

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

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| In the Matter of |) | Case Nos.: 06-O-12427 (06-O-12803; |
| |) | 06-O-13144; 06-O-15066; |
| PATRICIA MARLENE BOAG, |) | 07-O-10489)-RAP |
| |) | |
| Member No. 174680, |) | DECISION AND ORDER SEALING |
| |) | CERTAIN DOCUMENTS |
| A Member of the State Bar. |) | |
| |) | |

INTRODUCTION

In this original disciplinary proceeding, respondent Patricia Marlene Boag (respondent) was accepted for participation in the State Bar Court’s Alternative Discipline Program (ADP). As the court has now found that respondent has successfully completed the ADP, the court will recommend to the Supreme Court that respondent be suspended from the practice of law in California for two years, that execution of that period of suspension be stayed, and that she be placed on probation for three years subject to certain conditions, including a 30-day period of suspension (with credit given for the period of inactive enrollment under Business and Professions Code section 6233).¹

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¹ Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

PERTINENT PROCEDURAL HISTORY

On June 7, 2007, respondent contacted the State Bar of California's Lawyer Assistance Program (LAP) to assist her with her mental health issue.

The State Bar of California, Office of the Chief Trial Counsel (State Bar), filed a Notice of Disciplinary Charges (NDC) against respondent on August 31, 2007. This matter was originally assigned to the Honorable Richard A. Honn.

On October 22, 2007, Judge Honn filed an order referring this matter to the court's ADP before the undersigned judge. On November 5, 2007, this matter was reassigned to the undersigned judge for all further proceedings.

Respondent executed a Participation Plan with the LAP on November 15, 2007.

Respondent submitted a nexus statement to the court on April 3, 2008, establishing a nexus between her mental health issue and her misconduct in this matter.²

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) on May 15, 2008, which was received by the court that same day.

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 to the Supreme Court if respondent was terminated from, or failed to successfully complete, the ADP. After agreeing to the alternative discipline recommendations, the court memorialized in writing the alternative dispositions in a Confidential Statement of Alternative Dispositions and Orders (Confidential Statement); respondent executed the Contract and Waiver for Participation in the State Bar Court's ADP (Contract); the court signed an order approving the parties' Stipulation; the court accepted respondent for participation in the ADP; and respondent's period of participation in the ADP

² This was actually an addendum to an earlier nexus statement submitted by respondent.

commenced on September 29, 2008.³ The Confidential Statement and Contract were lodged, and the parties' Stipulation was filed, on October 6, 2008.

On December 17, 2008, the court filed an order pursuant to section 6233, enrolling respondent as an inactive member of the State Bar of California effective December 22, 2008, for a period of 30 days. It was ordered that at the expiration of the 30-day inactive enrollment period, respondent's status will be restored as an active member of the State Bar of California.⁴

Respondent has now participated in both the State Bar's LAP and the court's ADP for a significant period of time. Thus, after receiving proof from a mental health professional that was satisfactory to the court, the court issued an order finding that respondent has successfully completed the ADP, and this matter was submitted for decision.

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 in five client matters that she intentionally, repeatedly, or recklessly failed to perform legal services with competence in willful violation of rule 3-110(A) of the Rules of Professional Conduct.⁵ In four client matters, she stipulated to failing to refund unearned fees in willful violation of rule 3-700(D)(2), and in one client matter, respondent stipulated that she failed, upon termination of employment, to promptly release to a client, at the client's request, all the client's papers and property in willful violation of rule 3-700(D)(1).

³ On October 6, 2008, the court filed an order finding that respondent is accepted into the ADP, and the start date of respondent's participation in the ADP is September 29, 2008.

⁴ As such, respondent was enrolled inactive commencing December 22, 2008, through January 20, 2009.

⁵ Unless otherwise indicated, all further references to rules are to this source.

In aggravation, respondent's misconduct resulted in harm to clients. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(iv).) In addition, respondent's current misconduct evidences multiple acts of misconduct. (Standard 1.2(b)(ii).)

In mitigation, respondent has no prior record of discipline (standard 1.2(e)(i)); displayed spontaneous cooperation and candor with the victims of her misconduct and to the State Bar during disciplinary investigation and proceedings (standard 1.2(e)(v)); suffered extreme difficulties in her personal life at the time of the misconduct which were other than emotional or physical in nature; and respondent's good character is attested to by a wide ranges of references in the general and legal communities who are aware of the full extent of her misconduct (standard 1.2(e)(vi)). In addition, at the time of her misconduct, respondent suffered from extreme emotional difficulties which expert testimony would establish was directly responsible for the misconduct. This, however, is not a mitigating factor unless there is clear and convincing evidence that respondent no longer suffers from such difficulties. (Standard 1.2(e)(iv).) However, as respondent has now successfully completed the ADP, such extreme emotional difficulties will be considered as a further mitigating circumstance in this matter. (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.)

In determining the appropriate alternative discipline to recommend 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, 2.4(b), and 2.10 and *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631; *In the Matter of Lais* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907 and *Calvert v. State Bar* (1991) 54 Cal.3d 765.

Because respondent has now successfully completed the ADP, this court, in turn, now recommends to the Supreme Court the imposition of the lower level of discipline, set forth more fully below.

RECOMMENDED DISCIPLINE

IT IS HEREBY RECOMMENDED that respondent **PATRICIA MARLENE BOAG**, State Bar Number 174680, be suspended from the practice of law in California for two years, that execution of that period of suspension be stayed, and that she be placed on probation for a period of three years⁶ subject to the following conditions:

1. Respondent Patricia Marlene Boag is suspended from the practice of law for the first 30 days of probation (with credit given for inactive enrollment, which was effective December 22, 2008, through January 20, 2009 (Bus. & Prof. Code, § 6233)).
2. Respondent Patricia Marlene Boag 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;
 - b. 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;
 - c. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's

⁶ 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.)

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 her 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;

- 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. Respondent must comply with all provisions and conditions of his Participation Plan/Agreement 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 Plan/Agreement 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; and

- h. Within 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 Corona, Tobar and Sanchez matters (Bus. & Prof. Code, § 6201) and provide satisfactory proof of such to the State Bar's Office of Probation within 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 Everardo M. Corona, Carlos Jair Tobar and/or Alfonso Sanchez within 15 days after such request or agreement or within 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 30 days after issuance of any award, decision or final determination by any fee arbitrator pursuant to such fee arbitration, or within 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 pay the amount(s) awarded by the arbitrator(s) to Everardo M. Corona, Carlos Jair Tobar, and/or Alfonso Sanchez. Respondent must also provide satisfactory proof of such payment(s) to the Office of Probation within 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 Everardo M. Corona, Carlos Jair Tobar and/or Alfonso Sanchez 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, subdivision (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.

3. At the expiration of the period of probation, if Patricia Marlene Boag has complied with all conditions of probation, the two-year period of stayed suspension will be satisfied and that suspension will be terminated.

It is further recommended that Patricia Marlene Boag be ordered to 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 suspension. (Cal. Rules of Court, rule 9.10(b).)

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. Thereafter, pursuant to rule 5.388(c) (former 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 5.12 (former 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: May 10, 2011.

RICHARD A. PLATEL
Judge of the State Bar Court