

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case Nos.: 08-O-11613; 09-N-10047 (Cons.)
	)	
<b>CHESTERFIELD ADAMS SPAHR,</b>	)	<b>DECISION AND ORDER SEALING</b>
	)	<b>CERTAIN DOCUMENTS</b>
<b>Member No. 190173,</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

**I. INTRODUCTION**

In this disciplinary proceeding, respondent **Chesterfield Adams Spahr** (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 three years, that execution of that period of suspension be stayed, and that he be placed on probation for three years subject to certain conditions, including a minimum two-year period of suspension, and he will remain suspended until he provides proof to the Office of Probation of his participation in the State Bar of California's Lawyer Assistance Program (LAP) for two years from October 19, 2009.

**II. PERTINENT PROCEDURAL HISTORY**

On February 5, 2009, 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 no. 09-N-10047.

Respondent sought to participate in the State Bar Court's ADP, and on March 16, 2009, this matter was referred to the ADP.

On March 25, 2009, respondent contacted the State Bar's LAP to assist him with his substance abuse issue. Respondent signed a LAP Participation Plan on August 1, 2009.

On August 21, 2009, respondent submitted a declaration to the court which established a nexus between respondent's substance abuse issue and the charges in this matter.

On September 8, 2009, the State Bar filed a second NDC against respondent in case no. 08-O-11613. This matter was subsequently consolidated with case no. 09-N-10047.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) on September 25, 2009. The Stipulation set forth the factual findings, legal conclusions and mitigating and aggravating circumstances involved in case nos. 08-O-11613 and 09-N-10047 (Cons.).

Following briefing by the parties, the court issued a Confidential Statement of Alternative Dispositions and Orders dated October 19, 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. The hearing judge advised the parties that she would recommend a minimum two-year actual suspension (low level of discipline) to the Supreme Court if respondent successfully completed the ADP or a three-year actual suspension (high level of discipline) if respondent was terminated from the ADP.

Furthermore, the court stated it would only allow respondent to participate in the ADP if he agreed to be placed on inactive status pursuant to Business and Professions Code section 6233. Respondent agreed to be enrolled as an inactive member of the State Bar effective October 19, 2009, for a period of two years.

After agreeing to the court's alternative dispositions and being placed on inactive status, 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 October 19, 2009.

In November 2009, the State Bar requested interlocutory review of the hearing judge's high level of discipline which would be recommended if respondent was terminated from, or failed to successfully complete, the ADP. The review department found that the high level of discipline must be disbarment. Based on the review department's order of December 30, 2009, this court therefore amended its high level of discipline to disbarment. Consequently, the court lodged an Amended Confidential Statement of Alternative Dispositions and Orders on March 16, 2010.

Respondent participated successfully in both the LAP and the State Bar Court's ADP. On June 13, 2011, after receiving a Certificate of One Year of Participation in the Lawyer Assistance Program - Substance Use, the court filed an order finding that respondent has successfully completed the ADP.

### **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 that effective February 3, 2008, he was involuntarily enrolled inactive after his default was entered in State Bar Court case number 05-O-04590. Yet on April 16, 2008, he represented a client at a preliminary hearing in a criminal case. As a result, respondent stipulated to violating Business and Professions Code sections 6068, subdivision (a), and 6125.<sup>1</sup> He also stipulated that he was grossly negligent by practicing law when he should have known that he was ineligible.

Respondent also stipulated that he violated section 6103 by failing to timely comply with a Supreme Court's order filed on September 23, 2008, based on the following facts: the order required him to file a rule 9.20 compliance declaration no later than December 2, 2008; however,

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<sup>1</sup> All further references to section(s) are to Business and Professions Code, unless otherwise indicated

he did not submit his declaration until March 16, 2009—three and one-half months after it was due, and then only at the urging of the State Bar.

In aggravation, respondent's misconduct evidences multiple acts of wrongdoing. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(ii).)<sup>2</sup>

Also, respondent's two prior records of discipline are very serious aggravating circumstances. (Std 1.2(b)(1).)

Effective October 23, 2008, the Supreme Court, in matter S165359 (State Bar Court case no. 05-O-04590), imposed upon respondent a minimum 90-day actual suspension from the practice of law for violations of sections 6068, subdivisions (b) (two counts) and (i), and 6103.

