

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case No.: **05-O-05164**
)
WILLIAM CARLEY HALSEY,) **DECISION AND ORDER SEALING**
) **CERTAIN DOCUMENTS**
)
Member No. 71090,)
)
A Member of the State Bar.)

The State Bar of California, Office of the Chief Trial Counsel (State Bar), filed a Notice of Disciplinary Charges (NDC) against respondent William Carley Halsey (respondent) on March 21, 2007, in case no. 05-O-05164.

On March 27, 2007, respondent contacted the State Bar of California’s Lawyer Assistance Program (LAP) to assist him with his substance abuse issue.

The court issued an order on May 7, 2007, referring this matter to the State Bar Court’s Alternative Discipline Program (ADP) before the Honorable Richard A. Platel.

Effective May 18, 2007, this matter was reassigned to the undersigned judge.

On September 4, 2007, respondent submitted to the court a declaration regarding the nexus between his substance abuse issue and his misconduct in this matter.

On September 28, 2007, respondent executed a Participation Plan with the LAP.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) on March 18, 2008, which was received by the court that same date.

On April 23, 2008, the court executed 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. Also, on April 23, 2008, respondent and his counsel executed the Contract and Waiver for Participation in the State Bar Court's ADP (Contract). Respondent was accepted into the ADP and his period of participation in the ADP commenced as of April 23, 2008.¹

On May 2, 2008, the court executed an order regarding the Stipulation, and the Confidential Statement, Contract, and Stipulation were lodged. Also on May 2, 2008, the court filed an order, effective August 2, 2008, enrolling respondent as an inactive member of the State Bar of California pursuant to Business and Professions Code section 6233.²

After his period of participation in the ADP commenced, respondent successfully participated in both the State Bar's LAP and the court's ADP, and at a status conference held on October 19, 2009, the court found that respondent has successfully completed the ADP. This matter was thereafter submitted for decision on November 2, 2009.³

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In case no. 05-O-05164, respondent deposited a check into his client trust account on May 3, 2005, concerning the dissolution of marriage of Antonio Perez and Dolores Cervantes. Thereafter, respondent willfully failed to maintain client funds in a trust account in willful violation of rule 4-100(A) of the Rules of Professional Conduct of the State Bar of California,

¹ On April 24, 2008, the court filed an order finding that respondent is accepted into the ADP, and the start date of respondent's participation in the ADP is April 23, 2008.

² Respondent's inactive enrollment under Business and Professions Code section 6233 ended on September 1, 2008.

³ On November 3, 2009, the court filed an order finding that respondent has successfully completed the ADP.

and willfully committed acts involving dishonesty, moral turpitude, or correction in willful violation of Business and Professions Code section 6106 by (1) willfully or with gross negligence misappropriating at least \$41,896.33 held in trust for Perez and Cervantes; and (2) issuing a client trust account check and then willfully or with gross negligence failing to maintain sufficient funds in his client trust account to pay the check when it was presented for payment.

In mitigation, respondent was suffering from multiple debilitating medical conditions at the time the misconduct occurred. Personal and occupational stresses also led to emotional difficulties. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e)(iv).) In addition, respondent was candid and cooperative with the victims of his misconduct and with the State Bar during disciplinary investigation and proceedings. (Std. 1.2(e)(v).) As a further mitigating circumstance, respondent promptly took objective steps spontaneously demonstrating recognition of his wrongdoing and remorse which were designed to timely atone for the consequences of his misconduct. (Std. 1.2(e)(vii).) For example, respondent paid restitution to Perez (plus an additional sum for his inconvenience) without the force or threat of civil, criminal or disciplinary proceedings.

In aggravation, respondent has a prior record of discipline. (Std. 1.2(b)(i).) Effective May 21, 2003, respondent was privately reprimanded with conditions for one year in case no. 02-O-10725 for violations of rules 3-110(A), 3-700(A)(2), 3-700(D)(1) and 3-700(D)(2) of the Rules of Professional Conduct of the State Bar of California. In addition, the misconduct involved trust funds, and respondent was unable or refused to account to the client or person who was the object of the misconduct for the improper conduct toward the funds.

