

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case No.: <b>06-O-13190-PEM</b>
	)	
<b>JEFFREY ALAN NELSON,</b>	)	<b>DECISION AND ORDER SEALING</b>
	)	<b>CERTAIN DOCUMENTS</b>
<b>Member No. 74834,</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

**I. Introduction**

In this original disciplinary proceeding respondent **Jeffrey Alan Nelson** (respondent) was accepted for participation in the State Bar Court’s Alternative Discipline Program (ADP). (Rules Proc. of State Bar, rules 800-807.) As the court has found that respondent successfully completed the ADP, the court will recommend to the Supreme Court that respondent be suspended from the practice of law in California for six months, that execution of that period of suspension be stayed, and that he be placed on probation for two years subject to certain conditions, including that he be suspended from the practice of law for the first 60 days of probation. (Rules Proc. of State Bar, rule 803.)<sup>1</sup>

Because respondent was enrolled as an inactive member of the State Bar of California pursuant to Business and Professions Code section 6233, effective December 11, 2007 through

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

January 28, 2009, which period of inactive enrollment exceeds the recommended 60-day period of suspension if respondent successfully completes the ADP, it is also recommended that he receive credit for the for the period of inactive enrollment towards any period of actual suspension to be imposed by the Supreme Court.

## **II. Significant Procedural History**

In August 2006, respondent contacted the State Bar of California's Lawyer Assistance Program (LAP) to assist him with his mental health issues. He signed a pre-enrollment participation plan on August 18, 2006. The State Bar of California, Office of the Chief Trial Counsel (State Bar), filed a Notice of Disciplinary Charges (NDC) against respondent on September 8, 2006. Thus, before any filing of formal disciplinary charges by the State Bar, respondent sought to participate in the State Bar's Lawyer Assistance Program (LAP).

Respondent executed a Participation Agreement with the LAP on March 16, 2007.

On May 21, 2007, respondent submitted a declaration to the court, which established that at the time of his misconduct he was suffering from mental health issues. The parties also entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) in this matter in May 2007. The Stipulation was received by the court on May 22, 2007. Respondent's declaration and the stipulated facts, as well as the report of a medical professional, establish a causal connection between respondent's mental health issues and the misconduct found in this disciplinary proceeding. As such, the court found that respondent had adequately established a nexus between his mental health issues and his misconduct in this matter, i.e., that his mental health issues directly caused the misconduct set forth in this matter.

On September 4, 2007, the court lodged its Confidential Statement of Alternative Dispositions and Orders (Statement), setting forth the recommended discipline if respondent successfully completed or was terminated from or failed to complete the ADP. On that same

day, respondent entered into a Contract and Waiver for Participation in the State Bar Court's Alternative Discipline Program; the parties' Stipulation was lodged with the court; the court accepted respondent for participation in the ADP; and respondent's period of participation in the ADP began on September 4, 2007.

On March 15, 2010, the court found that respondent successfully completed the ADP and subsequently ordered the stipulation lodged September 4, 2007, to be filed. 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 the Statement.

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

The Stipulation Re Facts and Conclusions of Law approved by the court and filed on March 15, 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.

Briefly, respondent stipulated to professional misconduct, including willfully violating Business and Professions Code section 6068, subdivision (k) by failing to comply with the terms attached to his disciplinary probation, including failing to timely file quarterly reports and failing to provide the Office of Probation<sup>2</sup> with sufficient documentation to show that he had complied with his mental health reporting condition. In aggravation, respondent had a prior record of discipline and committed multiple acts of misconduct. In mitigation respondent showed candor and suffered from extreme difficulties in his family life, which were other than emotional or physical in nature.

