

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case Nos.: **11–O–17380–DFM**
) **(11–O–17438)**
CHRISTOPHER CHARLES BARSNESS,) **DECISION AND PUBLIC REPROVAL;**
) **ORDER SEALING CERTAIN**
Member No. 222861,) **DOCUMENTS**
)
)
A Member of the State Bar.)

INTRODUCTION

In this proceeding, respondent **Christopher Charles Barsness** (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, it is ordered that Respondent be publicly reprovved and subject to the conditions attached hereto for one year, as set forth below.

PERTINENT PROCEDURAL HISTORY

A Notice of Disciplinary Charges was filed against Respondent on June 18, 2012. Thereafter, Respondent requested referral for evaluation of his eligibility for participation in the State Bar Court’s ADP and was referred on July 16, 2012.

In furtherance of his participation in the ADP, Respondent contacted the State Bar’s Lawyer Assistance Program (LAP) on July 27, 2012, to assist him with his substance abuse and mental health issues and was accepted into LAP on February 12, 2013. He signed a LAP

Participation Plan on February 26, 2013. Respondent also submitted a declaration to the court on January 15, 2013, which established a nexus between Respondent's substance abuse and mental health issues and his misconduct in this matter.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) in December 2012, which was lodged by the court on March 19, 2013, and which sets forth the factual findings, legal conclusions and mitigating circumstances in this matter.

Following briefing by the parties in November 2012, the court issued a Confidential Statement of Alternative Dispositions and Orders, dated January 25, 2013, formally advising the parties of (1) the disposition which would be imposed if Respondent successfully completed the ADP and (2) the discipline which would be imposed if Respondent failed to successfully complete, or was terminated from, the ADP. After agreeing to those alternative possible dispositions, Respondent and his counsel executed the Contract and Waiver for Participation in the State Bar Court's ADP; the court signed an order approving the parties' Stipulation, which was then filed with the court; the court accepted Respondent for participation in the ADP; and Respondent's period of participation in the ADP began on March 15, 2013.

Respondent thereafter participated in both the LAP and the State Bar Court's ADP. On February 23, 2015, after receiving a certificate from the LAP setting forth that the LAP is not aware of the use of any unauthorized substances by Respondent for at least one year prior to this date, the court filed an order finding that Respondent has successfully completed the ADP.

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 and the State Bar stipulated to the following violations in two client matters: Sections 6103 and 6068,

subdivisions (m) (one count each); and Rules of Professional Conduct, rules 3–110(A) (two counts) and 3-700(D)(2) (one count).

Aggravating factors included client harm and multiple acts of misconduct. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b).)¹ Mitigating factors included no prior discipline and financial difficulties. (Std. 1.2(e).)

At the time Respondent engaged in his misconduct, he was suffering from substance abuse issues, and Respondent's substance abuse issues directly caused or contributed to the misconduct which forms the basis for this proceeding. Supreme Court case law establishes that an attorney's rehabilitation from alcoholism or other substance abuse problems can be accorded significant weight if it is established that (1) the abuse was addictive in nature; (2) the abuse causally contributed to the misconduct; and (3) the attorney has undergone a meaningful and sustained period of rehabilitation. (*Harford v. State Bar* (1990) 52 Cal.3d 93, 101; *In re Billings* (1990) 50 Cal.3d 358, 367.)

Supreme Court and Review Department case law establish that extreme emotional difficulties are a mitigating factor where expert testimony establishes that these emotional difficulties were directly responsible for the misconduct, provided that the attorney has also established through clear and convincing evidence that he or she no longer suffers from such difficulties. (*Porter v. State Bar* (1990) 52 Cal.3d 518, 527; *In re Naney* (1990) 51 Cal.3d 186, 197; *In re Lamb* (1989) 49 Cal.3d 239, 246; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 701-702.) However, the Supreme Court has also held that, absent a finding of rehabilitation, emotional problems are not considered a mitigating factor. (*Kaplan v. State Bar* (1991) 52 Cal.3d 1067, 1072-1073; *In re Naney, supra*, 51 Cal.3d at p. 197.)

¹ All further references to standard(s) or std. are to this source.

Respondent participated successfully in both the LAP and the State Bar Court's ADP. Respondent's successful completion of the ADP and successful participation in LAP qualify as clear and convincing evidence that Respondent no longer suffers from the substance abuse and mental health issues 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).)

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 disposition/discipline 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 then existing standards 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 2.4, 2.6, 2.10 as well as the following case law: *Blair v. State Bar* (1989) 49 Cal.3d 762; *Matthew v. State Bar* (1989) 49 Cal.3d 784; *In re Young* (1989) 49 Cal.3d 257; *Snyder v. State Bar* (1990) 49 Cal.3d 1302; *In re Naney* (1990) 51 Cal.3d 186; *Howard v. State Bar* (1990) 51 Cal.3d 215; *In re Morse* (1995) 11 Cal.4th 184; *In re Brown* (1995) 12 Cal.4th 205; *In re Silverton* (2005) 36 Cal.4th 81; *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96; *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354; *In the Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831; *In the Matter of Regan* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844; *In the Matter of Brockway*

(Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944; *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41.

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

PUBLIC REPROVAL

IT IS ORDERED that Respondent **CHRISTOPHER CHARLES BARSNESS**, State Bar Number 222861, be publicly reprovved. Pursuant to the provisions of rule 5.127(a) of the Rules of Procedure of the State Bar of California (Rules of Procedure), the public reprovval will be effective when this decision becomes final.

Further, 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 interests of Respondent and the protection of the public will be served by the following specified conditions being attached to the public reprovval imposed in this matter. Failure to comply with any conditions attached to this reprovval may constitute cause for a separate proceeding for wilful breach of rule 1-110 of the Rules of Professional Conduct of the State Bar of California (Rules of Professional Conduct).

Accordingly, Respondent is hereby ordered to comply with the following conditions² attached to the public reprovval for a period of one year following the effective date of the public reprovval imposed in this matter:

1. During the reprovval 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

² Respondent has already complied with provisions regarding restitution, Ethics School and the Multistate Professional Responsibility Examination as agreed in the Confidential Statement of Alternative Dispositions. Accordingly, he will not be ordered to do so herein.

(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 reprobation. 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 reprobation, 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 reprobation. 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 reprobation 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. 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.

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. It is further ordered that costs be paid with Respondent's membership fees for the year 2016. 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.

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) (former rule 806(c)) of the Rules of Procedure of the State Bar of California (Rules of Procedure),³ 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 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: May _____, 2015

DONALD F. MILES
Judge of the State Bar Court

³ The new Rules of Procedure became effective on January 1, 2011.