

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case Nos. 09-O-11892-PEM (09-O-12850;
)	10-O-00002; 10-O-03136;
)	10-O-03274; 10-O-03975);
DENNIS LYNN WRIGHT,)	11-O-13095-PEM (11-O-11922)
Member No. 60210,)	(Consolidated.)
)	
)	DECISION AND ORDER SEALING
<u>A Member of the State Bar.</u>)	CERTAIN DOCUMENTS

I. Introduction¹

In this consolidated, original disciplinary proceeding, respondent **DENNIS LYNN WRIGHT²** was accepted for participation in the State Bar Court’s Alternative Discipline Program (ADP) on April 20, 2011. However, on June 24, 2013, respondent asked to be terminated from the ADP because he was no longer able to comply with the requirements of his participation plan with the State Bar’s Lawyers Assistance Program (LAP). Thereafter, at a status conference on July 8, 2013, which respondent failed to attend, the court terminated respondent from the ADP in accordance with his request. At that time, the court also took the

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

² Respondent was admitted to the practice of law in this state on June 18, 1974, and has been a member of the State Bar of California since that time.

proceeding under submission for decision. In light of respondent's admitted misconduct, the court will recommend that respondent be placed on one year's stayed suspension and three years' probation on conditions, including a 120-day suspension. (See Rules Proc. of State Bar, rule 5.384.)

II. Pertinent Procedural History

On October 28, 2010, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed the notice of disciplinary charges (NDC) in case number 09-O-11892, which includes correlated case numbers 09-O-12850; 10-O-00002; 10-O-03136;³ 10-O-03274; and 10-O-03975. Respondent filed an answer to that NDC on December 2, 2010. Also, on December 2, 2010, respondent contacted LAP for assistance with his mental health issues.

At a status conference on December 13, 2010, the court referred the proceeding to the ADP for evaluation.

In early 2011, the court received a medical report regarding respondent's mental health issues that is dated January 17, 2011.

In March 2011, respondent submitted a Nexus Statement to the court. Respondent's Nexus Statement, which respondent executed under penalty of perjury, and the January 17, 2011 medical report establish the existence of a nexus between respondent's mental health issues and the misconduct in this case.

Also, in March 2011, the parties entered into a Stipulation Regarding Facts and Conclusions of Law (Stipulation). The Stipulation sets forth the parties' agreed-upon factual findings, legal conclusions, and mitigating and aggravating circumstances in this case. (State Bar Rules of Proc., rule 5.382(A)(3).) In addition, the parties filed briefs on the issue of discipline in March 2011.

³ At a status conference on March 7, 2011, the court dismissed case number 10-O-03136 without prejudice on the motion of the State Bar.

In April 2011, respondent executed a Contract and Waiver for Participation in the State Bar Court's ADP (Contract) and signed a LAP Participation Plan. In addition, in April 2011, the court lodged a Confidential Statement of Alternative Dispositions and Orders (Confidential Statement) formally advising the parties of (1) the discipline that the court will recommend to the Supreme Court if respondent successfully completes the ADP (the low) and (2) the discipline that the court will recommend if respondent fails to successfully complete the ADP (the high). Respondent agreed to those alternative dispositions. Therefore, on April 20, 2011, the court accepted respondent for participation in the ADP and approved and filed the Stipulation.

The State Bar filed the NDC in case number 11-O-13095 (which includes correlated case number 11-O-11922) on October 18, 2011. Respondent filed his answer to that NDC on November 18, 2011.

In October 2012, the parties executed an Amendment to Attach to the Stipulation, which contains the parties' agreed-upon factual findings, legal conclusions, and mitigating and aggravating circumstances for the additional misconduct charged in case number 11-O-13095. (State Bar Rules of Proc., rule 5.382(A)(2).) That same month, the parties submitted further briefs on discipline to address and include the additional misconduct charged in case number 11-O-13095.

