

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES**

In the Matter of) Case Nos.: **06-O-10418-RAP**
))
)) **(06-O-10504; 06-O-11174)**
))
RICHARD SAMUEL COLLINS ,))
)) **DECISION AND ORDER SEALING**
)) **CERTAIN DOCUMENTS.**
Member No. 162552,))
))
))
A Member of the State Bar.))

INTRODUCTION

In this disciplinary proceeding, respondent Richard Samuel Collins was accepted for participation in the State Bar Court’s Alternative Discipline Program (ADP).¹ As the court has now terminated respondent from the ADP, it will recommend to the Supreme Court that respondent 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 five years on conditions, including actual suspension for two years and until he makes specified restitution and until he complies with standard 1.4(c)(ii), Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct.²

¹ The ADP was formerly known as the (Pilot) Program for respondents with Substance Abuse or Mental Health Issues.

² Future references to standard or std. are to this source.

SIGNIFICANT PROCEDURAL HISTORY

A Notice of Disciplinary Charges was filed in on July 25, 2006.³ Later, this matter was referred to the undersigned judge for evaluation of respondent's eligibility for participation in the State Bar Court's ADP.

In furtherance of his participation in the ADP, respondent signed a Participation Agreement with the LAP. Respondent also submitted a declaration to the court on March 27, 2007 which established a nexus between respondent's mental health issues and his misconduct in this matter.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation). The Stipulation sets forth the factual findings, legal conclusions and mitigating and aggravating circumstances in this matter.

Following briefing by the parties, the court advised the parties of (1) the discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP and (2) the discipline which would be recommended if respondent failed to successfully complete, or was terminated from, the ADP. After agreeing to those alternative possible dispositions, respondent and his counsel executed the Contract and Waiver for Participation in the State Bar Court's ADP; the court executed a Confidential Statement of Alternative Dispositions and Orders (Confidential Statement) formally advising the parties in writing of the alternative discipline recommendations in this matter; the court accepted respondent for participation in the ADP; and respondent's period of participation in the ADP began on December 4, 2007.

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

³ State Bar Court case no. 06-O-13473 was never consolidated with these proceedings and was returned to standard proceedings by order filed December 23, 2008. The matter was concluded and the Supreme Court issued a disciplinary order, no. S175653, on October 20, 2009.

On December 20, 2010, the court held a hearing and filed an order finding respondent not to be in compliance with the conditions of ADP and terminating him from the program.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties' Stipulation, including the court's order approving the Stipulation, is attached hereto and hereby incorporated by reference, as if fully set forth herein. Respondent stipulated to the following wilful violations in three client matters: rules 3-100(A); 3-700(A)(2); 3-700(D)(2) (three counts); and 4-100(B)(3) of the Rules of Professional Conduct as well as sections 6068(i) and (m); 6103 (two counts) and 6106.

In aggravation, the parties stipulated that harm resulted and that respondent committed multiple acts of misconduct.

The absence of prior discipline was considered in mitigation.

As respondent did not successfully complete the ADP, he will not receive mitigating credit for his period of participation in either the ADP or the LAP.

DISCUSSION

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

In determining the appropriate alternative discipline recommendations if respondent successfully completed the ADP or was terminated from, or failed to successfully complete, the ADP, 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, 1.4, 1.5, 1.6, 1.7,

2.3, 2.4, 2.6 and 2.10 and *In re Silverton* (2005) 36 Cal.4th 81; *In re Morse* (1995) 11 Cal.4th 184; *Cannon v. State Bar* (1990) 51 Cal.3d 1103; *In re Young* (1989) 49 Cal.3d 257; *Brookman v. State Bar* (1988) 46 Cal.3d 1004; *Chasteen v. State Bar* (1985) 40 Cal.3d 586; and *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73.

Because respondent has now been terminated from the ADP, this court, in turn, now recommends to the Supreme Court the imposition of the higher level of discipline, set forth more fully below.

DISCIPLINE

Recommended Discipline

It is hereby recommended that respondent Richard Samuel Collins, State Bar Number 162552, 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 probation⁴ for a period of five years subject to the following conditions:

1. Respondent Richard Samuel Collins is suspended from the practice of law for two years and until he provides proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct; and until he makes restitution to the following:
 - a. Taunya B. Haverfield in the amount of \$1,202.00 plus 10% interest per annum from October 21, 2005 (or to the Client Security Fund to the extent of any payment from the fund to Taunya B. Haverfield, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnish satisfactory proof thereof to the State Bar's Office of Probation;
 - b. Richard Basil in the amount of \$1,080.00 plus 10% interest per annum from March 17, 2006 (or to the Client Security Fund to the extent of any payment from the fund to Richard Basil, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnish satisfactory proof thereof to the State Bar's Office of Probation; and
 - c. Mary Wheeler in the amount of \$250.00 plus 10% interest per annum from January 3, 2006 (or to the Client Security Fund to the extent of any payment from the fund to Mary Wheeler, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnish satisfactory proof thereof to the State Bar's Office of Probation;

⁴ The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d). To the extent the Client Security Fund has paid only principal amounts, respondent will still be liable for interest payments to the individuals set forth above.

With each written quarterly report required herein (set forth below), respondent must provide to the Office of Probation satisfactory proof of all restitution payments made by him during that quarter or applicable reporting period.

To the extent respondent has paid any restitution prior to the effective date of the Supreme Court's final disciplinary order in this proceeding, respondent will be given credit for such payments provided satisfactory proof of same is or has been shown to the Office of Probation.

2. Respondent Richard Samuel Collins must also comply with the following additional conditions of probation:

- a. 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;
- b. Within ten (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;
- c. Within thirty (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;
- d. 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 respondent 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 thirty (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 twenty (20) days before the last day of the period of probation and no later than the last day of the probation period;

- e. 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;
- f. 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, and passage of the test given at the end of that session;
- g. If respondent has not been terminated from the Lawyer Assistance Program (LAP), respondent must comply with all provisions and conditions of his Participation Agreement/Plan with the 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.

If respondent has been terminated from the LAP prior to his successful completion of the LAP, respondent must obtain an examination of his mental and physical condition with respect to his 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 he 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.

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.

At the expiration of the period of probation, if Richard Samuel Collins has complied with all conditions of probation, the three-year period of stayed suspension will be satisfied and that suspension will be terminated.

Multistate Professional Responsibility Examination

It is not recommended that Richard Samuel Collins be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) as he has already been ordered to do so in connection with S175653.

Rule 9.20, California Rules of Court

It is not recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court since he already did so in connection with S175653 and has not been entitled to practice since.

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.

DIRECTION RE DECISION AND ORDER SEALING CERTAIN DOCUMENTS

The court directs a court case administrator to file this Decision and Order Sealing Certain Documents; Order Re Termination of Involuntary Inactive Enrollment. Thereafter, pursuant to rule 5.388(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 5.12 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 disclosures. 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: January 27, 2011.

RICHARD A. PLATEL
Judge of the State Bar Court