

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 06-O-12517-DFM
)	(06-O-12518; 06-O-14218)
LORI SMITH,)	
)	DECISION AND ORDER SEALING
Member No. 196156,)	CERTAIN DOCUMENTS
)	
<u>A Member of the State Bar.</u>)	

INTRODUCTION

In this original disciplinary proceeding, Respondent Lori Smith (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 one (1) year, that execution of that period of suspension be stayed, and that she be placed on probation for two years subject to certain conditions.

PERTINENT PROCEDURAL HISTORY

Following the filing of a Notice of Disciplinary Charges (NDC) against Respondent by the State Bar of California's Office of the Chief Trial Counsel (State Bar) on November 29, 2007, Respondent requested referral for evaluation of her eligibility for participation in the State Bar Court's ADP. There being no opposition by the State Bar, the Honorable Richard A. Honn

granted Respondent's request, and this matter was referred to the ADP before the undersigned judge.

In furtherance of her participation in the ADP, Respondent contacted the State Bar's Lawyer Assistance Program (LAP) to assist with her mental health issue and signed a LAP Participation Plan on September 13, 2007. Respondent also submitted a declaration to the court on May 8, 2008, which established a nexus between Respondent's mental health issue and her misconduct in this matter.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) in March 2008. The Stipulation sets forth the factual findings, legal conclusions, and mitigating and aggravating circumstances in this matter.

Following briefing by the parties, the court issued a Confidential Statement of Alternative Dispositions and Orders dated September 4, 2008, formally advising 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 executed the Contract and Waiver for Participation in the State Bar Court's ADP; the court accepted Respondent for participation in the ADP; and Respondent's period of participation in the ADP began on September 11, 2008.

Respondent thereafter participated successfully in both the LAP and the State Bar Court's ADP. On April 26, 2010, after receiving a Certificate of One Year of Participation in the LAP - Mental Health, the court filed an order finding that Respondent has successfully completed the ADP.

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. The stipulation includes three client matters.

In the first matter, Respondent stipulated to willfully violating: (1) rule 3-700(D)(2) of the Rules of Professional Conduct of the State Bar of California¹ by failing to refund unearned fees promptly; (2) rule 4-100(A) by not maintaining client funds in her client trust account; and (3) Business and Professions Code section 6068, subdivision (i),² by failing to cooperate in a disciplinary investigation.

In the second matter, Respondent stipulated to willfully violating: (1) rule 3-110(A) by intentionally, recklessly, or repeatedly failing to perform legal services with competence; (2) rule 3-700(D)(1) by failing to promptly return a client's file; (3) rule 3-700(D)(2) by failing to promptly refund unearned fees; and (4) section 6068, subdivision (i), by failing to cooperate in a disciplinary investigation.

In the third matter, Respondent stipulated to willfully violating: (1) rule 4-100(A) by commingling personal funds and otherwise misusing her client trust account; (2) section 6068, subdivision (i), by failing to cooperate in a disciplinary investigation; and (3) section 6068, subdivision (j), by failing to update her official State Bar membership records address.

In mitigation, Respondent displayed spontaneous cooperation and candor with the State Bar during the disciplinary investigation and proceedings (Rules Proc. of State Bar, tit. IV, Stds.

¹ Unless otherwise indicated, all further references to rule(s) refer to the Rules of Professional Conduct of the State Bar of California.

² Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

for Atty. Sanctions for Prof. Misconduct, std. (e)(v)).³ The extreme emotional difficulties Respondent was suffering from at the time of the misconduct, and her successful completion of the ADP warrant additional consideration in mitigation. (Std. 1.2(e)(iv).) No aggravating circumstances were involved. (Std. 1.2(b).)

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, 2.2(b), 2.4(b), 2.6, and *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal State Bar Ct. Rptr. 354, and *Chasteen v. State Bar* (1985) 40 Cal.3d 586.

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, contained in the Confidential Statement.

DISCIPLINE

Recommended Discipline

It is hereby recommended that Respondent **Lori Smith**, State Bar Number 196156, be suspended from the practice of law in California for one (1) year, that execution of that period of

³ All further references to standard(s) or std. are to this source.

suspension be stayed, and that she be placed on probation⁴ for a period of two (2) years, subject to the following conditions:

- 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 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 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;

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.)

- 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 session⁵;
- g. Respondent must comply with all provisions and conditions of her 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 her 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;
- h. 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, within the same period of time, given periodically by the State Bar at either 180 Howard Street, San Francisco, California 94105-1639, or at 1149 South Hill Street, Los Angeles, California 90015, and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement; and Respondent will not receive MCLE credit for attending the Ethics School Client Trust Accounting School (Rule 3201, Rules of Procedure of the State Bar.)⁶;
- i. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from a certified public accountant or other financial professional approved by the Office of Probation⁷ (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 "Clients' Funds Account"; and Respondent has kept and maintained the following:

⁵ If Respondent provides proof to the Office of Probation that she completed this condition during her period of participation in the ADP, Respondent need not again comply with this condition.

⁶ If Respondent provides proof to the Office of Probation that she completed this condition during her period of participation in the ADP, Respondent need not again comply with this condition.

⁷ Approval may not be unreasonably denied.

- i. 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;
- ii. 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;
- iii. All bank statements and cancelled checks for each client trust account; and
- iv. Each monthly reconciliation (balancing) of (i), (ii), and (iii) above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii) 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.⁸

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 filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above; and

- j. Respondent must pay restitution to the following individuals of the amounts set forth below, plus ten percent (10%) interest per annum, accruing from the date specified below (or to the Client Security Fund [CSF] to the extent of any payment from the fund to any such individual(s), plus interest and costs, in accordance with Business and Professions Code section 6140.5) and provide satisfactory proof thereof to the Office of Probation. Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d). To the extent the CSF has paid only principal

⁸ The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct of the State Bar of California

amounts, Respondent will still be liable for interest payments to said individual(s), as set forth above.

<u>Payee</u>	<u>Amount</u>	<u>Plus 10% interest per annum from</u>
Jeishyel Tobar	\$1,126.85	April 20, 2006
Michael Smith	\$2,253.75	October 4, 2005

With each written quarterly report required herein, Respondent must provide to the Office of Probation satisfactory proof of all restitution payments made by her during that quarter or applicable reporting period.

To the extent that 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 such is or has been shown to the Office of Probation.

At the expiration of the period of probation, if Lori Smith has complied with all conditions of probation, the one (1) year period of stayed suspension will be satisfied and that suspension will be terminated.

Multistate Professional Responsibility Examination

It is further recommended that Lori Smith 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.⁹ 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. It is further recommended that Lori

⁹ The Confidential Statement permitted respondent to complete this condition during her period of participation in the ADP. The court's records do not indicate that respondent completed this condition during her period of participation in the ADP. If this is inaccurate, respondent should promptly file a motion for reconsideration.

Smith be ordered to reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and that such payment obligation be enforceable as provided for under Business and Professions Code section 6140.5.

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 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 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: June ____, 2010

DONALD F. MILES