

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case No. <b>06-C-13678-PEM</b>
	)	
<b>KATHERINE M. CONARD MANUEL</b>	)	
<b>AKA</b>	)	<b>DECISION AND DISCIPLINE ORDER;</b>
<b>KATHERINE MARY TANNENBAUM,</b>	)	<b>ORDER SEALING CERTAIN</b>
	)	<b>DOCUMENTS</b>
<b>Member No. 214275,</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

**I. Introduction**

In this conviction referral matter, respondent **Katherine M. Conard Manuel**<sup>1</sup> stipulated, among other things, to: (1) driving under the influence of alcohol; (2) driving while having a .08% or higher blood alcohol level; (3) hit and run driving; and (4) giving false information to a police officer. Respondent also stipulated that the circumstances surrounding her convictions for driving under the influence, driving with a blood alcohol level of .08% or higher, and hit and run driving did not involve moral turpitude; she further stipulated that the circumstances surrounding her conviction for giving false information to a police officer did involve moral turpitude.

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<sup>1</sup>Pursuant to Evidence Code section 452, the court takes judicial notice of respondent’s name change as found in the State Bar’s Member Name Change History, maintained as part of the State Bar of California’s official membership records. Effective July 2, 2001 through August 6, 2007, respondent’s official membership name was Katherine Mary Tannenbaum. Effective August 7, 2007, respondent’s official membership name was changed to Katherine Mary Conard Manuel.

In 2007, respondent sought to participate in the State Bar's Lawyer Assistance Program (LAP) and State Bar Court's Alternative Discipline Program (ADP). She has now successfully completed the ADP. (Rules Proc. of State Bar, rules 800-807.) Accordingly, respondent is hereby privately reprovved with conditions for two years.

## **II. Significant Procedural History**

After the transmittal to the State Bar Court of the records of conviction of respondent in September 2006, the Review Department of the State Bar Court issued an order in case No. 06-C-13678, referring respondent's non-final misdemeanor convictions for a hearing and decision limited to whether the facts and circumstances surrounding respondent's non-final misdemeanor convictions involved moral turpitude or other misconduct warranting discipline. The referral order was filed on October 2, 2006.

A Notice of Hearing on Conviction was filed against respondent on October 16, 2006.

In April 2007, respondent began participation in the State Bar's Lawyer Assistance Program (LAP) for assistance regarding her abuse of alcohol. At a status conference held on May 7, 2007, the court issued an order referring this matter to the ADP.

On July 6, 2007, notice of finality of respondent's conviction was transmitted to the State Bar Court. Thereafter, on July 11, 2007, the Review Department issued an augmented referral order in this matter.

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

On July 27, 2007, respondent executed a Participation Agreement with the LAP.

On August 7, 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 (Contract), and the parties' Stipulation Re Facts and Conclusions of Law; and respondent's

period of participation in the ADP commenced on August 7, 2007. The court also determined that respondent's abuse of alcohol directly caused her misconduct.

On May 5, 2009, the LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program (certificate), setting forth that respondent has complied with the requirements of the LAP Participation Agreement/Plan for one year prior to the date of this certificate, and that during this period, no unauthorized substances were detected. The certificate was received by the State Bar Court Clerk's Office on May 20, 2009.

On July 27, 2009, the court found that respondent successfully completed the ADP and ordered the stipulation lodged August 7, 2007, be filed. The court also indicated that it would issue this decision, imposing the lower level of discipline reflected in its 2007 confidential statement of alternative dispositions.

### **III. Findings of Fact and Conclusions of Law**

The Stipulation Re Facts and Conclusions of Law (stipulation), approved by the court and filed on July 27, 2009, is attached hereto and incorporated by reference as if fully set forth herein. The stipulation sets forth the factual findings, conclusions of law and certain aggravating and mitigating circumstances in this matter.

Briefly, respondent's convictions involved the following: (1) driving under the influence of alcohol (Veh. Code, § 23152, subd. (a)); (2) driving while having a .08% or higher blood alcohol level (Veh. Code, § 23152, subd. (b));<sup>2</sup> (3) hit and run driving (Veh. Code, §20002, subd. (a)); and (4) giving false information to a police officer (Veh. Code, §31).<sup>3</sup> Respondent

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<sup>2</sup> Special allegation of .20% blood alcohol level (Veh. Code §23578), with which respondent was criminally charged, was found to be true, as was special allegation of a prior DUI conviction (Veh. Code §23540).

