

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case Nos. **06-C-11615-RAP; 06-O-11559**
) (06-O-11880; 06-O-14274;
JACQUELINE STATEN,) 06-O-14275; 06-O-14276) (Cons.)
)
Member No. 175733,)
) **DECISION AND ORDER SEALING**
) **DOCUMENTS**
A Member of the State Bar.)
)
_____)

I. Introduction

In this conviction referral and disciplinary proceeding, respondent **Jacqueline Staten** stipulated to (1) one misdemeanor conviction of battery with serious bodily injury which did not involve moral turpitude; (2) professional misconduct in two client matters, including failing to perform services competently and failing to promptly refund unearned fees; and (3) trust accounting violations.

In September 2007, this court accepted respondent as a participant in the State Bar Court’s Alternative Discipline Program (ADP), as a result of the conviction referral matter (case No. 06-C-11615). In August 2008, respondent continued to participate in the ADP, as a result of the five additional cases filed against her (case Nos. 06-O-11559; 06-O-11880; 06-O-14274; 06-O-14275; and 06-O-14276). (Rules Proc. of State Bar, rules 800-807.)

However, respondent has recently been terminated from the State Bar Court's ADP because of her failure to comply with its requirements.

Accordingly, pursuant to rule 803 and in light of her admitted misconduct, the court hereby recommends that respondent be suspended from the practice of law for two years, that execution of the suspension be stayed, and that respondent be placed on probation for three years on conditions that include her actual suspension for one year.

II. Significant Procedural History

A. Respondent's Acceptance into the Alternative Discipline Program

1. Case No. 06-C-11615

On May 15, 2006, the Review Department of the State Bar Court issued an order, referring this matter to the Hearing Department for a hearing and decision limited to whether the facts and circumstances surrounding the offense involve moral turpitude or other misconduct warranting discipline in case No. 06-C-11615.

On September 24, 2007, the court approved a Stipulation re Facts and Conclusions of Law (2007 stipulation) and accepted respondent into the ADP. On the same day, respondent executed a Contract and Waiver for Participation in the State Bar Court's Alternative Discipline Program. This court also issued a Confidential Statement of Alternative Dispositions.

2. Case Nos. 06-O-11559; 06-O-11880; 06-O-14274; 06-O-14275; and 06-O-14276

On December 28, 2007, an amended Notice of Disciplinary Charges (NDC) was filed against respondent in case Nos. 06-O-11559; 06-O-11880; 06-O-14274; 06-O-14275; and 06-O-14276.

On April 22, 2008, respondent stipulated to professional misconduct (2008 stipulation) in those five cases.

Consequently, the court accepted respondent into the ADP in relation to these cases and consolidated the two conviction referral and disciplinary matters. On September 8, 2008, the court issued an order amending the Amended Contract and Waiver for Participation in the State Bar Court's Alternative Discipline Program (Amended Contract), which was lodged on June 30, 2008. This court also issued an Amended Confidential Statement of Alternative Dispositions (Amended Statement) on September 8, 2008.

Respondent's eligibility and acceptance into the ADP was based on, among other things: 1) her participation in the LAP; 2) the 2007 and 2008 stipulations as to facts and conclusions of law she entered with the State Bar; 3) the nexus evidence she provided; and 4) her agreement to accept the court's low and high levels of recommended discipline set forth in the Amended Statement. (Rules Proc. of State Bar, rule 802.)

Respondent agreed to fulfill all of the requirements set forth by the ADP Judge as conditions for respondent's ongoing participation in the ADP.

B. Respondent's Termination from the Alternative Discipline Program

On March 30, 2009, respondent was enrolled inactive for violating the terms of her Amended Contract. On April 22, 2009, the court issued an order to show cause (OSC) of the court's intent to terminate respondent from participation in the ADP because she was not in compliance with the conditions of the Amended Contract and had been terminated from LAP effective November 24, 2008.

Respondent filed responses to the OSC.

