

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case No.: **05-J-03765**
)
MATTHEW ALLAN BROMUND,) **DECISION AND ORDER SEALING**
) **CERTAIN DOCUMENTS**
)
Member No. 220152,)
)
A Member of the State Bar.)

On September 15, 2005, the State Bar of California, Office of the Chief Trial Counsel, filed a Notice of Disciplinary Charges against respondent Matthew Allan Bromund (respondent) in case no. 05-J-03765. This matter was initially assigned to the Honorable Robert M. Talcott.

Thereafter, on October 20, 2005, respondent contacted the State Bar of California's Lawyer Assistance Program (LAP) to assist him with his mental health issues.

Judge Talcott issued an order on November 16, 2005, referring this matter to the State Bar Court's Alternative Discipline Program (ADP) before the undersigned judge.

On January 11, 2006, respondent submitted a declaration establishing a nexus between his mental health issues and his misconduct in this matter.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) which was received by the court on May 2, 2006.

Respondent executed a Participation Plan with the LAP on May 3, 2006.

On October 17, 2006, respondent executed the Contract and Waiver for Participation in the State Bar Court's ADP (Contract). On that same date, the court executed: (1) an order approving the parties' Stipulation; and (2) 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 October 17, 2006, and respondent was accepted into the ADP as of that date.

At a status conference held on October 28, 2009, the court found that respondent has successfully completed the ADP. The parties' Stipulation was filed on October 28, 2009, and this matter was submitted for decision.¹

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On August 8, 2005, a hearing committee of the Disciplinary Hearing Commission of the North Carolina State Bar issued its findings of facts, conclusions of law, and order disbaring respondent from the practice of law in North Carolina. Respondent's discipline was based on his appropriation of all or part of the fees paid by three clients to his own use instead of remitting the fees to his employer; his misrepresentation to his employer that a check for fees was payment to his wife and mistakenly written to respondent; his creation of a fictitious receipt to conceal the true amount of a fee paid by a client from his employer and law office personnel; and his destruction of office copies of receipts to conceal the receipt of a client fee. Respondent stipulated that his culpability, as determined in the North Carolina State Bar disciplinary proceeding, warrants the imposition of discipline in California under the laws or rules in effect in this state at the time the misconduct was committed. Specifically, respondent stipulated that his

¹ On October 30, 2009, the court filed an order finding that respondent has successfully completed the ADP.

misconduct constitutes, at a minimum, four violations of section 6106 (moral turpitude) of the Business and Professions Code.

In mitigation, respondent: (1) displayed spontaneous cooperation and candor to the victim of his misconduct and to the State Bar during disciplinary investigation and proceedings; (2) promptly took objective steps spontaneously demonstrating remorse and recognition of his wrongdoing which were designed to timely atone for the consequences of his misconduct; (3) paid restitution of one appropriated fee to his employer without the threat of civil, criminal or disciplinary proceedings; and (4) established good character.²

In aggravation, respondent's misconduct evidenced multiple acts of wrongdoing or demonstrated a pattern of misconduct.

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 aggravating 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.)

² In addition, some mitigation is given for the fact that respondent paid the remaining restitution to his employer on the day of trial in the North Carolina disciplinary proceeding.

Respondent executed a Participation Plan with the LAP on May 3, 2006.³ The LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program – Mental Health dated September 17, 2009, which reflects that, for at least one year prior to this date, respondent has satisfied the requirements set forth in his LAP Participation Plan and has maintained mental health stability and has successfully participated 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 Certificate of One Year Participation in the Lawyer Assistance Program – Mental Health, qualify as clear and convincing evidence that respondent no longer suffers from the 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. (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 brief on the issue of discipline, which was received by the court on May 30, 2006, and respondent's brief on the issue of discipline, which was received by the court on July 5, 2006, and considering the Standards for Attorney Sanctions for Professional Misconduct (standard(s)) and case law cited therein, the parties' stipulation setting forth the facts, conclusions of law, and the aggravating and mitigating circumstances in this matter, and

³ Although respondent executed a LAP Participation Plan on May 3, 2006, he initially contacted the LAP on October 20, 2005.

respondent's declaration regarding the nexus between his 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 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, and 2.3 and the case law cited in the parties' discipline briefs, including *In the Matter of Copren* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 861, *McKnight v. State Bar* (1991) 53 Cal.3d 1025; *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96; and *In re Brown* (1995) 12 Cal.4th 205.

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 respondent's period of participation in the ADP commenced.

Thereafter, respondent successfully participated in the ADP and, as discussed earlier, in October 2009, 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 **MATTHEW ALLAN BROMUND**, State Bar Number 220152, be suspended from the practice of law in California for

two (2) years, that execution of that period of suspension be stayed, and that he be placed on probation for a period of three (3) years subject to the following conditions:

1. Respondent Matthew Allan Bromund is suspended from the practice of law for the first 90 days of probation.⁴
2. Respondent Matthew Allan Bromund 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 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;

⁴ 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.)

- 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 State Bar Ethics School, and passage of the test given at the end of that session; and
 - g. 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.
3. At the expiration of the period of probation, if Matthew Allan Bromund has complied with all conditions of probation, the two (2) year period of stayed suspension will be satisfied and that suspension will be terminated.

It is also recommended that Matthew Allan Bromund 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).)

It is further recommended that respondent be ordered to comply with the requirements of rule 9.20 (formerly rule 955) of the California Rules of Court, and perform the acts specified in

subdivisions (a) and (c) of that rule within thirty (30) and forty (40) calendar days, respectively, after the effective date of the Supreme Court's order in this matter.

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 person making the disclosure.

IT IS SO ORDERED.

Dated: January 5, 2010.

RICHARD A. PLATEL
Judge of the State Bar Court