

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: <b>06-O-12467-DFM</b>
	)	
<b>JAMES JOSEPH BRUSTMAN,</b>	)	<b>DECISION AND ORDER SEALING</b>
	)	<b>CERTAIN DOCUMENTS</b>
<b>Member No. 47523,</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

Following an Early Neutral Evaluation Conference held on May 7, 2007, the Honorable Richard A. Honn referred respondent James Joseph Brustman (respondent) to the undersigned judge to determine respondent’s eligibility for participation in the State Bar Court’s Alternative Discipline Program (ADP).

Thereafter, on May 11, 2007, respondent contacted the State Bar of California’s Lawyer Assistance Program (LAP) to assist him with his substance abuse issue.

The State Bar of California, Office of the Chief Trial Counsel (State Bar), filed a Notice of Disciplinary Charges (NDC) against respondent on May 22, 2007, in case no. 06-O-12467.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) on July 17, 2007, which was received by the court on August 21, 2007.

On August 22, 2007, respondent submitted to the court a declaration regarding the nexus between his substance abuse issue and his misconduct in this matter.

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

On April 22, 2008, the court executed the Confidential Statement of Alternative Dispositions and Orders (Confidential Statement) which set forth 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 failed to successfully complete, the ADP. Also on April 22, 2008, respondent and his counsel executed the Contract and Waiver for Participation in the State Bar Court's ADP (Contract). Respondent was accepted into the ADP and his period of participation in the ADP commenced as of April 25, 2008.

On May 2, 2008, the Confidential Statement, Contract, and Stipulation were lodged. Also on May 2, 2008, the court filed an order enrolling respondent as an inactive member of the State Bar of California pursuant to Business and Professions Code section 6233 effective December 1, 2008. Respondent's inactive enrollment under Business and Professions Code section 6233 ended on December 31, 2008.

After his period of participation in the ADP commenced, respondent successfully participated in both the State Bar's LAP and the court's ADP. Thereafter, on November 10, 2009, the court found that respondent has successfully completed the ADP, and this matter was submitted for decision on that date.<sup>1</sup>

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

In case no. 06-O-12467, respondent was retained by Iris Duenas (also known as Blanca Duenas) to represent her in a personal injury matter. In October 2004, the personal injury matter settled, and respondent received two settlement drafts which he deposited into his client trust account on November 4, 2004. Thereafter, respondent: (1) failed to maintain client funds in his client trust account and misappropriated client funds in willful violation of rule 4-100(A) of the

---

<sup>1</sup> On November 12, 2009, the court filed an order finding that respondent has successfully completed the ADP.

Rules of Professional Conduct of the State Bar of California (RPC); (2) committed an act or acts involving dishonesty, moral turpitude or corruption in willful violation of section 6106 of the Business and Professions Code by misappropriating funds held in his client trust account on behalf of Ms. Duenas and other clients; and (3) recklessly, repeatedly, or intentionally failed to perform legal service with competence in willful violation of rule 3-110(A) of the RPC by failing to timely pay his client, failing to timely satisfy medical liens, failing to take steps to timely negotiate a medical lien, failing to timely satisfy the balance of a lien, and by allowing his client to be subjected to the threat of adverse legal proceedings and collections as a result of respondent's actions.

In mitigation, respondent has suffered emotional/physical difficulties and has suffered other difficulties in his personal life. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e)(iv).) Respondent was diagnosed with liver cancer in February 2006. Thereafter, he was subjected to numerous medical procedures. During mid-June and mid-August 2006, respondent was confined to his home. Respondent has also had to care for his spouse.

In aggravation, respondent has a prior record of discipline. (Std. 1.2(b)(i).) Effective April 9, 1998, respondent was publicly reprimanded with conditions for one year in case no. 96-O-02722, etc. for violations of rules 3-110(A) and 4-100(B)(4) of the RPC and section 6068, subdivision (m) of the Business and Professions Code. As a further aggravating circumstance, respondent's misconduct in the present matter evidences multiple acts of wrongdoing. (Std. 1.2(b)(ii).)

The parties' stipulation as to facts and conclusions of law, including the court's order regarding the stipulation, is attached hereto and hereby incorporated by reference, as if fully set

forth herein. The stipulation as to facts and conclusions of law set forth the factual findings, legal conclusions, and aggravating and mitigating circumstances in this matter.

Furthermore, at the time respondent engaged in his misconduct, he was suffering from a substance abuse issue, and respondent's substance abuse issue 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.)

Respondent executed a Participation Plan with the LAP on November 19, 2007. The LAP issued a Certificate of One Year of Participation In the Lawyer Assistance Program – Substance Use – dated October 19, 2009, which reflects that the LAP is not aware of the use of any unauthorized substances by respondent for at least one year prior to this date.