On May 14, 2009, the court terminated respondent from the ADP based upon her noncompliance with the conditions of the ADP and her termination from LAP. The court also ordered respondent's inactive status be lifted. As a result, the 2007 and 2008 stipulations were filed on that day.

On June 19, 2009, the court denied the State Bar's motion for reconsideration regarding the court's order to lift respondent's inactive status. The court also denied respondent's motion for reconsideration regarding the court's order of terminating her from the ADP.

The court now issues this decision recommending the high level of discipline set forth in the Amended Statement.

III. Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 19, 1994, and has been a member of the State Bar of California at all times since.

The 2007 and 2008 stipulations are attached and hereby incorporated by reference, as if fully set forth herein. The stipulations set forth the factual findings, legal conclusions and aggravating and mitigating circumstances in this consolidated matter.

In summary, respondent stipulated to a criminal conviction involving battery with serious bodily injury; to professional misconduct in two client matters; and to trust accounting violations. The parties also stipulated to certain aggravating and mitigating factors.

Regarding mitigation, extreme emotional difficulties or physical disabilities suffered by the attorney at the time of the professional misconduct may be considered mitigating. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e)(iv).) The Supreme Court has held 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.) However, the Supreme Court also has held that, absent a finding of rehabilitation, emotional

problems are not considered to be a mitigating factor. (*Kaplan v. State Bar* (1991) 52 Cal.3d 1067, 1072-1073; *In re Naney, supra*, 51 Cal.3d at p. 197.)

Here, in accepting respondent into the ADP, the court found that respondent had suffered from bipolar disorder and that there was a sufficient connection between respondent's mental health problem and the stipulated misconduct. (Rules Proc. of State Bar, rule 802.) Respondent was enrolled in the State Bar's Lawyer Assistance Program (LAP) in April 2007 in a five-year commitment to her recovery program but was terminated from LAP in November 2008.

Respondent's conduct before this court while participating in the ADP and her termination from that program prevent the court from making a finding that respondent has established her sustained rehabilitation by clear and convincing evidence. Therefore, the court will not give respondent any mitigation credit for her participation in the LAP or the ADP.

Furthermore, although the parties stipulated that respondent was candid and cooperative with the State Bar during its resolution of these matters, the mitigating force of this factor is dramatically reduced based on respondent's termination from the ADP. (Std. 1.2(e)(v).)

IV. Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession and maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

After considering the 2007 and 2008 stipulations, scope of respondent's acts of misconduct, the mitigating and aggravating circumstances, the standards, the relevant case law, and respondent's declaration regarding the nexus between her mental health issues and her misconduct in this matter, the court had advised respondent and the State Bar of the low and high levels of discipline which would be recommended to the Supreme Court, depending on whether

respondent successfully completed the ADP or was terminated from the ADP. The recommended discipline was set forth in the Amended Statement.

Accordingly, because respondent was terminated from the ADP in May 2009, the court hereby recommends the high level of discipline to the Supreme Court.

V. Recommendation

It is hereby recommended that respondent **Jacqueline Staten** be suspended from the practice of law in the State of California for two years, that execution of such suspension be stayed and that respondent be placed on probation for three years on the following conditions:

1. Respondent must be actually suspended from the practice of law for the first year of the period of probation;
2. Respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;
3. Within 10 calendar 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 her current office address and telephone or, if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office of the State Bar and to the Office of Probation;
4. Respondent must submit written quarterly reports to the Office of Probation no later than each January 10, April 10, July 10 and October 10 of the period of probation. Under penalty of perjury, respondent must state whether she has complied with the State Bar Act, the Rules of Professional Conduct and the conditions of probation 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 probation period and no later than the last day of such period;

5. 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 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;

6. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully, any inquiries of the Office of Probation that are directed to him personally or in writing, relating to whether she is complying or has complied with these probation conditions;

7. Within one year of the effective date of the Supreme Court's final disciplinary order in this proceeding, respondent must provide to the Office of Probation satisfactory proof of her attendance at a session of State Bar Ethics School and of passage of the test given at the end of that session, unless she previously completed the course within the prior two years (Rules Proc. of State Bar, rule 290);

8. Respondent must obtain an examination of her mental and physical condition with respect to her mental health issue 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 she 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. 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;

9. 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;

10. Within thirty (30) days after the effective date of the Supreme Court's final disciplinary order in this matter, respondent must initiate arbitration of the attorney fees in the Edwin Troy Bogar matter (Bus. & Prof. Code, § 6201) and provide satisfactory proof of such to the State Bar's Office of Probation within forty-five (45) days after the effective date of the Supreme Court's final disciplinary order in this matter, unless respondent has previously done so.

