

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case Nos.: 07-O-10586-PEM
)	(07-O-13556; 08-O-10169)
SCOTT CHRISTOPHER BURRELL,)	
)	DECISION AND ORDER SEALING
Member No. 167779,)	CERTAIN DOCUMENTS
)	
<u>A Member of the State Bar.</u>)	

I. INTRODUCTION

In this disciplinary proceeding, respondent Scott Christopher Burrell (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 year, that execution of that period of suspension be stayed, and that he be placed on probation for two years.

II. PERTINENT PROCEDURAL HISTORY

In November 2007, respondent contacted the State Bar’s Lawyer Assistance Program (LAP) to assist him with his mental health issue. Respondent subsequently signed a LAP Participation Plan.

On May 30, 2008, the State Bar of California’s Office of the Chief Trial Counsel (State Bar) filed a Notice of Disciplinary Charges (NDC) against respondent in case nos. 07-O-10586

(07-O-13556; 08-O-10169). Respondent sought to participate in the State Bar Court's ADP. On July 21, 2008, this matter was referred to the ADP.

On January 2, 2009, respondent submitted a declaration to the court, which established a nexus between respondent's mental health issue and the charges in this matter.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) in November 2008. The Stipulation set forth the factual findings, legal conclusions and mitigating and aggravating circumstances involved in case nos. 07-O-10586 (07-O-13556; 08-O-10169).

Following briefing by the parties, the court issued a Confidential Statement of Alternative Dispositions and Orders dated January 20, 2009, 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 dispositions, respondent and his counsel 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 January 20, 2009.

On April 18, 2011, the court issued an order finding that respondent successfully completed the ADP and this matter was submitted for decision.

III. 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. Respondent stipulated, in these three disciplinary matters, to the following violations:

- Rule 3-110(A) of the Rules of Professional Conduct of the State Bar of California¹ in two matters [failure to perform legal services with competence];

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

- Business and Professions Code section 6103² in two matters [failure to obey a court order];
- Section 6068, subdivision (m) in two matters (four total counts) [failure to respond to client inquires and keep clients reasonably informed of significant developments];
- Rule 4-100(B)(3) in one matter [failure to account];
- Rule 3-700(A)(2) in one matter [improper withdrawal];
- Section 6068, subdivision (b) in one matter [failure to maintain respect to a court];
- Section 6068, subdivision (o)(3) in one matter [failure to report sanctions]; and
- Rule 3-700(D)(1) in one matter [failure to return client file].

In aggravation, respondent committed multiple acts of misconduct and caused harm to his clients. In mitigation, respondent demonstrated remorse and had no prior record of discipline.

In addition, respondent 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 Lawyer Assistance Program - Mental Health, qualify as clear and convincing evidence that respondent no longer suffers from the mental health 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. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e)(iv).)

IV. 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.)

² All further references to section(s) are to the Business and Professions Code, unless otherwise stated.

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 discipline recommended by the parties, as well as certain standards and case law were considered. The standards and case law presented by the parties included standards 1.6(a), 2.2(b), 2.4(b), and 2.6 , and *King v. State Bar* (1990) 52 Cal.3d 307, and *In the Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831.

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 of Alternative Dispositions and Orders.

V. DISCIPLINE

It is hereby recommended that respondent **Scott Christopher Burrell**, State Bar Number 167779, be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that he be placed on probation³ for a period of two years subject to the following conditions of probation:

1. 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;
2. 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;
3. 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 the period of probation, respondent must promptly meet with the probation deputy as directed and upon request;

³ 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.)

4. 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;

5. 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; and
6. 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 provisions and conditions 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, if respondent has successfully completed the LAP, respondent need not comply with this condition.

At the expiration of the period of probation, if respondent 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 not recommended that respondent be ordered to attend the State Bar's Ethics School, as he completed Ethics School during his period of participation in the ADP, in March 2009.

It is also not recommended that respondent take and pass the Multistate Professional Responsibility Examination (MPRE), as he took and passed the MPRE during his period of participation in the ADP, in August 2009.

In addition, respondent made full restitution to Sybil Klein, the City and County of San Francisco, and Darryl Erby during his period of participation in the ADP. Accordingly, the court does not recommend that respondent be ordered to make further restitution.

VI. 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.

VII. 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 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 5.12 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 _____, 2011

PAT McELROY
Judge of the State Bar Court