

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 06-O-15337-LMA
)	
CHRISTINA JOHNSON,)	DECISION AND ORDER SEALING
)	CERTAIN DOCUMENTS
Member No. 114232,)	
)	
<u>A Member of the State Bar.</u>)	

Introduction¹

In this original disciplinary proceeding, respondent Christina Johnson (respondent) was accepted for participation in the State Bar Court's Alternative Discipline Program (ADP). As the court has now terminated respondent from the ADP, the court will recommend to the Supreme Court that respondent be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that she be placed on probation for two years subject to certain conditions, including a 30-day period of suspension.

Significant Procedural History

Respondent contacted the State Bar's Lawyer Assistance Program (LAP) in September 2009, for assistance with her mental health and substance abuse issues.

¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

The State Bar of California, Office of the Chief Trial Counsel (State Bar) filed a Notice of Disciplinary Charges (NDC) against respondent on October 5, 2009, in case no. 06-O-15337. The matter was assigned to the undersigned judge.

On November 16, 2009, a status conference was held, and this matter was referred to the State Bar Court's ADP before the undersigned judge for evaluation of respondent's eligibility for participation in that program.

In furtherance of her participation in the ADP, respondent signed a long-term Participation Plan with the LAP on December 4, 2009.

Respondent submitted a nexus statement to the court on December 15, 2009, which established a nexus between respondent's mental health and substance abuse issues and her misconduct in this matter.

By March 3, 2010, the parties had entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) in case no. 06-O-15337. The Stipulation sets forth the factual findings, legal conclusions, and mitigating and aggravating circumstances in this matter. The Stipulation was received by the court on March 3, 2010.

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 executed the Contract and Waiver for Participation in the State Bar Court's ADP (Contract); 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 parties' Stipulation was filed; the court accepted respondent

for participation in the ADP; and respondent's period of participation in the ADP began on April 26, 2010.²

Respondent thereafter participated in both the LAP and the State Bar Court's ADP. Respondent was receiving financial assistance from the LAP. Respondent requested an extension of the financial assistance she had been receiving. However, she was granted only a partial extension of her financial assistance. She received a six-month extension which included the cost for a certain requirement of participation and \$200 a month towards the cost of another requirement of participation. Respondent, however, was not given an extension with respect to other costs associated with her participation in the LAP. Respondent requested that the decision be reviewed on appeal, but the LAP Oversight Committee affirmed the decision of the Financial Assistance Sub-Committee. As such, respondent could no longer afford the cost of participating in the LAP and withdrew from the LAP on January 19, 2010.

Because respondent was no longer participating in the LAP in violation of her ADP Contract, the court filed an order on March 9, 2011, ordering respondent to show cause, in writing, as to why she should not be terminated from the ADP and have the high level of discipline recommended to the Supreme Court.

The State Bar filed a response to the court's order to show cause on March 15, 2011. Respondent filed her declaration and her response to the order to show cause on March 24, 2011. In her response, respondent requested a hearing on the order to show cause. She also requested in her response that the court take judicial notice of certain facts and requested that the parties' Stipulation be amended in certain respects.³

² The Contract and the Confidential Statement were lodged on April 26, 2010, and the parties' Stipulation was also filed on that date.

³ Judicial notice has been taken of the requested facts. Respondent's request to amend the parties' Stipulation as set forth in her March 24, 2011 response to the order to show cause is denied.

The OSC hearing was held on April 25, 2011. The court did not terminate respondent from the ADP at that time. Rather, the court indicated that it would consider permitting respondent to remain in the ADP with conditions to be determined by the court if respondent could obtain a certificate from the LAP indicating she had successfully completed the LAP or compliance for the year 2010. If respondent was able to obtain such a certificate, the court would hold a further hearing on a set date during which there would be further discussion and argument as to whether respondent would be terminated from the ADP. If respondent did not obtain the LAP certificate, no hearing would occur, and respondent would be terminated from the ADP. Respondent was also directed by the court to provide a full waiver to the LAP so that the LAP could communicate with the State Bar.

As of May 18, 2011, respondent had not provided a certificate from the LAP or a full waiver to the LAP so that the State Bar could communicate with the LAP. Therefore, on May 18, 2011, the State Bar renewed its request to terminate respondent from the ADP.