<sup>3</sup> Respondent was also convicted of driving when her privilege was restricted for a prior wet reckless conviction (Veh. Code, § 14601.2, subd. (a)). Respondent was sentenced for her vehicle code convictions on November 2, 2006; at that time the Vehicle Code, section 14601.2, subdivision (a) conviction was dismissed.

stipulated that the circumstances surrounding her convictions pursuant to Vehicle Code section 23152, subdivision (a); section 23152, subdivision (b); and section 2002, subdivision (a) did not involve moral turpitude; she further stipulated that the circumstances surrounding her conviction pursuant to Vehicle Code section 31 involved moral turpitude. Respondent also acknowledged that by her conduct, she willfully violated section 6068, subdivision (a), of the Business and Professions Code.

At the time respondent engaged in her misconduct, she was suffering from substance abuse issues, which directly caused the misconduct that forms the basis for this proceeding.

In accordance with applicable Supreme Court case law, an attorney's rehabilitation from substance abuse problems can be accorded significant mitigating 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.) The court finds by clear and convincing evidence that respondent has satisfied all three conditions necessary to receive significant mitigating weight for her recovery efforts.

Respondent has been participating in the LAP since 2007. The LAP issued a Certificate of One Year Participation In the Lawyer Assistance Program – Substance Use, dated May 5, 2009, which reflects, in pertinent part, that LAP is not aware of the use of any unauthorized substances by respondent for at least one year prior to the issue date of the Certificate.

Respondent also has successfully completed the ADP. Respondent's successful completion of the ADP, which required her successful participation in the LAP, as well as the Certificate of One Year Participation In the Lawyer Assistance Program, qualifies as clear and convincing evidence that respondent has undergone a meaningful and sustained period of rehabilitation.

Accordingly, it is appropriate to consider respondent's successful completion of the ADP as a

further mitigating circumstance in this matter. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,<sup>4</sup> std. 1.2(e)(iv).)

#### **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 parties' briefs on discipline and considering the Standards for Attorney Sanctions for Professional Misconduct (standard(s)), relevant case law,<sup>5</sup> the parties' stipulation setting forth the facts, conclusions of law and aggravating and mitigating circumstances with respect to this conviction referral proceeding and the court's determination regarding the nexus between respondent's substance abuse issues and her misconduct, the court advised the parties of the discipline that would be imposed if respondent successfully completed the ADP and the discipline that would be recommended to the Supreme Court if respondent was terminated from the ADP.

After agreeing to the recommended discipline, which the court would impose 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 was accepted for participation in the ADP.

Thereafter, respondent successfully participated in the ADP and, as set forth in the order filed on July 27, 2009, the court found that respondent successfully completed the ADP.

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<sup>4</sup> Future references to standard(s) or std. are to this source.

<sup>5</sup> In particular, the court considered standards 1.2, 1.3, 1.4, 1.6, 2.6 and 3.4 and *In re Kelley* (1990) 52 Cal.3d 487.

Accordingly, the court will impose the discipline set forth in the Confidential Statement of Alternative Dispositions and Orders if respondent successfully completed the ADP.

## **V. Discipline**

### **A. Private Reproval with Conditions Attached**

Respondent **Katherine M. Conard Manuel** is hereby privately reproved with the following conditions attached for two years (Rules Proc. of State Bar, rule 271):

1. During the reproval period, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;
2. Within 10 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 number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report any such change in writing to the Membership Records Office of the State Bar and to the Office of Probation;
3. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the reproval period. Under penalty of perjury, respondent must state whether she has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions set forth in this Decision 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 reproval period and no later than the last day of said period;

4. 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 attached to the reprobation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the reprobation period, respondent must promptly meet with the probation deputy as directed and upon request;
5. 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 these reprobation conditions;
6. Within one 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, given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015-2299, and passage of the test given at the end of that session. Arrangements to attend Ethics 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 Requirement (MCLE), and respondent will not receive MCLE credit for attending Ethics School (Rules Proc. of State Bar, rule 3201);
7. Unless respondent has been terminated from the Lawyer Assistance Program (LAP) prior to respondent's successful completion of the LAP, respondent must comply with all provisions and conditions of respondent's Participation Agreement with the LAP and 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 respondent's compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. However, if respondent has successfully completed the LAP, respondent need not comply with this condition;

8. 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 to be filed with the Office of Probation;
9. Respondent must abstain from use of any alcoholic beverages, and must not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription; and
10. These conditions attached to the reproval will commence when this decision becomes final. (Rules Proc. of State Bar, rule 270.)

#### **VI. Direction Re Decision and Order Sealing Certain Documents**

The court directs a court case administrator to file this Decision and Discipline Order; Order Sealing Certain Documents. Thereafter, pursuant to rule 806(c) of the Rules of Procedure, all other documents not previously filed in this matter will be sealed under 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 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: October \_\_\_\_\_, 2009

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**PAT McELROY**  
Judge of the State Bar Court