Then, on November 19, 2012, the court lodged an Amended Confidential Statement of Alternative Dispositions and Orders (Amended Confidential Statement) setting forth the new low and the new high levels of discipline to cover the additional misconduct charged in the new case. Respondent agreed to the new alternative dispositions and signed an Amended Contract and Waiver for Participation in the State Bar Court's ADP (Amended Contract) on November 19, 2012. Also, on November 19, 2012, the court approved and filed the Amendment to Attach to

the Stipulation and then consolidated case number 09-O-11892 with case number 11-O-13095 for all purposes.

III. Findings of Fact and Conclusions Of Law

The Stipulation and the Amendment to Attach to the Stipulation, including the court's orders approving them, are attached hereto and incorporated by reference as if fully set forth herein. As set forth *post*, respondent stipulated to his being culpable on a total of 14 counts of misconduct involving 6 separate client matters.

Case Number 09-O-11892 (Gullette matter)

In the Gullette matter, respondent stipulated to (1) recklessly failing to perform legal services competently in willful violation of rule 3-110(A) and (2) failing to adequately communicate with the client in willful violation of section 6068, subdivision (m).

Case Number 09-O-11892 (Gullette matter)

In the Gullette matter, respondent stipulated to (1) recklessly failing to perform legal services competently in willful violation of rule 3-110(A); (2) failing to adequately communicate with the client in willful violation of section 6068, subdivision (m); and (3) failing to cooperate/participate in the State Bar's investigation of the client's complaints in willful violation of section 6068, subdivision (i).

Case Number 09-O-12850 (Dillworth Matter)

In the Dillworth matter, respondent stipulated to (1) failing to promptly return the client's file in accordance with the client's request in willful violation of rule 3-700(D)(1) and (2) failing to promptly execute a substitution-of- attorney form and forward the client's file to the client's new attorney in willful violation of Professional Conduct, rule 3-700(A)(2).

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Case Number 10-O-00002 (Keefe Matter)

In the Keefe matter, respondent stipulated to (1) failing to adequately communicate with the client in willful violation of section 6068, subdivision (m) and (2) failing to cooperate/participate in the State Bar's investigation of the client's complaints in willful violation of section 6068, subdivision (i).

Case Number 10-O-03274 (Reeves Matter)

In the Reeves matter, respondent stipulated to (1) intentionally or recklessly failing to perform legal services competently in willful violation of rule 3-110(A); (2) failing to adequately communicate with the client in willful violation of section 6068, subdivision (m); and (3) failing to cooperate/participate in the State Bar's investigation of the client's complaints in willful violation of section 6068, subdivision (i).

Case Number 10-O-03975 (Trust Account Violations)

In case number 10-O-03975, respondent stipulated to engaging in acts involving moral turpitude in willful violation of section 6106 by issuing and authorizing at least 14 insufficiently funded (NSF) checks and electronic debits on his client trust account (CTA) between May 4, 2009, and December 29, 2009. If the bank had paid the 14 NSF checks and debits, respondent's CTA would have been overdrawn by more than \$6,000.

In addition, in case number 10-O-03975, respondent stipulated to willfully violating rule 4-100(A) paying more than \$6,000 in personal expenses with funds on deposit in his CTA on at least 33 separate occasions between about January 1, 2009, and May 3, 2010. During much of that time period, client funds were also on deposit in respondent's CTA.

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Case Number 11-O-13095 (Owens Matter)

In the Owens matter, respondent stipulated to (1) repeatedly failing to perform legal services competently in willful violation of rule 3-110(A) and (2) failing to adequately communicate with the client in willful violation of section 6068, subdivision (m).

Aggravation

Respondent's misconduct involved client trust funds, and respondent either refused or was unable to account for those funds. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(iii).)⁴

Respondent's misconduct significantly harmed his clients or the administration of justice. (Std. 1.2(b)(iv).)

Respondent is culpable on 16 counts of misconduct. (Std. 1.2(b)(ii).)

