

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case Nos. **04-O-15581-RAP** (04-O-15814);
) **05-O-03481; 08-O-11567 (Cons.)**
BEHROUZ SHAFIE,)
) **DECISION AND ORDER SEALING**
Member No. 108581,) **DOCUMENTS**
)
A Member of the State Bar.)
)

I. INTRODUCTION

In this original, consolidated disciplinary proceeding, respondent **Behrouz Shafie** 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 three 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 an actual suspension of one year, with credit given for the period of inactive enrollment which was effective July 1, 2008, through October 13, 2009 (Bus. & Prof. Code, § 6233).

II. PERTINENT PROCEDURAL HISTORY

A. Case Nos. 04-O-15581 and 04-O-15814

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 June 28, 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 May 30, 2007. On May 30, 2007, the court received respondent's declaration, which established a nexus between respondent's mental health issues and his misconduct in this matter.

B. Case No. 05-O-03481

On November 29, 2007, a second NDC was filed against respondent in case No. 05-O-03481, which was then consolidated with the first NDC.

On April 8, 2008, the court issued a Confidential Statement of Alternative Dispositions and Orders (Statement), 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 April 8, 2008.

Respondent was placed on inactive enrollment effective July 1, 2008, and was returned to active status on October 14, 2009.

C. Case No. 08-O-11567

On September 22, 2010, a third NDC was filed against respondent in case No. 08-O-11567, which was consolidated with the previous two matters.

On October 13, 2010, the court received respondent's declaration regarding the nexus between his misconduct in this matter and his mental health issues.

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

The court then amended the Statement and determined that the alternative dispositions remained the same.

The State Bar and respondent had entered into three separate Stipulations Re Facts and Conclusions of Law (Stipulations). The Stipulations set forth the factual findings, legal conclusions, and mitigating and aggravating circumstances in these matters.

Respondent participated successfully in both the LAP and the State Bar Court's ADP. On October 6, 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. On September 27, 2010, respondent had successfully completed the LAP.

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, in four client matters: (1) Business and Professions Code section 6068, subdivision (m), by failing to communicate with a client; (2) Business and Professions Code section 6106, by issuing an insufficiently funded check and misappropriating more than \$55,000; (3) Rule 3-110(A) of the Rules of Professional Conduct by failing to perform

services with competence; (4) Rule 3-700(D)(1) of the Rules of Professional Conduct by failing to promptly return client files; (5) Rule 3-700(D)(2) of the Rules of Professional Conduct by failing to return unearned fees; and (6) Rule 4-100(A) of the Rules of Professional Conduct by failing to maintain client funds.

Respondent's misconduct involved trust funds in case number 04-O-15814 (Yadegar matter), which is an aggravating factor. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(iii).)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).)

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, 2.2, 2.3, 2.4, and 2.10.

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

Because respondent has 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 **Behrouz Shafie**, State Bar Number 108581, be suspended from the practice of law in California for three years, that execution of that period of suspension be stayed, and that he be placed on probation² for four years subject to the following conditions:

1. Respondent must be actually suspended from the practice of law for the first one year of his probation, with credit given for the period of inactive enrollment which was effective July 1, 2008, through October 13, 2009 (Bus. & Prof. Code, § 6233);
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 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 Business and Professions Code section 6002.1;
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

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.)

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 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;
8. Within one year of the effective date of the discipline herein, respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Client Trust Accounting School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Client Trust Accounting School or the State Bar's Ethics School; and
9. During each calendar quarter in which respondent receives, possesses, or otherwise handles funds or property of a client (as used in this probation condition, the term "client" includes all persons and entities to which respondent owes a fiduciary or trust duty) in any manner, respondent must submit, to the State Bar's Office of Probation with the probation report for that quarter, a certificate from a California Certified Public Accountant certifying:
 - (a) whether respondent has maintained a bank account that is designated as a "Trust Account," "Clients' Funds Account," or words of similar import in a bank in the State of California (or, with the written consent of the client, in any other jurisdiction where there is a substantial relationship between the client or the client's business and the other jurisdiction);
 - (b) whether respondent has, from the date of receipt of the client funds through the period ending five years from the date of appropriate disbursement of the funds, maintained:
 - (1) a written ledger for each client on whose behalf funds are held that sets forth:
 - (a) the name and address of the client,
 - (b) date, amount, and source of all funds received on behalf of the client,
 - (c) the date, amount, payee, and purpose of each disbursement made on

behalf of the client, and
(d) the current balance for the client;

- (2) a written journal for each bank account that sets forth:
- (a) the name of the account,
 - (b) the name and address of the bank where the account is maintained,
 - (c) the date, amount, and client or beneficiary affected by each debit and credit, and
 - (d) the current balance in the account;

(3) all bank statements and cancelled checks for each bank account; and

(4) each monthly reconciliation (balancing) of (1), (2), and (3) and, if there are any differences, an explanation of each difference; and

(c) whether respondent has, from the date of receipt of all securities and other properties held for the benefit of a client through the period ending five years from the date of appropriate disbursement of the securities and other properties, maintained a written journal that specifies:

- (1) each item of security and property held,
- (2) the person on whose behalf the security or property is held,
- (3) the date of receipt of the security or property,
- (4) the date of distribution of the security or property, and
- (5) the person to whom the security or property was distributed.

If respondent does not receive, possess, or otherwise handle client funds or property in any manner in during an entire calendar quarter and if respondent includes, in his probation report for that quarter, a statement to that effect under penalty of perjury under the laws of the State of California, respondent is not required to submit a certificate from a Certified Public Accountant for that quarter.

At the expiration of the period of probation, if respondent has complied with all conditions of probation, the three-year 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. California Rules of Court, Rule 9.20

The court does not recommend that respondent be ordered to comply with California Rules of Court, rule 9.20, because he had previously complied with rule 9.20 in connection with his inactive enrollment under Business and Professions Code section 6233.

D. 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 STIPULATIONS, DECISION AND
ORDER SEALING DOCUMENTS**

The court directs a court case administrator to file the three Stipulations Re Facts and Conclusions of Law (case Nos. 04-O-15581 (04-O-15814); 05-O-03481; and 08-O-11567), this Decision and Order Sealing Documents. Thereafter, pursuant to new rule 5.388(C) of the Rules of Procedure of the State Bar of California (new Rules of Procedure became effective January 1, 2011), all other documents not previously filed in this matter are ordered sealed under new rule 5.12 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 13, 2011.

RICHARD A. PLATEL
Judge of the State Bar Court