

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 05-O-00719-DFM
)	
LAWRENCE HOODACK,)	
)	DECISION AND ORDER SEALING
Member No. 97629,)	CERTAIN DOCUMENTS
)	
<u>A Member of the State Bar.</u>)	

INTRODUCTION

On September 6, 2006, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed the notice of disciplinary charges (NDC) against respondent **LAWRENCE HOODACK**¹ in this proceeding. Respondent filed his response to the NDC on October 4, 2006.

At a January 31, 2007 status conference, the court referred respondent for evaluation for participation in the State Bar Court’s Alternative Discipline Program (ADP). Then, on May 18, 2007, the present proceeding was reassigned to the undersigned judge for all purposes.

On August 13, 2007, the court received (1) a declaration from respondent regarding the nexus between his mental health issues and his misconduct and (2) a psychiatric report regarding

¹ Respondent was admitted to the practice of law in this state on May 29, 1981, and has been a member of the State Bar of California since that time.

respondent's mental health issues. On August 29, 2007, respondent signed a Participation Plan with the State Bar of California's Lawyer Assistance Program (LAP).

In December 2007, the parties submitted a Stipulation Regarding Facts and Conclusions of Law (Stipulation) to the court. (Rules Proc. of State Bar, rules 132, 802(a), 803(a).) On May 6, 2008, the court signed an order approving the Stipulation and then lodged the Stipulation and the order approving it together as a single document.

Also, on May 6, 2008, the court signed and lodged a Confidential Statement of Alternative Dispositions and Orders (Confidential Statement). In the Confidential Statement, the court found sufficient evidence of a nexus between (1) respondent's mental health issues and (2) the misconduct to which respondent stipulated in this proceeding. In the Confidential Statement, the court also set forth the level of discipline that it will recommend to the Supreme Court if respondent successfully completes the ADP as well as the level of discipline it will recommend if respondent does not successfully complete the ADP.

Finally, on May 6, 2008, respondent lodged a Contract and Waiver for Participation in the State Bar Court's Alternative Discipline Program (Contract), which is signed by respondent and his counsel at the time.

On May 7, 2008, the court filed an order accepting respondent into the ADP.

Thereafter, respondent participated in the LAP and the ADP. During his participation in the ADP, respondent attended and successfully completed both the State Bar's Ethics School and the State Bar's Client Trust Accounting School.² In addition, he took and passed the Multistate Professional Responsibility Examination (MPRE) during his participation in the ADP.

² Notwithstanding the fact that the State Bar sent respondent two certificates of completion which purports to evidence that respondent is entitled to six hours of Minimum Continuing Legal Education (MCLE) credits for attending Ethics School and three MCLE credits for attending Client Trust Accounting School, respondent is ORDERED not to claim any MCLE credits for attending and completing either Ethics School or Client Trust Accounting School. (Confidential Statement, at pp. 6.1, ¶ 2(k) & 6.2; accord, Rules Proc. of State Bar, rule 3201.)

Accordingly, the court does not recommend that respondent be required to attend either Ethics School or Client Trust Accounting School (Rules Proc. of State Bar, rule 290(a)) or to take the MPRE.

Finally, during respondent's participation in the ADP, respondent was involuntarily enrolled as an inactive member of the State Bar of California for six months from February 14, 2009, through August 14, 2009. (Bus. & Prof. Code, § 6233.)³ Accordingly, the court will recommend that respondent be given credit for that six-month period of inactive enrollment towards the six-month period of (actual) suspension recommended *post. (Ibid.)*

On December 15, 2009, the court received, from the LAP, a Certificate of One Year of Participation in the Lawyer Assistance Program – Mental Health, certifying that respondent has maintained mental health stability for the past year. Then, on January 26, 2010, the court filed an order in which it found that respondent had successfully completed the ADP; filed the Stipulation and the order approving it; and took the matter under submission for decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON MISCONDUCT

The court adopts the facts and conclusions of law that are set forth in the Stipulation.⁴ Briefly, the stipulated facts and conclusions establish the following misconduct, aggravation, and mitigation.

In November 2001, a drunk driver, who was fleeing from the California Highway Patrol (CHP), crashed his vehicle head-on into a car that was driven and owned by Tin Nguyen. At the time of the crash, Nguyen had four guest passengers (two adult males and two (minor) boys). Nguyen and the four passengers were all seriously injured in the crash.

³ All further statutory references are to the Business and Professions Code.

⁴ The Stipulation and the court's order approving it are attached hereto and incorporated by reference as if they were fully set forth herein.

In November 2001, Nguyen and one of the adult passengers retained respondent to represent them with respect to their personal injury claims against the drunk driver and the CHP. In December 2001, the other adult passenger also retained respondent to represent him with respect to his personal injury claims against the drunk driver and the CHP. Then, in January 2002, the mother of the two boys retained respondent to represent the boys with respect to their claims against the drunk driver and the CHP.

