satisfaction of the Office of Probation.

Modification of this probation condition will be made only upon motion to, and approval by, the State Bar Court, or by stipulation of the parties and approval by the State Bar Court.

Upon respondent'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 payment(s) provided satisfactory proof of such is or has been shown to the Office of Probation.

7. 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.

8. These probation conditions will commence on the effective date of the Supreme Court's final disciplinary order in this proceeding.

9. 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 will be satisfied and that suspension will be terminated.

It is further recommended that 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.¹

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.

¹ When 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 9.10(b), California Rules of Court, and rule 321(a)(1) and (3), Rules of Procedure of the State Bar of California.

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 person making the disclosure.

IT IS SO ORDERED.

Dated: March 23, 2010.

RICHARD A. PLATEL
Judge of the State Bar Court