

**PUBLIC MATTER**

**FILED**

JUL 23 2010

STATE BAR COURT CLERK'S OFFICE  
SAN FRANCISCO

**STATE BAR COURT OF CALIFORNIA**

**HEARING DEPARTMENT – SAN FRANCISCO**



In the Matter of ) Case No.: **06-C-13105-PEM; 06-C-13106**  
) **06-C-13107 (Cons.)**  
**CAROL DEBRA MARMOREK** )  
) **ORDER MODIFYING DECISION AND**  
**Member No. 213399** ) **ORDER SEALING CERTAIN**  
) **DOCUMENTS FILED JUNE 16, 2010.**  
**A Member of the State Bar.** )

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On its own motion, the court modifies the decision and order sealing documents filed June 16, 2010 as follows:

A. At page 1, paragraph two, after “substance abuse issues” insert: “that were the result of a violent assault where she sustained severe head injuries”;

B. Delete the text of the entire section entitled “RECOMMENDED DISCIPLINE” commencing at page 5 and ending on page 7 and insert instead:

“IT IS HEREBY ORDERED that respondent Carol Debra Marmorek is hereby publicly reprovved. Pursuant to the provisions of rule 270(a) of the Rules of Procedure of the State Bar of California (Rules of Procedure), the public reprovval will be effective when this decision becomes final. Furthermore, pursuant to rule 9.19(a) of the California Rules of Court and rule 271 of the Rules of Procedure, the court finds that the interests of respondent and the protection of the public will be served by the following specified conditions being attached to the public reprovval imposed in this matter. Failure to comply with any conditions attached to this reprovval may

constitute cause for a separate proceeding for wilful breach of rule 1-110 of the Rules of Professional Conduct of the State Bar of California (Rules of Professional Conduct).

Respondent is hereby ordered to comply with the following conditions attached to her public reproof for a period of one year following the effective date of the public reproof imposed in this matter:

1. During the reproof period, respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
2. Within thirty (30) days after the effective date of discipline, respondent must contact the State Bar's Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of reproof. 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 reproof, respondent must promptly meet with the probation deputy as directed and upon request;
3. Within ten (10) calendar days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including her current office address and telephone number, respondent must report such change in writing to both the Office of Probation and to the Membership Records Office of the State Bar;
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 during which these reproof conditions are in effect. Under penalty of perjury, respondent must state in each report whether she has complied with the State Bar Act, the Rules of Professional Conduct and all conditions of reproof during the preceding calendar quarter. If the first report will cover less than thirty (30) calendar days, that report must be submitted on the reporting 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 twenty (20) calendar days before the last day of the period of reprobation and no later than the last day of the reprobation period;

5. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully, all inquiries of the Office of Probation which are directed to her personally or in writing relating to whether respondent is complying or has complied with the conditions of her reprobation;

6. Respondent must comply with all provisions and conditions of her 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 her 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 her 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.

It is not recommended that respondent take and pass the Multistate Professional Responsibility Examination (MPRE) or the State Bar's Ethics School as she has already done so.

Respondent completed the Multistate Professional Responsibility Examination and the State Bar's Ethics School in 2006 and 2008, respectively, early in her suspension, by agreement with the court. She does not have to do so again."<sup>1</sup>

**IT IS SO ORDERED.**

Dated: July 23, 2010

  
PAT McELROY  
Judge of the State Bar Court

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<sup>1</sup> The Multistate Professional Responsibility Examination is not required as a condition of a reproof. (*Segretti v. State Bar* (1976) 15 Cal.3d 878, 891 [the condition of a professional responsibility examination is mandatory when an attorney is placed on suspension, even if stayed]).

**CERTIFICATE OF SERVICE**

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on July 23, 2010, I deposited a true copy of the following document(s):

ORDER MODIFYING DECISION AND ORDER SEALING CERTAIN DOCUMENTS  
FILED JUNE 16, 2010.

in a sealed envelope for collection and mailing on that date as follows:

by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

CAROL D. MARMOREK  
PO BOX 320832  
LOS GATOS, CA 95032

by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

by overnight mail at , California, addressed as follows:

by fax transmission, at fax number . No error was reported by the fax machine that I used.

By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Erica Dennings, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 23, 2010.



George Hue  
Case Administrator  
State Bar Court

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case No.: 06-C-13105-PEM; 06-C-13106
	)	06-C-13107 (Cons.)
<b>CAROL DEBRA MARMOREK</b>	)	
	)	<b>DECISION AND ORDER SEALING</b>
<b>Member No. 213399</b>	)	<b>CERTAIN DOCUMENTS</b>
	)	
A Member of the State Bar.	)	

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**INTRODUCTION**

After the filing of formal disciplinary charges against respondent Carol Debra Marmorek in August 2006, in the captioned consolidated cases, this matter was referred to the State Bar Court's Alternative Discipline Program (ADP) and assigned to the undersigned judge.

In August 2005, respondent contacted the State Bar of California's Lawyer Assistance Program (LAP) to assist her with her substance abuse issues. On December 21, 2005, she executed a Participation Agreement with the LAP.

On June 13, 2007, respondent submitted a declaration establishing a nexus between her substance abuse and mental health issues and her misconduct in this matter.

The parties entered into a Stipulation Re Facts and Conclusions of Law in April 2007.