When respondent accepted the representation of these five individuals, the interests of the five individuals potentially conflicted. Respondent, however, did not inform any of the five individuals or the mother of the two boys of (1) the relevant circumstances and (2) the actual and reasonably foreseeable adverse consequences to them from respondent's concurrent representation of them. Nor did respondent obtain the informed written consent to his concurrent representation of the five individuals from any of them or from the mother of the two boys.

The drunk driver was uninsured. And the CHP was not responsible because of governmental immunity. Therefore, respondent was able to obtain the \$30,000 policy limits on Nguyen's uninsured-motorist coverage for personal injuries for the five clients. The clients agreed to divide the \$30,000 settlement proceeds equally so that each client would receive \$6,000.

In about March 2002, respondent received three checks for \$6,000 from the insurance company. By December 2002, respondent had received the remaining two \$6,000 checks. Respondent properly deposited all five of the \$6,000 checks into his client trust account. But respondent never obtained court approval to settle the claims of the two minor boys.

In September 2002, respondent promptly settled Nguyen's medical lien and timely paid Nguyen his share of the settlement proceeds. However, it took respondent four more years to pay the four passenger clients their share of the \$30,000 settlement.

In 2002, respondent also collected, out of the settlement proceeds, a \$2,000 fee from each of his five clients (for total of \$10,000 in attorney's fees). Respondent improperly collected a \$2,000 fee from each of the two minors. At most, respondent was entitled to collect a \$1,500 fee from each minor.

After December 2002, respondent should have held \$17,000 in his client trust account for the four passenger clients. However, by January 16, 2003, the balance in respondent's trust account dropped to \$7,869.28. Thus, respondent willfully misappropriated the difference of \$9,130.72 (\$17,000 less \$7,869.28 equals \$9,130.72) through gross negligence.

In October 2006, respondent finally resolved the medical provider's liens for four passenger clients and sent each of them a letter of apology and a check for \$4,000, waiving retention of any attorney's fees from them.

Violations

Respondent failed to obtain his clients' informed written consent to his concurrent representation of them in willful violation of State Bar Rules of Professional Conduct, rule 3-310(C)(1).⁵

After December 2002, respondent failed to properly keep the entire \$17,000 in his client trust account in willful violation of rule 4-100(A). Moreover, respondent's misappropriation of \$9,130.72 of his clients' settlement proceeds in January 2003 involved moral turpitude in willful violation of section 6106.

By waiting four years to pay the four passenger clients their shares of the settlement proceeds, respondent failed to promptly pay, as requested, funds to which the clients were entitled in willful violation of rule 4-100(B)(4).

⁵ Unless otherwise noted, all further references to rules are to the State Bar Rules of Professional Conduct.

Respondent repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) by failing to promptly resolve all five clients' medical liens, to obtain court approval of the minor boys' settlements, and to respond to a request for information from a victim's fund.

AGGRAVATION AND MITIGATION

Aggravation

In aggravation, respondent has one prior record of discipline. (Rules Proc. of State Bar, tit. IV, Stds. For Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i).)⁶ In 1994, the Supreme Court placed respondent on three years' stayed suspension and on three years' probation with conditions, including a four-month suspension, because he violated 11 provisions of the State Bar Rules of Professional Conduct in a single client matter.

In addition, respondent's misconduct in the present proceeding evidences multiple acts of wrongdoing. (Std. 1.2(b)(ii).)

Mitigation

Respondent has been candid and cooperative with the State Bar during the pendency of this State Bar Court proceeding. (Std. 1.2(e)(v).)

Respondent took objective steps demonstrating remorse and recognition of wrongdoing. (Std. 1.2(e)(vii).)

At the time respondent engaged in the stipulated misconduct in the present proceeding, he was suffering from a mental health issue. Respondent's mental health issue directly caused or contributed to the foregoing misconduct. Caselaw holds that extreme emotional difficulties are a mitigating factor where expert testimony establishes that the emotional difficulties were directly responsible for the misconduct, provided that the attorney also establishes, by clear and

⁶ All further references to standards are to this source.

convincing evidence, that he or she no longer suffers from the 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.) Moreover, the Supreme Court has held that, absent a finding of rehabilitation, emotional difficulties are not a mitigating factor. (*Kaplan v. State Bar* (1991) 52 Cal.3d 1067, 1072-1073; *In re Naney, supra*, 51 Cal.3d at p. 197.)

As noted *ante*, on January 26, 2010, the court filed an order in which it found that respondent had successfully completed the ADP. Respondent's successful completion of the ADP required his successful participation in the LAP. Moreover, respondent's Certificate of One Year of Participation in the Lawyer Assistance Program – Mental Health is clear evidence of respondent's mental health stability. In short, the record contains clear and convincing evidence that respondent no longer suffers from the mental health issue that led to his misconduct. Accordingly, he is entitled to significant mitigation for his successful completion of the ADP. (Std. 1.2(e)(iv).)

