

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of ) Case Nos.: **06-C-15509-RAH**  
)  
**RONALD SHUJI TAMURA,** ) **DECISION AND ORDER SEALING**  
) **CERTAIN DOCUMENTS**  
)  
**Member No. 186877,** )  
)  
A Member of the State Bar. )

**I. Introduction**

In this disciplinary proceeding, respondent **Ronald Shuji Tamura** has successfully completed the State Bar Court’s Alternative Discipline Program (ADP). (Rules Proc. of State Bar, rules 800-807.) The court recommends, among other things, that respondent be suspended from the practice of law for two years, execution of that period of suspension be stayed, and that he be placed on probation for two years, and that he be suspended from the practice of law for the first 30 days of his probation. (Rules Proc. of State Bar, rule 803)<sup>1</sup>

Because respondent was placed on inactive status for a total of 30 days, it is also recommended that he receive credit for the period of inactive enrollment towards any period of actual suspension to be imposed by the Supreme Court. (Business and Professions Code, § 6233.)

---

<sup>1</sup> References to rule are to the Rules of Procedure of the State Bar, unless otherwise noted.

## II. Significant Procedural History

After the transmittal to the State Bar Court of the records of the January 25, 2007, conviction of respondent Ronald Shuji Tamura (respondent) for violating Penal Code sections 245, subdivision (a)(2) [assault with a firearm] and 273a, subdivision (a) [child endangerment], felonies, the Review Department of the State Bar Court issued an order on February 14, 2007, in case no. 06-C-15509, placing respondent on interim suspension effective March 12, 2007, pending final disposition of this matter.<sup>2</sup> Respondent was also ordered to comply with rule 9.20 of the California Rules of Court (rule 9.20), and to perform the acts specified in paragraphs (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of respondent's interim suspension.

On January 24, 2007, respondent contacted the State Bar of California's Lawyer Assistance Program (LAP) to assist him with his mental health issues; and on February 6, 2007 formally applied to participate in the LAP.

On May 10, 2007, a Supplemental Transmittal of Records of Conviction was filed in the State Bar Court. Shortly thereafter, on May 24, 2007, the Review Department, filed an order referring the matter to the Hearing Department of the State Bar Court for a hearing and decision as to whether the facts and circumstances surrounding respondent's violation of Penal Code sections 245, subdivision (a)(2) and 273a, subdivision (a), felonies, of which respondent was convicted, involved moral turpitude or other misconduct warranting discipline, and if so found, the discipline to be imposed.

---

<sup>2</sup> The Review Department of the State Bar Court by order filed March 8, 2007, temporarily stayed the interim suspension, and referred the matter to the full review department for consideration of respondent's February 28, 2007 motion to vacate the interim suspension. Respondent's interim suspension was vacated on March 22, 2007, subject to his continued compliance with his criminal probation.

On June 8, 2007, a Notice of Hearing on Conviction was filed in case No. 06-C-15509. On June 15, 2007, respondent filed a response to the Notice of Hearing on Conviction. He also filed a request on that same date to participate in the Alternative Discipline Program (ADP). The matter, which was originally assigned to the Honorable Donald F. Miles, was referred by the court on August 7, 2007, to the Alternative Discipline Program before the undersigned judge.

Respondent submitted a declaration to the court, which was received on October 17, 2007, establishing a nexus between his mental health issues and his misconduct in this matter.

On November 19, 2007, respondent signed a Participation Plan with the LAP.

In March 2008, the parties executed a Stipulation Re Facts and Conclusions of Law (Stipulation) in this matter.

On May 20, 2008, respondent executed the Contract and Wavier for Participation in the State Bar Court's Alternative Discipline Program (Contract). On that same date, the court executed an order approving the parties' Stipulation and executed the Confidential Statement of Alternative Dispositions and Orders (Statement), which set forth the discipline that would be recommended to the Supreme Court if respondent successfully completed the ADP and the discipline that would be recommended if respondent was terminated from, or failed to successfully complete, the ADP. The Contract, Stipulation, and Statement were lodged with the court on May 20, 2008.

On May 28, 2008, the court issued an order finding that respondent is accepted into the ADP, and that the start date of respondent's participation in the ADP is May 20, 2008.

Respondent thereafter participated in the State Bar's LAP and the court's ADP.

On December 7, 2009, the LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program – Mental Health (certificate), setting forth that respondent complied with the requirements of the LAP Participation Evaluation/ Participation Plan for one year prior

to the date of the certificate, and that during the one-year period, respondent maintained mental health and stability and participated successfully in the LAP.

On January 8, 2010, the parties' stipulation was filed with the court. And, on February 12, 2010, the court issued an order, finding that respondent had successfully completed the ADP. The court also indicated that it would issue this decision recommending to the Supreme Court the imposition of the lower level of discipline reflected in its May 2008 Statement.

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

The Stipulation Re Facts and Conclusions of Law (stipulation) approved by the court and filed on January 8, 2010, is incorporated by reference as if set forth fully herein. The stipulation sets forth the factual findings, conclusions of law and certain aggravating and mitigating circumstances in this matter. The parties also stipulated that the facts and circumstances surrounding respondent's conviction did not involve moral turpitude, but did involve other misconduct warranting discipline.

