

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 05-O-03574 (05-O-04446);
)	06-O-13860 (Cons.)
STEPHEN C. HOLLINGSWORTH,)	
)	DECISION AND ORDER SEALING
Member No. 200609,)	CERTAIN DOCUMENTS
)	
A Member of the State Bar.)	

PERTINENT PROCEDURAL HISTORY

After the State Bar of California, Office of the Chief Trial Counsel (State Bar) filed a Notice of Disciplinary Charges (NDC) on May 16, 2006, in case nos. 05-O-03574; 05-O-04446, respondent Stephen C. Hollingsworth (respondent) sought to participate in the State Bar Court’s Alternative Discipline Program (ADP) and the State Bar of California’s Lawyer Assistance Program (LAP).

On September 14, 2006, respondent contacted the LAP to assist him with his mental health issues, and on May 17, 2007, respondent executed a Participation Plan with the LAP.

On September 19, 2006, Judge Richard A. Honn of the State Bar Court, Hearing Department, issued an order referring respondent to the court’s ADP.

On March 6, 2007, the State Bar filed a NDC against respondent in case no. 06-O-13860 which was thereafter consolidated with case nos. 05-O-03574; 05-O-04446.

On April 5, 2007, respondent submitted a declaration to the court which established a nexus between his mental health issues and his misconduct. The parties entered into a Stipulation Re Facts and Conclusions of Law on January 3, 2008. On May 12, 2008, respondent and his counsel signed the Contract and Waiver for Participation in the State Bar Court's ADP (Contract).¹ On May 20, 2008, the court lodged its Confidential Statement of Alternative Dispositions and Orders, the parties' Stipulation Re Facts and Conclusions of Law, and the executed Contract. Also on May 20, 2008, the court issued an order accepting respondent into the ADP as of May 12, 2008.

On June 9, 2008, the court issued an order enrolling respondent inactive pursuant to Business and Professions Code section 6233 effective June 12, 2008, for violations of the terms of his ADP Contract.

On July 10, 2008, the LAP closed respondent's case as respondent was terminated from the LAP by the LAP Evaluation Committee.

Thereafter, on July 21, 2008, the court issued an Order to Show Cause (OSC) of the court's intent to terminate respondent from participation in the ADP. On September 17, 2008: (1) the court issued an order terminating respondent from participation in the ADP and relieving respondent from his inactive status pursuant to Business and Professions Code section 6233; (2) the parties' Stipulation Re Facts and Conclusions of Law was filed; and (3) this matter was taken under submission for decision.

Accordingly, the court now issues this decision recommending that the Supreme Court impose upon respondent the discipline set forth below in this decision.

¹ The court executed an order approving the parties' stipulation on this date.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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.

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 parties' briefs on discipline and considering the 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 declaration regarding the nexus between his mental health issues and his misconduct in this matter, 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 the ADP. Respondent executed the Contract to participate in the ADP; the Contract was lodged with the court; and respondent was accepted for participation in the ADP.

Shortly after being accepted into the ADP, the court received a report from the LAP indicating the respondent was not in compliance with the terms of his LAP Participation Plan, and on June 9, 2008, the court issued an order enrolling respondent inactive pursuant to Business and Professions Code section 6233 effective June 12, 2008, for violations of the terms of his ADP Contract.

On July 10, 2008, the LAP closed respondent's case as respondent was terminated from the LAP by the LAP Evaluation Committee.

Thereafter, on July 21, 2008, the court issued an Order to Show Cause (OSC) of the court's intent to terminate respondent from participation in the ADP due to his termination from the LAP and thus his failure to comply with the terms and conditions of the ADP Contract. The parties were given ten days from service of the OSC to file a response to the OSC and to request a hearing on the OSC. Respondent failed to file a response to the OSC. Thus, on September 17, 2008: (1) the court issued an order terminating respondent from participation in the ADP and relieving respondent from his inactive status pursuant to Business and Professions Code section 6233; (2) the parties' Stipulation Re Facts and Conclusions of Law was filed; and (3) this matter was taken under submission for decision.

Accordingly, the court recommends to the Supreme Court the imposition of the discipline set forth in the court's Confidential Statement of Alternative Dispositions and Orders in the event respondent was terminated from the ADP.