On May 19, 2011, the court received a certificate from the LAP dated May 11, 2011, setting forth that the LAP is not aware of the use of any unauthorized substances by respondent during the one year period of January 19, 2010 to January 19, 2011. Also, on May 19, 2011, the court received, through respondent's counsel, a communication from the LAP indicating that a request had been received to provide a One-Year Certificate - Mental Health regarding respondent but that a certificate could not be provided at that time for several reasons.

On June 3, 2011, respondent filed a response to the State Bar's renewed request for respondent's termination from the ADP, along with the declaration of respondent's counsel. Respondent's declaration was also received by the court in early June 2011.

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The hearing on the court's order to show cause was held on June 7, 2011. No good cause having been shown, respondent was terminated from the ADP, and this matter was submitted for decision.⁴

Findings of Fact and Conclusions of Law

Case No. 06-O-15337 – The Haselip Matter

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.

In case no. 06-O-15337, respondent stipulated that she: (1) failed to perform, in willful, repeated, and reckless violation of rule 3-110(A); (2) failed to keep her client reasonably informed of significant developments in a matter in which respondent agreed to provide legal services in willful violation of section 6068, subdivision (m); (3) willfully failed to promptly release, upon termination of employment, to her client, at her client's request, all the client papers and property in willful violation of rule 3-700(D)(1); (4) willfully failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to her client in willful violation of rule 3-700(A)(2); and (5) violated or disobeyed court orders requiring her to do or forbear an act connected with or in the course of her profession which she ought in good faith to do or forbear in willful violation of section 6103.

Aggravation⁵

Multiple Acts/Pattern of Misconduct (Std. 1.2(b)(ii).)

In aggravation, respondent's misconduct involved multiple acts of misconduct.

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⁴ The court filed an order on June 8, 2011, terminating respondent from the ADP.

⁵ All further references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Harm to Client/Public/Administration of Justice (Std. 1.2(b)(iv).)

By losing the ability to assert her claim, respondent's client was harmed by respondent's misconduct.

Mitigation

No Prior Record (Std. 1.2(e)(i).)

Respondent was admitted to the practice of law in California on August 13, 1984. Respondent had practiced law for over 20 years at the time of her first act of misconduct in this matter.

Extreme Emotional/Physical Difficulties (Std. 1.2(e)(iv).)

During a portion of the misconduct, respondent suffered from mental/emotional/physical difficulties. Respondent was taking prescription medication(s) and had an adverse reaction to such medication(s).

However, as respondent did not successfully complete the ADP, she will not receive mitigating credit for her 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 certain standards and case law. In particular, the court considered standards 1.2, 1.3, 1.4, 1.5, 1.6, 2.4(b), 2.6, and 2.10 and *Layton v. State Bar* (1990) 50 Cal.3d 889; *In the Matter of Sullivan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 608; *In the Matter*

of Kopinski (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716; *In the Matter of Aulakh* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690; and *Franklin v. State Bar* (1986) 41 Cal.3d 700.

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.

Recommendations

It is hereby recommended that respondent Christina Johnson, State Bar Number 114232, be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that she be placed on probation⁶ for a period of two years subject to the following conditions:

1. Respondent Christina Johnson is suspended from the practice of law for the first 30 days of probation.
2. Respondent Christina Johnson 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 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

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.)

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 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 State Bar Ethics School, and passage of the test given at the end of that session;
- g. Respondent must obtain an examination of her mental and physical condition with respect to her substance abuse and mental health issues pursuant to rule 5.68 (former rule 184) of the Rules of Procedure of the State Bar of California (Rules of Procedure)⁷ 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 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 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 she is so complying with this condition of probation.

⁷ Effective January 1, 2011, new Rules of Procedure of the State Bar of California became effective.

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 5.300 (former 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.

3. At the expiration of the period of probation, if Christina Johnson has complied with all conditions of probation, the one-year period of stayed suspension will be satisfied and that suspension will be terminated.

Multistate Professional Responsibility Examination

It is further recommended that Christina Johnson be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order imposing discipline 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. Respondent's 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, 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: August ____, 2011

LUCY ARMENDARIZ
Judge of the State Bar Court