

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of ) Case Nos.: **06-O-15379**; 07-C-11768;  
 ) 07-C-12132 (Cons.)  
**RANDALL JOHN BOBUS,** )  
 ) **DECISION AND ORDER SEALING**  
**Member No. 75867,** ) **CERTAIN DOCUMENTS**  
 )  
A Member of the State Bar. )

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After the transmittal to the State Bar Court of the records of the conviction of respondent Randall John Bobus (respondent), the Review Department of the State Bar Court issued orders on May 30 and June 8, 2007, in case nos. 07-C-11768 and 07-C-12132, respectively, referring respondent's misdemeanor convictions of violating Vehicle Code section 23152, subdivision (b) [driving under the influence with a blood alcohol level of .08% or more] to the Hearing Department of the State Bar Court for certain action.<sup>1</sup>

A Notice of Hearing on Conviction was filed against respondent on June 13, 2007, in case no. 07-C-12132 and in case no. 07-C-11768.

On July 25, 2007, the State Bar transmitted evidence of the finality of respondent's conviction referenced in case no. 07-C-12132 to the court. On July 30, 2007, the State Bar

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<sup>1</sup> At the time of the referral, the court had not received evidence that respondent's conviction was final.

transmitted evidence of the finality of respondent's conviction referenced in case no. 07-C-11768 to the court.

On July 31, 2007, the court issued an order consolidating case no. 07-C-11768 and 07-C-12132.

Thereafter, the Review Department issued an order on August 3, 2007 in case no. 07-C-12132 augmenting its earlier reference to include a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding the offense of which respondent was convicted involved moral turpitude or other misconduct warranting discipline. On August 9, 2007, the court issued the same order in case no. 07-C-11768.

Thereafter, on September 27, 2007, respondent contacted the State Bar of California's Lawyer Assistance Program (LAP) to assist him with his substance abuse and mental health issues.

On October 2, 2007, the court issued an order referring this matter to the State Bar Court's Alternative Discipline Program (ADP)<sup>2</sup> before the undersigned judge.

Respondent executed a Participation Plan with the LAP on April 23, 2008.

On April 28, 2008, the parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) in case no. 06-O-15379 and case nos. 07-C-11768; 07-C-12132 (Cons.). The Stipulation was received by the court on April 29, 2008.

On April 29, 2008, the court filed a Notice of Disciplinary Charges (NDC) against respondent in case no. 06-O-15379.

Respondent submitted to the court a declaration dated June 3, 2008, establishing a nexus between his substance abuse and mental health issues and his misconduct in these matters.

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<sup>2</sup> The ADP was previously known as the Pilot Program for Respondents with Substance Abuse or Mental Health Issues.

On June 24, 2008, the court issued an order consolidating case no. 06-O-15379 with case nos. 07-C-11768; 07-C-12132 (Cons).

On June 30, 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 June 30, 2008: (1) respondent and his counsel executed the Contract and Waiver for Participation in the State Bar Court's ADP (Contract); (2) the court executed an order approving the parties' Stipulation; (3) the Contract, Stipulation, and Confidential Statement were lodged; and (4) respondent's period of participation in the ADP commenced. The court issued an order on July 1, 2008, finding that respondent is accepted into the ADP, and the start date of respondent's participation in the ADP is June 30, 2008.

On November 25, 2008, the court filed an order under Business and Professions Code section 6233 enrolling respondent as an inactive member of the State Bar for a period of 30 days beginning December 1, 2008. On December 26, 2008, the court filed an order terminating respondent's inactive enrollment effective December 31, 2008.

The court filed an order on July 14, 2009, noting that respondent was not in compliance with the conditions of the ADP and the LAP. The order also reflected that respondent suffered a relapse and was arrested for driving under the influence.

Respondent was terminated from the LAP on January 13, 2010. Thereafter, on February 8, 2010, the court filed an order terminating respondent from the ADP; the parties' Stipulation was filed; and this matter was submitted for a decision recommending imposition of the high level of discipline set forth in the court's Confidential Statement.

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

In case no. 06-O-15379, respondent stipulated that in or about June 1999 and continuing until March 6, 2006, respondent represented Mary Vitorelo in a family law matter. In or about August or September 2003, Vitorelo employed respondent on a contingency fee basis to represent her in a personal injury matter. Respondent stipulated that he willfully violated: (1) rule 3-110(A) of the Rules of Professional Conduct of the State Bar of California<sup>3</sup> by: (a) failing to explain or confirm his fee agreement with Vitorelo in a manner in which they had a meeting of the minds concerning the amount of respondent's contingent fee; (b) settling the personal injury case without fully explaining the details of the settlement in writing, i.e., without providing Vitorelo with a written breakdown as to how he intended to distribute the settlement funds; (c) causing Vitorelo's falsified signature to be placed on the settlement draft; (d) distributing most of the funds to himself without fully explaining his intentions to Vitorelo and without either a supporting fee agreement or express authorization from Vitorelo; (2) Business and Professions Code section 6106<sup>4</sup> by committing an act involving moral turpitude, dishonesty and corruption by causing, or through gross negligence allowing, the falsified signature of Vitorelo to be placed on the settlement draft; (3) section 6068, subdivision (m) by failing to respond promptly to reasonable status inquires of a client; (4) rule 4-100(B)(3) by failing to render appropriate accounts to a client regarding all funds of the client coming into his possession by taking funds without providing the itemized billing statement to justify the taking; (5) rule 3-700(D)(1) by failing to release promptly, upon termination of employment, to the client, at the client's request, all the client papers and property; (6) section 6068, subdivision (a) by failing to support the Constitution and laws of the United States and of this state by violating his fiduciary duties to

