

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case Nos. 05-O-02615-PEM; 06-O-13784
)	(Cons.)
KATHLEEN JILL SMITH,)	
)	DECISION AND ORDER SEALING
Member No. 182929,)	CERTAIN DOCUMENTS
)	
A Member of the State Bar.)	
)	

I. INTRODUCTION

In this original disciplinary proceeding, respondent **Kathleen Jill Smith** 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 two years, that execution of that period of suspension be stayed, and that she be placed on probation for two years.

II. PERTINENT PROCEDURAL HISTORY

Following the filing of a Notice of Disciplinary Charges (NDC) in case No. 05-O-02615 against respondent by the State Bar of California’s Office of the Chief Trial Counsel (State Bar) on December 22, 2005, respondent requested referral for evaluation of her eligibility for participation in the State Bar Court’s ADP. The State Bar filed an opposition to respondent's participation in the ADP. The court denied the motion.

Respondent submitted a declaration to the court on May 31, 2006, which established a nexus between respondent's mental health issues and her misconduct in this matter. Respondent contacted the State Bar's Lawyer Assistance Program (LAP) to assist with her mental health issues and signed a LAP Participation Plan on October 6, 2006.

An investigative matter, case No. 06-O-13784, was then consolidated with case No. 05-O-02615.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation). The Stipulation, filed May 18, 2010, sets forth the factual findings, legal conclusions, and mitigating and aggravating circumstances in this matter.

The court issued a Confidential Statement of Alternative Dispositions and Orders, dated January 16, 2007, 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 and her 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 January 16, 2007.

Respondent thereafter participated successfully in both the LAP and the State Bar Court's ADP. On May 18, 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' Stipulation, including the court's order approving the Stipulation, is attached hereto and hereby incorporated by reference, as if fully set forth herein. Respondent stipulated to

willfully violating: (1) Rule 3-110(A) of the Rules of Professional Conduct of the State Bar of California by failing to perform services competently; and (2) Business and Professions Code sections 6068, subdivision (a), and 6125, by engaging in the unauthorized practice of law.

In aggravation, respondent has two prior records of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i).)¹ Respondent's current misconduct evidences multiple acts of wrongdoing. (Std. 1.2(b)(ii).) Respondent's misconduct harmed significantly the client. (Std. 1.2(b)(iv).) Respondent demonstrated indifference toward rectification of or atonement for the consequences of her misconduct. (Std. 1.2(b)(v).) And she displayed a lack of cooperation to the State Bar during disciplinary investigation or proceedings. (Std. 1.2(b)(vi).)

In mitigation, respondent has good character evidence and a substantial record of pro bono activities and community service. (Std. 1.2(e)(vi). 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, 1.7, 2.4 and 2.6.

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

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 Confidential Statement.

V. RECOMMENDATIONS

A. Recommended Discipline

It is hereby recommended that respondent **Kathleen Jill Smith**, State Bar Number 182929, be suspended from the practice of law in California for two years, that execution of that period of suspension be stayed, and that she be placed on probation² for a period of two years subject to the following conditions:

1. 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;
2. 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;
3. 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;
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 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

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.)

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;

5. Respondent must have an attorney work site monitor who furnishes quarterly reports to the Office of Probation;³
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. Respondent must comply with all provisions and conditions of her 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 her 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 her 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
8. Respondent must obtain psychiatric or psychological help/treatment from a duly licensed psychiatrist, psychologist or clinical social worker at respondent's own expense a minimum of **two times per month**, and must furnish evidence to the Office of Probation that respondent is so complying with each quarterly report. Help/treatment should commence immediately, and in any event, no later than thirty (30) days after the effective date of the discipline in this matter. Treatment must continue for **two years** or until a motion to modify this condition is granted and that ruling becomes final.

If the treating psychiatrist, psychologist or clinical social worker determines that there has been a substantial change in respondent's condition, respondent or Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 550 of the Rules of Procedure of the State Bar. The motion must be supported by a written statement from the psychiatrist, psychologist, or clinical social worker, by affidavit or under penalty of perjury, in support of the proposed modification.

³ Respondent's current work site monitor is Carolyn A. McBeath.

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

B. Multistate Professional Responsibility Examination

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) because she had already done so.

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 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: August _____, 2010

PAT McELROY
Judge of the State Bar Court