On August 27, 2007, the court lodged its Confidential Statement of Alternative Dispositions and Orders, the Contract and Waiver for Participation in the State Bar Court's ADP

and the parties' Stipulation Re Facts and Conclusions of Law. Respondent was accepted into the ADP on November 16, 2006.

Thereafter, respondent participated successfully in both the State Bar's LAP and the court's ADP.

The LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program dated March 10, 2010, which reflects that respondent has satisfied all lab testing requirements set forth in the LAP Participation Agreement/Plan for at least one year prior to March 10, 2010, and that during this time period, there were no unauthorized substances detected nor was LAP aware of the use of any unauthorized substances.

On April 28, 2010, the court issued an order finding that respondent has successfully completed the ADP. Thereafter, on that same date, the parties' Stipulation Re Facts and Conclusions of Law was filed, and this matter was submitted for decision.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

In this matter, respondent and the State Bar stipulated to her culpability for violations of Business and Professions Code section 6068, subdivision (a)<sup>1</sup> due to misdemeanor convictions for violating Penal Code, section 647, subdivision (b) (two instances) and Vehicle Code section 31 (one instance). In mitigation, respondent was remorseful; had emotional or physical difficulties and severe financial stress; engaged in community service; participated in LAP; and displayed candor or cooperation. In aggravation, respondent had one prior disciplinary record and engaged in multiple acts of misconduct.

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

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<sup>1</sup> Future references to section are to the Business and Professions Code section unless otherwise stated.

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.

Furthermore, at the time respondent engaged in her misconduct, she was suffering from substance abuse issues which 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.)

Furthermore, at the time respondent engaged in the misconduct, she 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 executed a Participation Agreement with the LAP on December 21, 2005 and has been successfully participating in the LAP.

Respondent successfully completed the ADP. Respondent's successful completion of the ADP and her successful participation in LAP qualify as clear and convincing evidence that respondent no longer suffers from the mental health and substance abuse issues which led to her 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 the State Bar's briefs on the issue of discipline, which were received by the court on April 11 and August 17, 2007, and respondent's brief on the issue of discipline, which was received by the court on August 8, 2007, and considering the Standards for Attorney Sanctions for Professional Misconduct (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 declarations regarding the nexus between her substance abuse and mental health issues and her 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 did not 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 their briefs, the State Bar initially sought

actual suspension for 30 days and then for two years while respondent sought a private reproof or dismissal.

The court also considered standards 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 3.2 and 3.4; sections 6101, 6102 and 6106; Penal Code section 647, subdivision (b); Vehicle Code section 31; California Rules of Court, rule 9.10; and the case law cited in the parties' discipline briefs, including *In re Silverton* (2005) 36 Cal.4th 81; *Arm v. State Bar* (1990) 50 Cal.3d 763; *In re Andreani* (1939) 14 Cal.2d 736; *In re Stevens* (1925) 197 Cal. 408; *Davis v. City of San Diego* (2003) 106 Cal.App.4<sup>th</sup> 893; *Bihun v. AT&T Information Systems, Inc.* (1993) 13 Cal.App.4<sup>th</sup> 976; and *In the Matter of Buckley* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 201.

After agreeing to the discipline that the court would recommend to the Supreme Court if she successfully completed or was terminated from, or failed to successfully complete, the ADP, respondent executed the Contract to participate in the ADP; the Contract was lodged with the court; and respondent's period of participation in the ADP commenced.

Thereafter, respondent successfully participated in the ADP and, as noted above, the court has 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 court's Confidential Statement of Alternative Dispositions and Orders if respondent successfully completed the ADP.

#### **RECOMMENDED DISCIPLINE**

IT IS HEREBY RECOMMENDED that respondent Carol Debra Marmorek be suspended from the practice of law for one year; that execution of that suspension be stayed, and that respondent be placed on probation for two years, with the following conditions:

1. Respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;

2. Within thirty (30) days after the effective date of discipline, respondent must contact the State Bar's 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;

3. Within ten (10) calendar days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including her current office address and telephone number, respondent must report such change in writing to both the Office of Probation and to the Membership Records Office of the State Bar;

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 during which these probation conditions are in effect. Under penalty of perjury, respondent must state in each report whether she has complied with the State Bar Act, the Rules of Professional Conduct and all conditions of probation during the preceding calendar quarter. If the first report will cover less than thirty (30) calendar days, that report must be submitted on the reporting 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 twenty (20) calendar days before the last day of the period of probation and no later than the last day of the probation period;

5. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully, all inquiries of the Office of Probation which are directed to her

personally or in writing relating to whether respondent is complying or has complied with the conditions of her probation;

6. Respondent must comply with all provisions and conditions of her 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 her 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 her 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.

7. These probation conditions will commence on the effective date of the Supreme Court's final disciplinary order in this proceeding.

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

It is not recommended that respondent take and pass the Multistate Professional Responsibility Examination (MPRE) or the State Bar's Ethics School as she has already done so.

#### **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. It is further recommended that Carol Debra Marmorek be ordered to reimburse the Client Security Fund to the extent that the

misconduct in this matter results in the payment of funds and such payment be enforceable as provided for 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 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: June \_\_\_\_\_, 2010

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PAT McELROY  
Judge of the State Bar Court