The parties' stipulation as to facts and conclusions of law, including the court's order regarding 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.

Furthermore, at the time respondent engaged in his misconduct, he was suffering from a substance abuse issue, and respondent's substance abuse issue directly caused or contributed to the misconduct which forms the basis for this proceeding. Supreme Court case law establishes that an attorney's rehabilitation from alcoholism or other substance abuse problems can be accorded significant weight if it is established that (1) the abuse was addictive in nature; (2) the abuse causally contributed to the misconduct; and (3) the attorney has undergone a meaningful and sustained period of rehabilitation. (*Harford v. State Bar* (1990) 52 Cal.3d 93, 101; *In re Billings* (1990) 50 Cal.3d 358, 367.)

Respondent executed a Participation Plan with the LAP on September 28, 2007. The LAP issued a Certificate of One Year of Participation In the LAP – Substance Use – dated October 14, 2009, which reflects that the LAP is not aware of the use of any unauthorized substances by respondent for at least one year prior to this date.

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 LAP, qualify as clear and convincing evidence that respondent no longer suffers from the substance abuse issue 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 briefs by both respondent and the State Bar on the issue of discipline, and considering the Standards for Attorney Sanctions for Professional Misconduct 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 respondent's declaration regarding the nexus between his substance abuse issue 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, 1.7(a), 2.2(a), 2.2(b), and 2.3, and the case law cited in the parties' briefs, including *In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403 and *Waysman v. State Bar* (1986) 41 Cal.3d 452.

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 began his period of participation in the ADP.

Respondent thereafter successfully participated in the ADP, and on October 19, 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 Confidential Statement of Alternative Dispositions and Orders if respondent successfully completed the ADP.

RECOMMENDED DISCIPLINE

IT IS HEREBY RECOMMENDED that respondent **WILLIAM CARLEY HALSEY**, State Bar Number 71090, be suspended from the practice of law in California for one (1) year, that execution of that period of suspension be stayed, and that he be placed on probation for a period of three (3) years⁴ subject to the following conditions:

1. Respondent William Carley Halsey is suspended from the practice of law for the first thirty (30) days of probation (with credit given for the period of inactive enrollment pursuant to Business and Professions Code section 6233 which commenced on August 2, 2008 and ended on September 1, 2008).
2. Respondent William Carley Halsey 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

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.)

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;

- 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 Ethics School, and passage of the test given at the end of that session;
- 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; and
- h. 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:
 - (1) 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);

- (2) 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:
- (a) a written ledger for each client on whose behalf funds are held that sets forth:
 - 1. the name and address of the client,
 - 2. the date, amount, and source of all funds received on behalf of the client,
 - 3. the date, amount, payee, and purpose of each disbursement made on behalf of the client, and
 - 4. The current balance for the client;
 - (b) a written journal for each bank account that sets forth:
 - 1. the name of the account,
 - 2. the name and address of the bank where the account is maintained,
 - 3. the date, amount, and client or beneficiary affected by each debit and credit, and
 - 4. the current balance in the account;
 - (c) all bank statements and cancelled checks for each bank account; and
 - (d) each monthly reconciliation (balancing) of (a), (b), and (c) and, if there are any differences, an explanation of each difference; and
- (3) 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:
- (a) each item of security and property held,
 - (b) the person on whose behalf the security or property is held,
 - (c) the date of receipt of the security or property,

- (d) the date of distribution of the security or property, and
- (e) 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 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.

3. It is also recommended that, at the expiration of the period of probation, if William Carley Halsey has complied with all conditions of probation, the one (1) year period of stayed suspension will be satisfied and that suspension will be terminated.

It is further recommended that William Carley Halsey 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).)

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 PARTIES' STIPULATION AND DECISION AND ORDER SEALING

CERTAIN DOCUMENTS

The court directs a court case administrator to file the parties' Stipulation Re Facts and Conclusions of Law and 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: March _____, 2011

DONALD F. MILES
Judge of the State Bar Court