In addition to the mitigating circumstances set forth above, at the time that respondent engaged in misconduct, he was suffering from mental health issues which causally contributed to

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<sup>2</sup> The State Bar's Office of Probation was previously known as the Probation Unit. The court will use the current name, the Office of Probation, in this decision.

his misconduct. Supreme Court and Review Department case law establish that extreme emotional difficulties are a mitigating factor where expert testimony establishes that these 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 Agreement with the LAP on March 16, 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 (Agreement) Plan for at least one year prior to March 3, 2010; and, that for at least one year prior to that date, respondent has maintained mental health stability and has participated successfully in the LAP.

As set forth, *ante*, respondent has been participating in the LAP since 2007, and has 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 which led to his misconduct. Accordingly, it is appropriate to consider respondent's successful completion of the ADP as a further mitigating circumstance in this matter. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,<sup>3</sup> std. 1.2(e)(iv).)

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

#### 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 State Bar's brief on the issue of discipline which was received by the court on July 3, 2007, and respondent's brief on the issue of discipline which was received by the court on July 6, 2007, and considering the standards and case law cited therein, the parties' stipulation setting forth the facts, conclusions of law, and the aggravating and mitigating circumstances, 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 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, 1.7, and 2.6, and the case law cited in the parties' briefs, including *In re Silvertown* (2005) 36 Cal.4th 81 and *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17.

After agreeing to the discipline that 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 was accepted for participation in the ADP.

Thereafter, respondent successfully participated in the ADP; and, as set forth in the order filed on March 15, 2010, the court found that respondent successfully completed the ADP. Accordingly, the court will recommend to the Supreme Court the imposition of the discipline set forth in the court's Confidential Statement if respondent successfully completed the ADP.

## **V. Recommendations**

### **A. Discipline**

It is hereby recommended that respondent **Jeffrey Alan Nelson**, be suspended from the practice of law in California for six months, that execution of that period of suspension be stayed, and that he be placed on probation for a period of two years subject to the following conditions:

1. Respondent Jeffrey Alan Nelson must be suspended from the practice of law for the first sixty days of his probation,<sup>4</sup> (with credit given for the period of inactive enrollment pursuant to Business and Professions Code section 6233, which commenced on December 11, 2007 and ended on January 29, 2009);
2. Respondent Jeffrey Alan Nelson 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 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

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<sup>4</sup> The probation period and respondent's probation conditions will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

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 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 and any probation monitor assigned under these conditions 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;<sup>5</sup>
- g. Unless respondent has been terminated from the Lawyer Assistance Program (LAP) prior to respondent's successful completion of the LAP, respondent must comply with all conditions and provisions of respondent's Participation Agreement with the LAP and 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 respondent's compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. However,

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<sup>5</sup> If respondent successfully completed a session of the State Bar Ethics School while he was participating in the Alternative Discipline Program, as permitted pursuant to this court's Alternative Discipline Program Status Conference Order, which was issued on December 10, 2007, and filed on December 11, 2007, and provided satisfactory proof of such successful completion to the Office of Probation or provides satisfactory proof of such completion within 90 days of the effective date of the discipline herein to the Office of Probation, respondent will have satisfied his Ethics School probation condition.

if respondent has successfully completed the LAP, respondent need not comply with this condition.

3. At the expiration of the period of this probation, if Jeffrey Alan Nelson has complied with all the terms of probation, the six-month period of stayed suspension will be satisfied and that suspension will be terminated.

**B. Multistate Professional Responsibility Exam**

It is further recommended that respondent must 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).) Or, in the alternative, respondent must provide satisfactory proof to the State Bar's Office of Probation in Los Angeles within 90 days after the effective date of the Supreme Court's disciplinary order in this matter, that he has taken and passed the MPRE during the period of his participation in the Alternative Discipline Program.<sup>6</sup>

**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. It is further recommended that Jeffrey Alan Nelson 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.

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<sup>6</sup> Pursuant to this court's Alternative Discipline Program Status Conference Order, which was issued on December 10, 2007, and filed on December 11, 2007, respondent was permitted to take the MPRE while participating in the Alternative Discipline Program.



## **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 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

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PAT McELROY  
Judge of the State Bar Court