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<sup>3</sup> Unless otherwise indicated, all further references to rule(s) refer to the Rules of Professional Conduct of the State Bar of California.

<sup>4</sup> Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

Adams Chiropractic by withdrawing client settlement funds for fees without the knowledge and without the permission of Adams Chiropractic which had a lien against any recovery in the Vitorelo personal injury matter; (7) section 6106 by committing an act involving moral turpitude, dishonesty and corruption by mailing a letter containing misleading and false statements to a hospital which treated his client; and (8) section 6016 by committing an act involving moral turpitude, dishonesty and corruption by making misleading and false statements in a letter to his client.

In case no. 07-C-11768, respondent was arrested for driving under the influence of alcohol on April 24, 2005, by the Santa Rosa Police Department after a single-car traffic collision. Respondent's blood alcohol level was determined to be .19%. On April 20, 2007, respondent pled no contest to a misdemeanor violation of Vehicle Code section 23152, subdivision (b) and a charge of violating Vehicle Code section 23152, subdivision (a) was dismissed. Respondent stipulated that the facts and circumstances surrounding the conviction do not involve moral turpitude and do involve other misconduct warranting discipline. Respondent also acknowledged that by his conduct, he willfully violated section 6068, subdivision (a).

In case no. 07-C-12132, respondent was arrested for driving under the influence of alcohol on March 11, 2007, by the California Highway Patrol after a single-vehicle motorcycle accident. Respondent's blood alcohol level was determined to be .17%. On April 12, 2007, respondent pled no contest to a misdemeanor violation of Vehicle Code section 23152, subdivision (b). Respondent stipulated that the facts and circumstances surrounding the conviction do not involve moral turpitude and do involve other misconduct warranting discipline. Respondent also acknowledged that by his conduct, he willfully violated section 6068, subdivision (a).

In aggravation, respondent has two prior records of discipline (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i)). Effective January 1986, respondent was privately reprimanded in case no. 84-O-18481.

On January 4, 1990, the Supreme Court issued an order in S011866 (85-O-18356) suspending respondent from the practice of law for one year; staying execution of that suspension; and placing respondent on probation for two years on condition that he be actually suspended for the first 30 days of the probation period and comply with other conditions of probation. Discipline was imposed for misconduct in two client matters. Respondent stipulated that in one matter he abandoned his client in violation of sections 6068, subdivision (a) and 6103; failed to perform legal services competently in violation of former rule 6-101(A)(2); failed to maintain reasonable communication with his client in violation of section 6103; and violated his oath and duties as an attorney at law as set forth in sections 6068, subdivision (a) and 6103. In the other client matter, respondent stipulated that he abandoned his client in violation of sections 6068, subdivision (a) and 6103; failed to perform legal services competently in violation of former rule 6-101(A)(2); and violated his oath and duties as an attorney at law as set forth in section 6068, subdivision (a) and 6103. Respondent's prior private reprimand was considered an aggravating factor. In mitigation, it was noted that at the time of his misconduct, respondent was suffering from drug abuse and alcoholism, but respondent had overcome his alcohol and drug dependency and devoted substantial volunteer time to the Sonoma County Other Bar. He voluntarily withdrew from the practice of law from November 1, 1985 through January 31, 1986, to complete a residential treatment program. Thereafter, he attended approximately three AA or Other Bar meetings per day, seven days per week. Additional factors in mitigation were: (1) that respondent had been candid and cooperative with the State Bar's investigation; (2) he expressed remorse and regret with respect to the handling of the client matters; (3) respondent

made reimbursement to one client for the damages sustained as a result of respondent's failure to appear at a hearing; and (4) although the other client sued respondent for malpractice, an arbitrator issued an award in favor of respondent. As further aggravating circumstances, respondent's misconduct in the present matter was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct (std. 1.2(b)(iii)) and involved multiple acts of misconduct (std. 1.2(b)(ii)).

In mitigation, respondent was cooperative and candid with the State Bar in resolving these matters. (Std. 1.2(e)(v).) Respondent also participated in the LAP.<sup>5</sup>

The parties' stipulation as to facts and conclusions of law, including the court's order approving 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.