RECOMMENDED DISCIPLINE

IT IS HEREBY RECOMMENDED that respondent **STEPHEN C. HOLLINGSWORTH** be suspended from the practice of law for two years and until he shows proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice, and present learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct; that execution of said suspension be stayed; and that respondent be placed on probation for three (3) years, with the following conditions:

1. Respondent must be actually suspended from the practice of law for the first year of probation;

2. During the probation period, respondent must comply with the provisions of the State Bar Act and 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 section 6002.1 of the Business and Professions Code;
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 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 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 (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;
8. Respondent must obtain an examination of his mental and physical condition with respect to his mental health issues pursuant to rule 184 of the Rules of Procedure from a qualified practitioner approved by the Office of Probation and must comply with any treatment/monitoring plan recommended following such examination. The examination and any further help/treatment/ monitoring recommended by the examining practitioner will be at respondent's own expense. The examination must be conducted no later than thirty (30) days after the effective date of the Supreme Court's final disciplinary order in this matter. Help/treatment/monitoring should commence immediately after said examination and, in any event, no later than thirty (30) days after said examination. With each quarterly report, respondent must furnish to the Office of Probation sufficient evidence, as specified by the Office of Probation, that he is so complying with this condition of probation. Treatment/monitoring must continue for the period of

probation or until a motion to modify this condition is granted and that ruling becomes final.

If the examining or treating practitioner determines that there has been a substantial change in respondent's condition, respondent or the State Bar's Office of Probation or the 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 of California. The motion must be supported by a written statement from the examining or treating practitioner, by affidavit or under penalty of perjury, in support of the proposed modification.

Upon the request of the Office of Probation, respondent must provide the Office of Probation with medical and confidentiality waivers and access to all of respondent's medical records necessary to monitor this probation condition. Revocation of any medical/confidentiality waiver is a violation of this condition. Any medical records obtained by the Office of Probation will be confidential and no information concerning them or their contents will be given to anyone except members of the Office of the Chief Trial Counsel, the Office of Probation, and the State Bar Court, who are directly involved with maintaining, enforcing or adjudicating this condition;

9. Respondent must pay restitution to Isabel Rios in the amount of \$2,750 plus 10% interest per annum from September 3, 2004 (or to the Client Security Fund to the extent of any payment from the fund to Isabel Rios, plus interest and costs, in

accordance with Business and Professions Code section 6140.5), and furnish satisfactory proof thereof to the State Bar's Office of Probation. Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d).

With each written quarterly report required herein, respondent must provide to the Office of Probation satisfactory proof of all restitution payments made by him during that quarter or applicable reporting period.

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 payments provided satisfactory proof of such is or has been shown to the Office of Probation;

10. If respondent possesses client funds at any time during the period covered by a required quarterly report, respondent must file with each required report a certificate from a certified public accountant or other financial professional approved by the Office of Probation (accountant's certificate), certifying that: respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Client's Funds Account"; and respondent has kept and maintained the following:
 - A. a written ledger for each client on whose behalf funds are held that sets forth:
 1. the name of such client,

2. the date, amount, and source of all funds received on behalf of such client,
 3. the date, amount, payee and purpose of each disbursement made on behalf of such client, and
 4. the current balance for such client;
- B. a written journal for each client trust fund account that sets forth:
1. the name of such account,
 2. the date, amount, and client affected by each debit and credit, and
 3. the current balance in such account;
- C. All bank statements and canceled checks for each client trust account; and
- D. each monthly reconciliation (balancing) of (i), (ii), and (iii) above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii) above, the reason for the differences, and that respondent has maintained a written journal of securities or other properties held for a client 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 possess any client funds, property or securities during the entire period covered by a report, respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In

this circumstance, respondent need not file the accountant's certificate described above.

The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct;

11. Unless, within the period of his ADP participation, respondent provided to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School and passage of the test given at the end of that session, within one (1) year after 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 Client Trust Accounting School given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015, and passage of the test given at the end of that session. Arrangements to attend Ethics School Client Trust Accounting School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Trust Accounting School. (Rules Proc. of State Bar, rule 3201);
12. Probation will commence upon the effective date of the Supreme Court order in this matter. (Cal. Rules of Court, rule 9.18.)

Respondent must provide proof of passage of the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners, to the Office of Probation within one (1) year after the effective date of the Supreme Court's final disciplinary

order in this matter. **Failure to pass the MPRE results in actual suspension without further hearing until passage. (But see Cal. Rules of Court, rule 9.10(b); Rules Proc. of State Bar, rule 321(a) & (c).)**

Respondent must comply with the requirements of rule 9.20, 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 proceedings 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: October 27, 2008

RICHARD A. PLATEL
Judge of the State Bar Court