Specifically, the parties stipulated that on November 7, 2006, respondent and his wife were arguing in their bedroom. Respondent started breaking things. When his wife called 911, respondent grabbed a handgun from a safe and pointed it at her. After forcing his wife to say she was sorry, respondent put the gun back in the safe. The couple's two small children came into the room. Respondent's wife kept telling respondent that he was out of control. Respondent told his wife to shut up, grabbed the gun from the safe for a second time, and pointed it at her, while the children were next to her. Respondent's wife stopped talking and respondent returned the gun to the safe. The police arrived and respondent was taken into custody without further incident. Respondent pled guilty to a felony violation of Penal Code section 245, subdivision (a)(2) [assault with a firearm] and two counts of violating Penal Code section 273a, subdivision (a) [child endangerment], which are also felonies.

In mitigation the parties stipulated that respondent has no prior record of discipline (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,<sup>3</sup> std. 1.2(e)(i)), displayed candor and cooperation with the State Bar during the disciplinary proceedings (std. 1.2(e)(v), provided evidence of his good character that was attested to by a wide range of references in the legal and general communities, who are aware of his misconduct (std. 1.2(e)(vi), and took objective steps demonstrating remorse and recognition of wrongdoing (std. 1.2(e)(vii).) In aggravation respondent caused harm to his wife and children. (Std. 1.2(b)(iv).)

At the time respondent engaged in the misconduct for which he has been found culpable, respondent was suffering from mental health issues that 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 Plan with the LAP on November 19, 2007. The LAP issued a certificate of one-year participation in the LAP, which reflects that respondent has satisfied the requirements set forth in his LAP Participation Plan for at least one year prior to December 7, 2009; and that for at least one year prior to that date, respondent has maintained mental health stability and has participated successfully in the LAP.

---

<sup>3</sup>Future references to standard(s) or std. are to this source.

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 from the LAP, qualify as clear and convincing evidence that respondent no longer suffers from the mental health issues that led to his misconduct. Accordingly, it is appropriate to consider respondent's successful completion of the ADP as a mitigating circumstance in this matter. (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 and case law cited therein, the parties' stipulation setting forth the facts, conclusions of law, and aggravating and mitigating circumstances with respect to this disciplinary proceeding, and respondent's declaration regarding the nexus between his mental health issues and his misconduct in this matter, the court advised the parties of the discipline that would be recommended to the Supreme Court if respondent successfully completed the ADP and the discipline that would be recommended if respondent were terminated from, or failed to successfully complete, the ADP.

In determining the appropriate discipline to recommend in this matter, 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, 1.5, 1.6, and 3.4, and the case law cited in the parties' briefs, including *In re Hickey* (1990) 50 Cal.3d 571; *In re Otto* (1989) 48 Cal.3d 970; and *In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406.

After agreeing to the recommended discipline that the court would recommend to the Supreme Court, 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 court's February 12, 2010 order, 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 court's 2008 Confidential Statement of Alternative Dispositions and Orders if respondent successfully completed the ADP.

## V. Recommendations

### A. Discipline

Accordingly, the court hereby recommends that respondent **Ronald Shuji Tamura** be suspended from the practice of law in California for two years, that execution of that period of suspension be stayed, and that he be placed on probation for two years, subject to the following conditions:

1. Respondent must be suspended from the practice of law for the first 30 days of the period of probation, with credit given for the period of inactive enrollment pursuant to Business and Professions Code section 6233;<sup>4</sup>

---

<sup>4</sup> It was the intention of the court and the parties that respondent be enrolled inactive for 30 days, the period of suspension that would be recommended to the Supreme Court if respondent successfully completed the ADP. Due to an error, however, respondent had been ordered inactive for a total of 27 days. Pursuant to this court's July 31, 2008 Order Enrolling Respondent Involuntary Inactive, and its August 20, 2008 Order Terminating Inactive Enrollment, respondent was involuntarily enrolled as an inactive member of the State Bar of California, commencing August 9, 2008, and continuing through and including August 22, 2008. Additionally, pursuant to this court's October 31, 2008 Order of Inactive Enrollment and December 3, 2008 Order Terminating Inactive Enrollment, respondent was involuntarily enrolled inactive, effective November 11, 2008 through and including November 23, 2008. As such, respondent was placed on inactive status for 27 days, rather than the intended 30 days.

The court, therefore, filed an Order of Inactive Enrollment on March 19, 2010, vacating the previously ordered submission date in this matter and ordering that respondent be involuntarily enrolled inactive, effective April 2, 2010, through and including April 4, 2010. Thus, respondent was enrolled inactive for 30 days. Accordingly, the court recommends that respondent receive credit for the 30-day period of inactive enrollment pursuant to section 6233.

2. 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;
3. Within 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;
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 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;
5. 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 he 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 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, 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;
7. Within one year of the effective date of the discipline, 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;
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 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;

10. The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter; and
11. At the expiration of the period of probation, if respondent has complied with all conditions of probation, the two-year period of stayed suspension will be satisfied and that suspension will be terminated.

**B. Multistate Professional Responsibility Exam**

It is further recommended that respondent 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).)

**C. 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.

**VI. 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 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: April \_\_\_\_\_, 2010

---

**RICHARD A. HONN**  
Judge of the State Bar Court