Respondent must advise the Office of Probation, in writing, of any request or agreement to participate in fee arbitration made by Mr. Bogar within fifteen (15) days after such request or agreement or within thirty (30) days after the effective date of the Supreme Court's final disciplinary order in this matter, whichever is later, unless respondent has previously advised the Office of Probation of such a request or agreement.

Respondent must participate in fee arbitration as directed by the organization conducting the fee arbitration.

Within thirty (30) days after issuance of any award, decision or final determination by any fee arbitrator pursuant to such fee arbitration, or within thirty (30) days after the effective date of the Supreme Court's final disciplinary order in this matter, whichever is later, respondent must provide a copy of said award, decision or final determination to the Office of Probation, unless respondent has previously done so.

The arbitrator's award, decision or final determination will be binding upon respondent. Respondent must abide by any final award, decision or final determination of any fee arbitrator and must provide satisfactory proof thereof to the Office of Probation within thirty (30) days after compliance with any such final award, decision or final determination, unless respondent has previously done so.

If the State Bar Client Security Fund has reimbursed Mr. Bogar for all or any portion of any award pursuant to fee arbitration, respondent must pay restitution to the Client Security Fund of the amount paid, plus applicable interest and costs, in accordance with Business and Professions Code section 6140.5. Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

To the extent that respondent has paid any fee arbitration award prior to the effective date of the Supreme Court's final disciplinary order in this matter, respondent will be given credit for such payment(s) provided satisfactory proof of such payment(s) is or has been shown to the Office of Probation;

11. Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report required to be filed with the Office of Probation;

12. The period of probation will commence on the effective date of the final disciplinary order of the Supreme Court imposing discipline in this proceeding; and

13. At the expiration of the period of this probation, if respondent has complied with all of the terms and conditions of probation, the order of the Supreme Court suspending respondent from the practice of law for two years will be satisfied and that suspension will be terminated.

It is also recommended that respondent be ordered to comply with the requirements of the California Rules of Court, rule 9.20, and that she be ordered to perform the acts specified in rule 9.20(a) and (c) within 30 and 40 calendar days, respectively, from the effective date of the Supreme Court's final disciplinary order in this proceeding. Failure to comply with rule 9.20 could result in disbarment. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Respondent is required to file a rule 9.20(c) affidavit even if she has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

It is further recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE), administered by the National Conference of Bar Examiners, and to provide proof of passage of the MPRE to the Office of Probation, within one year of the effective date of the Supreme Court's final disciplinary order in this proceeding.

Failure to pass the MPRE, and to provide proof of such passage, within the specified time will result in actual suspension by the State Bar Court Review Department, without further hearing, until respondent provides the required proof of passage of the MPRE.

VI. Costs

It is also 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.

VII. Order Sealing Documents

In the course of determining respondent's eligibility for participation in the State Bar Court's Alternative Discipline Program, and while respondent was participating in the Program, various documents were submitted to the court for review under confidential cover. Pursuant to Business and Professions Code section 6234, subdivision (a), and rule 806 of the Rules of Procedure of the State Bar of California, all information concerning the nature and extent of a respondent's treatment is absolutely confidential and is not to be disclosed to the public absent an express written waiver by the respondent.

In light of the foregoing,

IT IS HEREBY ORDERED that, pursuant to rules 23 and 806, all other documents not previously filed are to remain confidential and sealed.

IT IS FURTHER ORDERED that the 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: September 10, 2009.

RICHARD A. PLATEL
Judge of the State Bar Court