

**STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of	)	<b>Case No. 97-O-13445, etc.</b>
	)	
<b>FRED G. GLANTZ,</b>	)	<b>DECISION AND DISCIPLINE ORDER;</b>
	)	<b>ORDER FILING AND SEALING</b>
<b>Member No. 37933,</b>	)	<b>CERTAIN DOCUMENTS</b>
	)	
<u>A Member of the State Bar.</u>	)	

**INTRODUCTION**

This disciplinary proceeding arises out of misconduct involving the client trust account of respondent Fred G. Glantz (“respondent”).

Respondent reached a stipulation as to facts and conclusions of law with the Office of the Chief Trial Counsel of the State Bar of California (“State Bar”) which was approved by the court. After respondent entered into a Contract and Waiver for Participation in the State Bar Court’s Alternative Discipline Program (“ADP”),<sup>1</sup> the court accepted respondent as a participant in the ADP. (Rules Proc. of State Bar, rules 800-807.)

As set forth below in greater detail, respondent has successfully completed the ADP. Accordingly, pursuant to rule 803 of the Rules of Procedure of the State Bar of California (“Rules of Procedure”), the court hereby orders that respondent be privately reprimanded with conditions in this matter.

---

<sup>1</sup>The ADP was formerly known as the State Bar Court’s Pilot Program for Respondents with Substance Abuse or Mental Health Issues (“Pilot Program”). The court will use ADP throughout this decision to refer to this program.

### **SIGNIFICANT PROCEDURAL HISTORY**

On October 23, 2001, the State Bar filed a Notice of Disciplinary Charges (“NDC”) against respondent in the above-entitled matter.

On November 20, 2001, respondent filed a response to the NDC.

In or about September 2002, respondent contacted the State Bar’s Lawyer Assistance Program (“LAP”).

On November 7, 2002, the court issued a Status Conference Order referring respondent to the ADP judge.

On February 10, 2003, the court received Respondent’s Statement on Discipline.

On February 13, 2003, respondent executed a Participation Agreement with the LAP to assist him with his mental health issue.

On February 19, 2003, the court received the State Bar’s Response to Respondent’s Statement Re Nexus Requirement and Range of Discipline.

On February 24, 2003, respondent submitted a declaration establishing a nexus between his mental health issue and his misconduct in this matter, and the State Bar submitted a brief regarding the issues of nexus and discipline.

On April 1, 2003, respondent submitted to the court his character evidence and a supplement to his statement on discipline.

On April 2, 2003, the State Bar submitted an amended brief regarding discipline.

On May 22, 2003, respondent submitted to the court some additional evidence in mitigation and probation conditions agreed upon by the parties in the event that respondent was suspended.

On May 27, 2003, respondent and his counsel executed a Stipulation Re Facts and Conclusions of Law, which was executed by the Deputy Trial Counsel of the State Bar on June 23, 2003, which attached a copy of the Stipulation of Facts and Conclusions of Law which the parties had filed with the court on July 12, 2002.

On November 11, 2003, respondent executed a Contract and Waiver for Participation in the State Bar Court's ADP.

On December 16, 2003, the Stipulation Re Facts and Conclusions of Law executed by respondent on May 27, 2003, the Contract and Waiver for Participation in the State Bar Court's ADP, and the Decision Re Alternative Recommendations for Degree of Discipline were lodged with the court, and respondent was accepted for participation in the ADP as of said date.

On February 26, 2004, the court lodged an order approving the parties' stipulation nunc pro tunc from December 16, 2003.

On April 11, 2006, the court issued a status conference order directing respondent to request a one year certificate of compliance from the LAP and a letter of status from his doctor.

In mid-July 2006, respondent submitted a letter to the court from his mental health professional dated July 8, 2006.

Thereafter, on July 18, 2006, the court issued a status conference order finding that respondent has successfully completed the ADP.

The LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program dated August 3, 2006, certifying that respondent has complied with the requirements set forth in the LAP Participation Agreement/Plan for one year prior to August 3, 2006, and that during this time, respondent has maintained mental health and stability and has participated successfully in the LAP. This matter was thereafter submitted for decision on August 4, 2006, following the court's receipt of the Certificate of One Year Participation in the Lawyer Assistance Program.