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 of one-year participation in the LAP, qualify as clear and convincing evidence that respondent no longer suffers from the substance abuse issue which 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).)

### **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 briefs by both respondent and the State Bar on the issue of discipline, and considering the Standards for Attorney Sanctions for Professional Misconduct and case law cited therein, the parties' stipulation setting forth the facts, conclusions of law, and the aggravating and mitigating circumstances in this matter, and respondent's declaration regarding the nexus between his substance abuse issue and his 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 failed to 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 particular, the court considered standards 1.2, 1.3, 1.4, 1.5, 1.6, 1.7(a), 2.2(a), 2.2(b), and 2.4(b), and the case law cited in the parties' briefs, including *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280; *McKnight v. State Bar* (1991) 53 Cal.3d 1025; *Waysman v. State Bar* (1986) 41 Cal.3d 452, and *Schultz v. State Bar* (1975) 15 Cal.3d 799.

After agreeing to the discipline which the court would recommend to the Supreme Court 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 began his period of participation in the ADP a few days later.

Respondent thereafter successfully participated in the ADP, and on November 10, 2009, 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 Confidential Statement of Alternative Dispositions and Orders if respondent successfully completed the ADP.

**RECOMMENDED DISCIPLINE**

**IT IS HEREBY RECOMMENDED** that respondent **JAMES JOSEPH BRUSTMAN**, State Bar Number 47523, be suspended from the practice of law in California for one (1) year, that execution of that period of suspension be stayed, and that he be placed on probation for a period of three (3) years<sup>2</sup> subject to the following conditions:

1. Respondent James Joseph Brustman is suspended from the practice of law for the first thirty (30) days of probation (with credit given for the period of inactive enrollment pursuant to Business and Professions Code section 6233 which commenced on December 1, 2008 and ended on December 31, 2008).
2. Respondent James Joseph Brustman 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

---

<sup>2</sup> 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.)

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 (1) 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 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;
- h. Unless, within the period of his ADP participation, respondent provided to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School and passage of the test given at the end of that session, within one (1) year after 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 Client Trust Accounting 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, and passage of the test given at the end of that session. Arrangements to attend Ethics School

Client Trust Accounting 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 (MCLE) requirement, and respondent will not receive MCLE credit for attending Trust Accounting School. (Rules Proc. of State Bar, rule 3201.); and

- i. If respondent possesses client funds at any time during the period covered by a required quarterly report, respondent must submit with each required report a certificate from a certified public accountant or other financial professional approved by the Office of Probation (accountant's certificate), certifying that respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Client's Funds Account"; and respondent has kept and maintained the following:
  - (a) a written ledger for each client on whose behalf funds are held that sets forth:
    1. the name of such client,
    2. the date, amount, and source of all funds received on behalf of such client,
    3. the date, amount, payee, and purpose of each disbursement made on behalf of such client, and
    4. The current balance for such client;
  - (b) a written journal for each client trust fund account that sets forth:
    1. the name of such account,
    2. the date, amount, and client affected by each debit and credit, and
    3. the current balance in such account;
  - (c) all bank statements and cancelled checks for each client trust account; and
  - (d) each monthly reconciliation (balancing) of (a), (b), and (c) above, and if there are any differences between the monthly total balances reflected in (a), (b), and (c) above, the reason for the differences, and that respondent has maintained a written journal of securities or other properties held for a client that specifies:
    1. each item of security and property held,
    2. the person on whose behalf the security or property is held,



3. the date of receipt of the security or property,
4. the date of distribution of the security or property,  
and
5. the person to whom the security or property was  
distributed.

If respondent does not possess any client funds, property or securities during the entire period covered by a report, respondent must so state under penalty of perjury in the report submitted to the Office of Probation for that reporting period. In this circumstance, respondent need not submit the accountant's certificate described above.

The requirements of this condition are in addition to those set forth in rule 4-100 of the Rules of Professional Conduct of the State Bar of California.

3. It is also recommended that, at the expiration of the period of probation, if James Joseph Brustman has complied with all conditions of probation, the one (1) year period of stayed suspension will be satisfied and that suspension will be terminated.

It is further recommended that James Joseph Brustman 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).)

### **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 PARTIES' STIPULATION AND COURT'S DECISION AND ORDER**

### **SEALING CERTAIN DOCUMENTS; FURTHER ORDER**

The court directs a court case administrator to file the parties' Stipulation Re Facts and Conclusions of Law and 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: March \_\_\_\_\_, 2011

---

DONALD F. MILES  
Judge of the State Bar Court