### **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 discipline recommendations of both the State Bar and respondent, and considering the Standards for Attorney Sanctions for Professional Misconduct and case law cited by the parties, 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 and mental health issues and his misconduct, the court

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<sup>5</sup> Although on June 30, 2008, the court approved the parties' stipulation which considered respondent's participation in the LAP a mitigating circumstance, in light of respondent's termination from the LAP, this is given little weight as a mitigating circumstance.

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 is terminated from, or fails 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, 1.7, 2.2(b), 2.3, 2.4(b), 2.6, 2.10 and 3.4, and certain case law including *Bach v. State Bar* (1987) 43 Cal.3d 848, *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490, *Edmondson v. State Bar* (1981) 29 Cal.3d 339, *Lewis v. State Bar* (1973) 9 Cal.3d 704, *Davis v. State Bar* (1983) 33 Cal.3d 231, *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, *Kent v. State Bar* (1987) 43 Cal.3d 729 and *In re Kelley* (1990) 52 Cal.3d 487.

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 participation in the ADP. However, on July 14, 2009, the court filed an order noting that respondent was not in compliance with the conditions of the ADP and the LAP, and that respondent suffered a relapse and was arrested for driving under the influence. Thereafter, respondent was terminated from the LAP on January 13, 2010. The ADP Contract executed by respondent and his counsel on June 30, 2008, states, "Respondent understands that eligibility for participation in the ADP is contingent upon Respondent's acceptance and participation in the Lawyer Assistance Program (hereinafter "LAP"). Respondent agrees to comply with all terms and conditions set forth by the LAP. Respondent understands that, if Respondent's participation in the LAP is terminated without successfully completing the LAP, Respondent's participation in the ADP will be



terminated and discipline will be imposed or recommended . . . .”<sup>6</sup> Thus, on February 8, 2010, the court filed an order terminating respondent from the ADP. Accordingly, in light of respondent’s termination from the ADP, the court will recommend to the Supreme Court the imposition of the discipline set forth in the court’s Confidential Statement of Alternative Dispositions and Orders if respondent was terminated from, or failed to successfully complete, the ADP.

### **RECOMMENDED DISCIPLINE**

**IT IS HEREBY RECOMMENDED** that respondent **RANDALL JOHN BOBUS**, State Bar Number 75867, 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 three (3) years<sup>7</sup> subject to the following conditions:

1. Respondent Randall John Bobus is suspended from the practice of law for the first six (6) months of probation.
2. Respondent Randall John Bobus 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

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<sup>6</sup> Respondent’s ADP Contract, page 2, paragraph 5.

<sup>7</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.)

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 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 State Bar Ethics School, and passage of the test given at the end of that session;
- g. Respondent must comply with all conditions of probation imposed in the underlying criminal matters and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation;
- h. Respondent must obtain psychiatric or psychological help/treatment from a duly licensed psychiatrist, psychologist, or clinical social worker at respondent's own expense a minimum of two (2) times per month and must furnish evidence to the Office of Probation that respondent is so complying with each quarterly report. Help/treatment should commence immediately, and in any event, no later than thirty (30) days after the effective date of the discipline in this matter. Treatment must continue for two (2) years or until a motion to modify this condition is granted and that ruling becomes final.

If the treating psychiatrist, psychologist, or clinical social worker determines that there has been a substantial change in respondent's condition, respondent 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 550 of the Rules of Procedure of the State Bar. The motion must be supported by a written statement from the psychiatrist, psychologist, or clinical social worker, by affidavit or under penalty of perjury, in support of the proposed modification;

- i. Respondent must abstain from use of any alcoholic beverages, and shall not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription; and
  - j. Respondent must select a licensed medical laboratory approved by the Office of Probation. Respondent must furnish to the laboratory blood and/or urine samples as may be required to show that respondent has abstained from alcohol and/or drugs. The samples must be furnished to the laboratory in such a manner as may be specified by the laboratory to ensure specimen integrity. Respondent must cause the laboratory to provide to the Office of Probation, at the respondent's expense, a screening report on or before the tenth day of each month of the probation period, containing an analysis of respondent's blood and/or urine obtained not more than ten (10) days previously.<sup>8</sup>
3. At the expiration of the period of probation, if Randall John Bobus has complied with all conditions of probation, the one-year period of stayed suspension will be satisfied and that suspension will be terminated.

It is also recommended that respondent Randall John Bobus be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one (1) 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).)

It is further recommended that respondent Randall John Bobus be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and perform the acts specified in

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<sup>8</sup> The fee arbitration condition set forth in the Confidential Statement has been satisfied. (See ADP Status Conference Order filed April 13, 2009.) Furthermore, respondent provided satisfactory proof to the Office of Probation that the chiropractor accepted respondent's payment as full satisfaction on their lien.

subdivisions (a) and (c) of that rule within thirty (30) and forty (40) calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

**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 Randall John Bobus 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 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 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: February \_\_\_\_\_, 2011

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PAT McELROY  
Judge of the State Bar Court

