

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of ) Case Nos.: **05-O-03488-LMA** (07-O-13146)  
)  
**THOMAS WESLEY PACK,** ) **DECISION AND DISCIPLINE ORDER;**  
) **ORDER SEALING CERTAIN**  
) **DOCUMENTS**  
)  
Member No. **144236,** )  
)  
A Member of the State Bar. )

**I. Introduction**

In this disciplinary proceeding, respondent **Thomas Wesley Pack** has successfully completed the State Bar Court’s Alternative Discipline Program (ADP). (Rules Proc. of State Bar, rules 800-807.) Accordingly, respondent is hereby publicly reprovved with conditions for two years.

**II. Significant Procedural History**

On August 23, 2007, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed a Notice of Disciplinary Charges (NDC) against respondent.

In or about August 2007, respondent sought to participate in the State Bar’s Lawyer Assistance Program (LAP); and on September 5, 2007, respondent signed a Lawyer Assistance Program Evaluation Plan. On February 15, 2008, after being evaluated for a period of time, respondent executed a Participation Agreement/Plan with the LAP.

On March 24, 2008, respondent submitted a declaration to the court that established that at the time of his misconduct, he was suffering from mental health issues. On April 28, 2008, respondent also executed a stipulation regarding facts and conclusions of law in this matter. Respondent's declaration and the stipulated facts, as well as the opinion of a medical professional, establish a causal connection between respondent's mental health issues and the misconduct found in this disciplinary proceeding. As such, the court found that respondent had adequately established a nexus between his mental health issues and his misconduct in this matter, i.e., that his mental health issues directly caused the misconduct set forth in this matter.

On May 19, 2008, the court lodged its Confidential Statement of Alternative Dispositions and Orders (Statement), setting forth the recommended discipline if respondent successfully completed or was terminated from the court's ADP. On that same day, respondent executed a Contract and Waiver for Participation in the State Bar Court's Alternative Discipline Program; the parties' stipulation was lodged with the court; and respondent was accepted as a participant in the ADP.

On September 21, 2009, the LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program – Mental Health (certificate), setting forth that respondent complied with the requirements of the LAP Participation Agreement/Plan for one year prior to the date of the certificate, and that during the one-year period, respondent maintained mental health and stability and participated successfully in the LAP.

On November 30, 2009, the court found, as set forth in its December 2, 2009 Corrected Alternative Discipline Program Status Conference Order, that respondent successfully completed the ADP and that the projected end date of his participation in the ADP was November 30, 2009. The court indicated that it would issue this decision imposing the lower level of discipline

reflected in the Statement. The court also ordered that the Stipulation re Facts and Conclusions of law, lodged with the court on May 19, 2008, be filed on November 30, 2009.

### **III. Findings of Fact and Conclusions of Law**

The Stipulation Re Facts and Conclusions of Law (stipulation) approved by the court and lodged on May 19, 2008, are incorporated by reference as if set forth fully herein. The stipulation sets forth the factual findings, conclusions of law and certain aggravating and mitigating circumstances in this matter. Specifically, respondent stipulated to failing to provide competent legal services to a client by not timely responding to discovery, not exchanging expert witness information, not responding to the opposing party's motions and not preparing for trial, thereby violating rule 3-110(A) of the Rules of Professional Conduct; respondent also stipulated to violating conditions of his Agreement in Lieu of Discipline by failing to keep all agreements made in lieu of disciplinary prosecution with the agency charged with attorney discipline, i.e., the State Bar, thereby violating Business and Professions Code section 6068, subdivision (l).

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 has been participating in the LAP since 2007, and has successfully completed the ADP. Respondent's successful completion of the ADP, as well as the certificate, 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 further mitigating circumstance. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,<sup>1</sup> 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, 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 discipline, as well as certain standards and case law cited therein,<sup>2</sup> the parties' stipulation setting forth the facts, conclusions of law and aggravating and mitigating circumstances with respect to this disciplinary proceeding, and the nexus between respondent's mental health and his misconduct in this matter, the court advised the parties of the disposition of this matter if respondent successfully completed the ADP and the discipline that would be recommended to the Supreme Court if respondent was terminated from, or failed to successfully complete the ADP. After agreeing to the recommended disposition/discipline, respondent executed the contract to participate in the ADP and was accepted for participation in the ADP.

Thereafter, respondent successfully participated in the ADP; and, as set forth in the Corrected Alternative Discipline Program Status Conference Order, signed and dated December

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<sup>1</sup> Future references to standard(s) or std. are to this source.

<sup>2</sup> In particular, the court considered standards 1.2, 1.3, 1.4, 1.5, and 2.6, as well as *Van Sloten v. State Bar* (1989) 48 Cal.3d 921.

2, 2009, the court found that respondent successfully completed the ADP. Accordingly, the court imposes the discipline set forth in the Statement if respondent successfully completed the ADP.

### **V. Disposition and Discipline**

Therefore, respondent **Thomas Wesley Pack** is hereby publicly reprovved with the following conditions for two years:

1. During the reprovval period, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;
2. Within 10 days of any change in the information required to be maintained on the State Bar's membership records pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report any such change in writing to the Membership Records Office of the State Bar and to the Office of Probation;
3. Within 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 reprovval. 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 reprovval, 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 reprovval. Under penalty of perjury, respondent must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions set forth in this Decision during

the preceding calendar quarter. If the first report will cover less than 30 days, that report must be submitted on the reporting due 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 20 days before the last day of the period of reprobation and no later than the last day of said period;

5. 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 these reprobation conditions;
6. Respondent must comply with all provisions and conditions of respondent's 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 his 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;

The court will not order Thomas Wesley Pack to attend a session of the Ethics School, as a reprobation condition, since he completed Ethics School given by the State Bar of California on October 25, 2007.

Additionally, if Thomas Wesley Pack provides proof of passage of the Multistate Professional Responsibility Examination (MPRE), which was administered on November 3, 2007, to the Office of Probation within one year of the effective date of the public reprobation in this proceeding, he is not required to again take and pass the MPRE. However, if respondent does not provide proof of passage of the MPRE, which was administered on November 3, 2007, he must take and pass the MPRE within one year of the effective date of the public reprobation in this proceeding, and provide satisfactory proof of his passage of the MPRE to the Office of Probation within said year. Failure to pass the MPRE within the specified time may result in automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

Pursuant to the provisions of rule 270(a) of the Rules of Procedure of the State Bar of California, the public reprobation will be effective when this decision becomes final.

#### **VI. Costs**

Costs are 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.

#### **VII. Direction Re Decision and Order Sealing Certain Documents**

The court directs a court case administrator to file this Decision and Discipline Order; Order Sealing Certain Documents. Thereafter, pursuant to rule 806(c) of the Rules of Procedure, all other documents not previously filed in this matter will be sealed under 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 official 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: February \_\_\_\_\_, 2010

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**LUCY ARMENDARIZ**  
Judge of the State Bar Court