Effective July 23, 2009, the Supreme Court, in matter S172493 (State Bar Court case no. 07-O-14109), imposed upon respondent a minimum one-year actual suspension from the practice of law for violations of sections 6068, subdivisions (i) and (m), and 6106, and rule 3-110(A) of the State Bar Rules of Professional Conduct.

In mitigation, 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 - Substance Use, qualify as clear and convincing evidence that respondent no longer suffers from the substance abuse 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. (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 Ca1.3d 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

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<sup>2</sup> All further references to standard(s) or std. are to this source.

ADP, the court considered the discipline recommended by the parties, as well as certain standards and case law. In particular, the court considered standards 1.3, 1.4, 1.5, 1.6, 2.3, and 2.6, , and *In the Matter of Bercovich* (1990) 50 Cal.3d. 116; *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527; and *In the Matter Rose* (1994) 3 Cal. State Bar Ct. Rptr. 192.

Because respondent has now successfully completed the ADP, this court, in turn, recommends to the Supreme Court the imposition of the lower level of discipline, set forth more fully below.

## V. DISCIPLINE

It is hereby recommended that respondent **Chesterfield Adams Spahr**, State Bar Number 190173, be suspended from the practice of law in California for three years, that execution of that period of suspension be stayed, and that he be placed on probation<sup>3</sup> for a period of three years subject to the following conditions:

1. Respondent Chesterfield Adams Spahr is suspended from the practice of law for a minimum of the first two years of probation (with credit given for inactive enrollment, which was effective October 19, 2009 (Bus. & Prof. Code § 6233)), and he will remain suspended until the following requirement is satisfied:
  - a. Respondent must provide proof to the Office of Probation of his participation in the State Bar of California's Lawyer Assistance Program (LAP) for two years from October 19, 2009.<sup>4</sup>
2. Respondent Chesterfield Adams Spahr 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;

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<sup>3</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.)

<sup>4</sup> During respondent's participation in the ADP, he satisfactorily completed 40 hours of minimum continuing legal education (MCLE). Therefore, it is not recommended that respondent be ordered to remain suspended until he completes 40 hours of MCLE as set forth in the court's Amended Confidential Statement.

- 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 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. It is not recommended that respondent be ordered to attend State Bar Ethics School, as respondent attended State Bar Ethics School on April 28, 2011, and passed the test given at the end of that session.
- 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 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;

- h. 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;
- i. 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 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 10 days previously; and
- j. Respondent must maintain with the Office of Probation a current address and a current telephone number at which respondent can be reached. Respondent must return any call from the Office of Probation concerning testing of respondent's blood or urine within 12 hours. For good cause, the Office of Probation may require respondent to deliver respondent's urine and/or blood sample(s) for additional reports to the laboratory described above no later than six hours after actual notice to respondent that the Office of Probation requires an additional screening report.

At the expiration of the period of probation, if respondent has complied with all conditions of probation, the three-year period of stayed suspension will be satisfied.

## **VI. MPRE**

It is not recommended that Chesterfield Adams Spahr be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE), because he took the MPRE in March 2011 and passed with a score of 116.

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## **VII. CALIFORNIA RULES OF COURT, RULE 9.20**

It is not recommended that Chesterfield Adams Spahr be ordered to comply with rule 9.20 of the California Rules of Court, as he complied with the requirements of rule 9.20 in connection with his inactive enrollment pursuant to section 6233.

## **VIII. 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 costs be paid with respondent's membership fees for the year 2012. If respondent fails to pay costs as described above, or as may be modified by the State Bar Court, costs are due and payable immediately.

## **IX. ORDER REGARDING INACTIVE ENROLLMENT**

It is ordered that respondent remain on inactive enrollment pursuant to section 6233 until October 19, 2011 or the effective date of the Supreme Court order in this matter, whichever occurs first.

## **X. DIRECTION RE DECISION AND ORDER SEALING CERTAIN DOCUMENTS**

The court directs a court case administrator to file the parties' Stipulation (unless it has already been filed) and this Decision and Order Sealing Certain Documents. Thereafter, pursuant to rule 5.388(c) (former rule 806(c)) of the Rules of Procedure of the State Bar (Rules of Procedure),<sup>5</sup> 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

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<sup>5</sup> Effective January 1, 2011, new Rules of Procedure of the State Bar became effective.



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: July \_\_\_\_\_, 2011

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PAT McELROY  
Judge of the State Bar Court