

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case No.: 11-O-11228-LMA
	)	
<b>JAMES CURTIS HOLLAND,</b>	)	<b>DECISION AND ORDER SEALING</b>
	)	<b>CERTAIN DOCUMENTS</b>
<b>Member No. 134233,</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

**Introduction**

In this original disciplinary proceeding, respondent James Curtis Holland (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 one year subject to certain conditions, including a 30 days period of suspension.

**Significant Procedural History**

The State Bar of California, Office of the Chief Trial Counsel (State Bar) filed a Notice of Disciplinary Charges (NDC) against respondent on February 24, 2012, in case No. 11-O-11228.

On February 29, 2012, respondent contacted the State Bar's Lawyer Assistance Program (LAP) to assist him with his mental health issues.

Respondent filed his response to the NDC on March 14, 2012.

Following an in-person status conference, the court filed an order referring this matter to the court's ADP.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) on May 4, 2012, and the Stipulation was received by the court on that date.

On June 21, 2012, respondent submitted his nexus statement to the court which established a nexus between respondent's mental health issue and his misconduct in this matter.

Respondent entered into a long-term Participation Plan with LAP on October 19, 2012.

Following receipt of the parties' recommendations regarding the appropriate levels of discipline in this matter, the court lodged a Confidential Statement of Alternative Dispositions and Orders on November 26, 2012, setting forth the discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP, and the discipline which would be recommended to the Supreme Court if respondent was terminated from, or failed to successfully complete, the ADP. After agreeing to the court's discipline recommendations, on November 26, 2012, respondent executed the Contract and Waiver for Participation in the State Bar Court's ADP; the court signed an order approving the parties' Stipulation, and the Stipulation was filed; and respondent was accepted for participation in the ADP. The start date of respondent's participation in the ADP was November 26, 2012.

Thereafter, respondent successfully participated in both the LAP and the ADP. On January 29, 2014, the court received a Certificate of One Year of Participation in the Lawyer Assistance Program – Mental Health dated January 24, 2014. The certificate set forth that respondent had satisfied the requirements set forth in his LAP Participation Agreement/Plan for

one year prior to the date of the certificate, and from January 2013 to January 2014, respondent had maintained mental health stability and had participated successfully in the LAP.

Thereafter, on August 25, 2014, the court filed an order finding that respondent has successfully completed the ADP.

### **Findings of Fact and Conclusions of Law**

#### **Culpability Findings**

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.

#### **Case No. 11-O-11228 (State Bar Investigation)**

In the above matter, respondent stipulated that he willfully violated rule 4-100(A) of the Rules of Professional Conduct by commingling his funds with client funds in a client trust account.

#### **Aggravation**

##### **Prior Record of Discipline (Former Standard 1.2(b)(1))<sup>1</sup>**

In aggravation, respondent has a prior record of discipline. Effective August 5, 2009, respondent was publicly reprimanded in State Bar Court case No. 07-O-14219 for violating rule 3-110(A) of the State Bar Rules of Professional Conduct.

##### **Multiple Acts/Pattern of Misconduct (Former Standard 1.2(b)(ii))**

Respondent's misconduct involves multiple acts of wrongdoing or demonstrates a pattern of misconduct.

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<sup>1</sup> The Standards for Attorney Sanctions for Professional Misconduct were revised effective January 1, 2014. However, as respondent entered into a Stipulation in this ADP matter in 2012, the former standards are the operative standards in this matter.

## **Mitigation**

### **Lack of Harm (Former Standard 1.2(e)(iii))**

Respondent's misconduct did not harm a client.

### **Good Faith (Former Standard 1.2(e)(ii))**

Respondent mistakenly believed he could pay credit card bills from his client trust account if a portion of the bill was attributable to a client.

### **Extreme Emotional Difficulties (Standard 1.2(e)(iv))**

Respondent has successfully been participating in the LAP and has successfully completed the ADP. Accordingly, it is appropriate to consider respondent's successful completion of the ADP as a further 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 highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.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 ADP, the court considered the discipline recommended by the parties, as well as certain standards and case law. In particular, the court considered former standards 1.2, 1.3, 1.4, 1.5, 1.6, 1.7(a), and 2.2(b) and *In the Matter of McKiernan* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420; *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113; *In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871; and *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615.

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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.

### **Recommendations**

It is hereby recommended that respondent James Curtis Holland, State Bar Number 134233, 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 a period of one year subject to the following conditions:

1. Respondent is suspended from the practice of law in the State of California for the first 30 days of his probation.<sup>2</sup>
2. 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.
3. 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.
4. 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.

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<sup>2</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.)

5. 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.

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 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.

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**

It is further recommended that James Curtis Holland be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order imposing discipline 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.

### **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.

### **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(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 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: November \_\_\_\_\_, 2014

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LUCY ARMENDARIZ  
Judge of the State Bar Court