

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No.: 11-C-16467-RAP; 12-C-10024
)	(Cons.)
JAMES PEYTON COLLINS,)	
)	DECISION AND ORDER SEALING
Member No. 122739,)	CERTAIN DOCUMENTS
)	
A Member of the State Bar.)	
_____)	

Introduction

In this consolidated conviction referral proceeding, respondent James Peyton Collins¹ 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 order that respondent be publicly reprovved with conditions for one year.

Significant Procedural History

A. Case No. 11-C-16467

Following the transmittal to the State Bar Court of the records of respondent's July 29, 2011 conviction for violating Penal Code section 602(k) [trespass], a misdemeanor, which may or may not involve moral turpitude, the Review Department of the State Bar Court (review department) filed an order on October 31, 2011, in case No. 11-C-16467, referring the matter to the hearing department for a hearing and decision recommending the discipline to be imposed if

¹ Respondent was admitted to practice law in California on June 10, 1986.

the hearing department finds that the facts and circumstances surrounding the violation of which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

A Notice of Hearing on Conviction (NOH) was filed on November 7, 2011. The matter was assigned to the Honorable Richard A. Honn.

Thereafter, at a settlement conference held on January 19, 2011, the case was referred to the Alternative Discipline Program for evaluation.

On February 22, 2012, the matter was reassigned to the undersigned judge for all further proceedings. Additionally, respondent was ordered to contact and cooperate with the State Bar's Lawyer Assistance Program (LAP) and to follow any recommendation made by it regarding evaluation and treatment.

On March 23, 2012, respondent submitted his Confidential Nexus Statement in case No. 11-C-16467, which established a nexus between his mental health issues and his misconduct.

B. Case No. 12-C-10024

On April 24, 2012, the State Bar of California, Office of the Chief Trial Counsel (State Bar) transmitted evidence of finality of respondent's 2005 conviction for a violation of Penal Code section 602(f) [Trespass/Damage Sign], which conviction occurred on December 19, 2005.

Following the April 24, 2012 transmittal to the State Bar Court of the records of respondent's December 19, 2005 conviction for violating Penal Code section 602(f), a misdemeanor, which may or may not involve moral turpitude, the review department filed an order on May 18, 2012, in case No. 12-C-10024, referring the matter to the hearing department for a hearing and decision recommending the discipline to be imposed if the hearing department finds that the facts and circumstances surrounding the violation of which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

On May 24, 2012, a NOH was served on respondent and filed in case No. 12-C-10024, and the matter was assigned to the undersigned judge.

At the initial status conference, regarding case No. 12-C-10024, which took place on May 31, 2012, respondent was referred to the Alternative Discipline Program for evaluation. Additionally, the court ordered that case No. 12-C-10024 and case No. 11-C-16467 be consolidated.

B. The Consolidated Case (Case Nos. 11-C-16467; 12-C-10024 Cons.)

On September 26, 2012, respondent submitted to the court his Amended Nexus Declaration in Support of Referral to the Alternative Discipline Program in the consolidated matter, which established a nexus between his mental health issues and his misconduct in the above-referenced consolidated matter.

In April 2012, the parties had entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) in case No. 11-C-16467. And, in August 2012, they entered another Stipulation Re Facts and Conclusions of Law (Stipulation) in case No. 12-C-10024.

On October 16, 2012, respondent entered into a long-term Participation Plan with the State Bar's Lawyer Assistance Program (LAP), which was received by the court on October 17, 2012.

On October 18, 2012, the court issued a Confidential Statement of Alternative Dispositions and Orders (Statement) formally advising the parties of (1) the discipline to be imposed if respondent successfully completed the ADP and (2) the discipline which would be recommended to the Supreme Court if respondent failed to successfully complete, or was terminated from, the ADP. 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 18, 2012.

On June 17, 2014, the court received from the LAP a Certificate of One Year of Participation in the Lawyer Assistance Program – Mental Health, stating that respondent had satisfied the requirements set forth in the LAP Participation Plan for one year prior to the date of the Certificate and maintained mental health stability and participated successfully in the LAP during that period.

On June 23, 2014, respondent filed a motion for early termination from the Alternative Discipline Program. As respondent had participated in the Alternative Discipline Program since October 2012, had complied with the terms of his LAP Participation Plan, had maintained mental health stability and successfully participated in the LAP for at least one year, this court found good cause to grant respondent's motion. Thus, on August 5, 2014, the court issued an order in which it found that respondent had successfully completed the Alternative Discipline Program and granted respondent's motion for early termination from the Alternative Discipline Program.

The matter was submitted for decision on August 6, 2014.

Findings of Fact and Conclusions of Law

Culpability Findings

The parties' Stipulations filed on October 18, 2012, including the court's Alternative Discipline Program Orders approving the Stipulations are attached hereto and are hereby incorporated by reference, as if fully set forth herein.

Case No. 11-C-16467 –Misdemeanor Trespass

On May 30, 2011, respondent was arrested near an Orchard Supply Hardware Store (OSH).