DECISION

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. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

After reviewing and considering (1) the parties' briefs on the issue of discipline, (2) the standards, (3) the Stipulation (which sets forth the facts, conclusions of law, and various aggravating and mitigating factors), and (4) respondent's declaration regarding the nexus between his mental health issues and his misconduct, the court signed and lodged the Confidential Statement, which advised the parties of the discipline that the court would

recommend to the Supreme Court if respondent successfully completed the ADP and if respondent did not successfully complete the ADP. In determining the appropriate discipline to recommend if respondent successfully completed the ADP, the court considered the discipline recommended by the parties, the standards, and case law. In particular, the court considered standards 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 2.2, and 2.3; the caselaw cited in the parties' briefs on discipline, including *McKnight v. State Bar* (1991) 53 Cal.3d 1025, and the case of *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071.

After agreeing to the discipline that the court would recommend to the Supreme Court if respondent successfully completed or if he 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 participated in and 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 if respondent successfully completed the ADP.

DISCIPLINE RECOMMENDATION

It is hereby recommended that respondent **LAWRENCE HOODACK**, State Bar Number 97629, be suspended from the practice of law in California for three years, that execution of that period of suspension be stayed, and that he be placed on probation for a period of three years subject to the following conditions:⁷

1. Lawrence Hoodack is suspended from the practice of law in California for the first six months of his probation (with credit given for the period of his involuntary inactive enrollment under Business and Professions Code section 6233, which began on February 14, 2009, and ended on August 14, 2009).
2. Hoodack must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California.

⁷ As noted *ante*, the court does not recommend that respondent be required to attend either Ethics School or Client Trust Accounting School because respondent did so during his participation in the ADP.

3. Within 10 days of any change, Hoodack 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 30 days after the effective date of discipline, Hoodack must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss these terms and conditions of probation. At the direction of the Office of Probation, Hoodack must meet with the probation deputy either in person or by telephone. Hoodack must promptly meet with the probation deputy as directed and requested.
5. Hoodack must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10. Under penalty of perjury, Hoodack must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Hoodack 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 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 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 the assertion of applicable privileges, Hoodack must answer fully, promptly and truthfully, any inquiries of the Office of Probation which are directed to him personally or in writing relating to whether he is complying or has complied with the probation conditions.
7. Hoodack 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. Hoodack must immediately report any non-compliance with any provision(s) or condition(s) of his Participation Agreement/Plan to the Office of Probation. Hoodack 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. Hoodack will be relieved of this condition after he provides to the Office of Probation satisfactory certification of completion of the LAP.
8. During each calendar quarter in which Hoodack 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 Hoodack owes a fiduciary or trust duty) in any manner, Hoodack 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:

- (a) whether Hoodack 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);
- (b) whether Hoodack 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:
 - (1) a written ledger for each client on whose behalf funds are held that sets forth:
 - (a) the name and address of the client,
 - (b) the date, amount, and source of all funds received on behalf of the client,
 - (c) the date, amount, payee, and purpose of each disbursement made on behalf of the client, and
 - (d) the current balance for the client;
 - (2) a written journal for each bank account that sets forth:
 - (a) the name of the account,
 - (b) the name and address of the bank where the account is maintained,
 - (c) the date, amount, and client or beneficiary affected by each debit and credit, and
 - (d) the current balance in the account;
 - (3) all bank statements and cancelled checks for each bank account; and
 - (4) each monthly reconciliation (balancing) of (1), (2), and (3) and, if there are any differences, an explanation of each difference; and
- (c) whether Hoodack 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:
 - (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 Hoodack does not receive, possess, or otherwise handle client funds or property in any manner during an entire calendar quarter and if Hoodack 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, Hoodack is not required to submit a certificate from a Certified Public Accountant for that quarter.

- 9. The three-year probation period will begin on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.) And, at the expiration of the period of probation, if Hoodack has complied with all the terms of probation, the order of the Supreme Court suspending him from the practice of law for three years will be satisfied and that suspension will be terminated.

MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION

As noted *ante*, the court does not recommend that Hoodack be required to take and pass the Multistate Professional Responsibility Examination because he recently did so during his participation in the ADP.

COSTS

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that those costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Respondent must also reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and such payment is enforceable as provided under Business and Professions Code section 6140.5.

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 be disclosed to only: (1) parties to the proceeding and their 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 must be given a copy of this order sealing the documents by the person making the disclosure.

IT IS SO ORDERED.

Dated: April ____, 2010.

DONALD F. MILES
Judge of the State Bar Court