Mitigation

Before respondent's misconduct began in 2008, respondent had practiced law for almost 34 years without a prior record of discipline. Even though respondent's misconduct is serious, he is entitled to very significant mitigation for his many, many years of misconduct free practice. (Std. 1.2(e)(i); *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, fn. 13 [noting that the Supreme Court has repeatedly applied standard 1.2(e)(1) in cases involving serious misconduct and citing *Rodgers v. State Bar* (1989) 48 Cal.3d 300, 317; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029].)

Because respondent did not successfully complete the ADP, he is not entitled to any mitigation for his partial participation in the ADP or LAP. Nor is respondent otherwise entitled to any mitigation for his mental health issues because he did not establish that he no longer suffers from the difficulties and issues. Nonetheless, respondent is entitled to some limited

⁴ All further references to standard(s) or std. are to this source.

mitigation because, at the time of respondent's misconduct, respondent was dealing with the aftermath of close family member's attempted suicide. (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. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

To determine the appropriate level of discipline, the court reviewed and considered (1) respondent's and the State Bar's original briefs on the issue of discipline and additional briefs on discipline after the State Bar filed additional charges against respondent in case number 11-O-13095, (2) the Stipulation and the Amendment to Attach to the Stipulation (which set forth the facts, conclusions of law, aggravation, and mitigation), (3) the standards, (4) respondent's Nexus Statement and the January 17, 2011 medical report regarding the nexus between respondent's mental health issues and his misconduct, and (5) the Confidential Statement and the Amended Confidential Statement, which advised the parties of the discipline that the court would recommend if respondent successfully completed the ADP and if respondent failed to successfully complete the ADP.

In determining the appropriate discipline to recommend, the court considered the discipline recommended by the parties, the standards, and case law. In particular, the court considered standards 1.2, 1.3, 1.4, 1.5, 1.6, 1.7(c), 2.2, 2.3, 2.4, and 2.6 and *Kelly v. State Bar* (1991) 55 Cal.3d 509; *Pineda v. State Bar* (1989) 49 Cal.3d 753; and *Lester v. State Bar* (1976) 17 Cal.3d 547.

Because respondent was terminated from the ADP, the court hereby recommends the high level of discipline to the Supreme Court.

V. Recommendations

Discipline

The court recommends that respondent DENNIS LYNN WRIGHT, State Bar Number 60210, be suspended from the practice of law in California for one year, that execution of the one-year suspension be stayed, and that he be placed on probation for three years subject to the following conditions:

1. Respondent Dennis Lynn Wright is suspended from the practice of law for the first 120 days of probation.
2. Wright must comply with the provisions of the State Bar Act, the Rules of Professional Conduct of the State Bar of California, and all the conditions of this probation.
3. 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.
4. 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. Respondent must promptly meet with the probation deputy as directed and upon request.
5. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10. 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.

6. Subject to 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.

7. 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 Ethics School and passage of the test given at the end of that session.
8. 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.
9. 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 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 12 months 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 Rules of Procedure of the State Bar, rule 5.300 et seq. 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.

10. The probation period will commence on the effective date of the Supreme Court order in this matter. (See Cal. Rules of Court, rule 9.18.) At the expiration of the period of probation, if Dennis Lynn Wright has complied with all conditions of probation, one-year stayed suspension will be satisfied and that suspension will be terminated.

Multistate Professional Responsibility Examination

It is further recommended that Dennis Lynn Wright be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to pass the MPRE within the specified time may result, without further hearing, in respondent's suspension until passage. (*Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8; but see Cal. Rules of Court, rule 9.10(b); Rules Proc. of State Bar, rules 5.161(A)(2), 5.162(A)&(E).)

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California Rules of Court, Rule 9.20

It is further recommended that respondent Dennis Lynn Wright be ordered to comply California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within thirty (30) and forty (40) calendar days, respectively, after the effective date of the Supreme Court 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 that the costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

VI. 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) of the Rules of Procedure of the State Bar of California, all other documents not previously filed in this matter are ordered sealed under 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 their 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: September ____, 2013.

PAT McELROY
Judge of the State Bar Court