On July 29, 2011, respondent pled nolo contendere to and was convicted of a violation of Penal Code section 602(k) (misdemeanor trespass). The court accepted his plea and sentenced respondent to two years' probation and fined him \$880.

Respondent stipulated that the facts and circumstances surrounding his conviction do not involve moral turpitude, but do involve other misconduct warranting discipline.

Case No. 12-C-10024 –Misdemeanor Trespass

On October 16, 2005, two witnesses were walking past a hardware store when they saw a man, not respondent, reaching under a fence surrounding the store and taking items from under the fence. The witnesses called to the man, who ignored them, while he carried the items in his hand to the store parking lot and placed them in a parked car. The man then left the store property.

The witnesses then entered the store to report what they had seen. While speaking to the store management, respondent exited the store and entered the parked car where the man had previously placed the items, which he had been carrying.

The store management contacted the police, who located respondent and the other man. Both were arrested. Although they were both charged with misdemeanor burglary and possession of burglar's tools, the charges were dismissed against respondent on December 19, 2005, when the complaint against him was amended to add one count of trespass.

On December 22, 2005, respondent pled nolo contendere to a violation of Penal Code section 602(f) (misdemeanor trespass).

The court accepted respondent's plea and suspended his sentence, placed him on one year summary probation, and fined him \$100.

Respondent stipulated that the facts and circumstances surrounding his conviction do not involve moral turpitude, but do involve other misconduct warranting discipline.

Aggravation²

Multiple Acts (Standard 1.2(b)(ii).)³

Because respondent was convicted of trespass in two separate incidents, the stipulated misconduct constitutes multiple acts of misconduct.

Mitigation

Good Character (Std. 1.2(e)(vi))

Respondent's has provided 13 favorable references in support of his good character from members of the legal and general community, who are aware of the full extent of his misconduct.

Other

Respondent has been a member of the State Bar of California since 1986, and has no prior record of discipline. His lack of a prior record of discipline in 19 years of practice of law at the time his misconduct commenced in 2005, entitles him to mitigating credit.

Respondent admitted culpability at an early stage in this proceeding. Because he has accepted responsibility for his actions and cooperated with the State Bar, respondent is receiving substantial mitigation.

In addition, it is appropriate to now consider respondent's successful completion of the ADP as a mitigating circumstance in this matter.

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

² All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

³ The Standards for Attorney Sanctions for Professional Misconduct (Standards) were revised effective January 1, 2014. However, as the parties' entered into their Stipulation prior to the effective date of the revisions, the court will cite to the former Standards which were in effect at the time the Stipulations was entered into in 2012.

highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate alternative discipline to impose or recommend if respondent successfully completed the ADP or was terminated from, or failed to successfully complete, the ADP, the court considered the disposition/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, and 3.4 and *In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406. Although not published opinions and, therefore, not precedential, the court also considered the matters which resulted in private and public reprovls, which were noted in his discipline brief.

Because respondent has now successfully completed the ADP, this court, in turn, now imposes the lower level of discipline in the Amended Confidential Statement, set forth more fully below.

Discipline Order

Accordingly, it is ordered that respondent James Peyton Collins, State Bar Number 122739, is hereby publicly reprovcd. Pursuant to the provisions of rule 5.127 of the Rules of Procedure of the State Bar (Rules of Procedure), the public reprovcl will be effective when this decision becomes final. Furthermore, pursuant to rule 9.19(a) of the California Rules of Court and rule 5.128 of the Rules of Procedure, the court finds that the interest of respondent and the protection of the public will be served by the following specified conditions being attached to the public reprovcl imposed in this matter. Failure to comply with any condition(s) attached to this public reprovcl may constitute cause for a separate proceeding for willful breach of rule 1-110 of the State Bar Rules of Professional Conduct. Respondent is hereby ordered to comply with the

following conditions attached to his public reproof for one year following the effective date of the public reproof imposed in this matter.

1. During the reproof 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 reproof. 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 reproof, respondent must promptly meet with the probation deputy as directed and upon request.

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 reproof. 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 reproof 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 reprobation and no later than the last day of the reprobation period.

5. 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 reprobation conditions.

6. 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.

7. Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.

8. Respondent must comply with all provisions and conditions of his Participation Plan/Agreement with the Lawyer Assistance Program (LAP) and must provide the Office of Probation with certification of completion of the LAP. Respondent must immediately report any non-compliance with any provision(s) or condition(s) of his Participation Plan/Agreement to the Office of Probation. Respondent 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 his compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. Respondent will be relieved of this condition upon providing to the Office of Probation satisfactory certification of completion of the LAP.

Multistate Professional Responsibility Examination

Respondent must also take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this reproof and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

Costs

Costs are 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 Discipline Order; Order Sealing Certain Documents

The court directs a court case administrator to file this Decision and Discipline Order; Order Sealing Certain Documents. Thereafter, pursuant to rule 5.388(c) of the 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 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: October 23, 2014

RICHARD A. PLATEL
Judge of the State Bar Court