### **FACTS AND CONCLUSIONS OF LAW**

The Stipulation Re Facts and Conclusions of Law, approved by the court nunc pro tunc from December 16, 2003, is incorporated by reference as if set forth fully herein.

### **Jurisdiction**

Respondent is a member of the State Bar of California, admitted January 5, 1966.

**Case No. 97-O-13445, etc.**

Between March 1997 and November 1997, respondent misappropriated a total of at least \$89,115.46 from seven clients and wrote a total of at least seven checks between March 1997 and January 1998 that were paid by his bank against insufficient funds. Respondent made full restitution to his clients in a timely manner and without delay. (See Amended State Bar Brief Re Discipline, filed April 2, 2003, at p. 1.)

Based on the foregoing, the court finds that respondent wilfully violated rule 4-100(A) of the Rules of Professional Conduct of the State Bar of California (“Rules of Professional Conduct”) by his failure to maintain funds belonging to his clients in his client trust account and by his repeated issuance of checks drawn on his client trust account for which there were insufficient funds for payment of the checks. The court also finds that respondent committed acts of moral turpitude, dishonesty or corruption in violation of Business and Professions Code section 6106 as a result of his misappropriation of funds from seven clients.

**AGGRAVATION AND MITIGATION**

**Aggravation**

In aggravation, respondent has a record of prior discipline in one matter for which he received a private reproof. The reproof was effective on May 11, 1994. (*In the Matter of Fred G. Glantz*, State Bar Court Case No. 91-O-07116.) In the prior proceeding, respondent stipulated to wilful violations of rule 4-100(A) [failure to maintain client funds in a trust account] and rule 4-200(A) [entering into an agreement for an illegal or unconscionable fee] of the Rules of Professional Conduct. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(b)(i) (“standard”).)

Respondent’s current misconduct also evidences multiple acts of wrongdoing. (Standard 1.2(b)(ii).)

**Mitigation**

In mitigation, respondent’s good character is attested to by a wide range of references in the legal and general communities. (Standard 1.2(e)(vi).)

Finally, respondent was suffering from a mental health issue at the time of his misconduct which expert testimony would establish was directly responsible for the misconduct in this matter, and respondent has established through clear and convincing evidence that he no longer suffers from such difficulties. (Standard 1.2(e)(iv).)

Respondent's declaration establishes that at the time of his misconduct, respondent was suffering from a mental health issue. For a seven or eight month period in 1997, after settling a personal injury case, respondent would take his attorney's fees in advance of his receipt of the check from the insurance company, using the "float" of his client trust account. When the insurance check arrived, respondent would immediately distribute the client's share of the proceeds and would leave the remainder of the funds in his trust account to compensate for the attorney's fee that he had already paid to himself. On some occasions, however, there were delays in respondent's receipt of funds from the insurance companies, resulting in a temporary shortfall in respondent's trust account. However, respondent's bank always paid the checks on insufficient funds in light of his longstanding relationship with the bank. Respondent admits that his mental health issue was out of control during this time period. The court finds that respondent has adequately established a nexus between his mental health issue and his misconduct in this matter, i.e., that his mental health disorder directly caused the misconduct in this proceeding.

Furthermore, respondent sought assistance from the LAP in or about September 2002. Respondent complied with the LAP's terms for its evaluation of him, and in February 2003, respondent entered into a long-term participation agreement with the LAP to assist him with his mental health issue. Since entering into the LAP, respondent has maintained compliance with the terms of his participation agreement. Pursuant to rule 804 of the Rules of Procedure, in July 2006, respondent provided the court with a letter from his mental health professional dated July 8, 2006, which was satisfactory to the court. In addition, the LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program dated August 3, 2006, certifying that respondent has complied with the requirements set forth in the LAP Participation

Agreement/Plan for one year prior to August 3, 2006, and that during this time, respondent has maintained mental health and stability and has participated successfully in the LAP.

In addition to participating in the LAP, respondent was accepted into the court's ADP effective December 16, 2003. Respondent's participation in the ADP allowed the court to monitor respondent's progress in the LAP and his overall efforts at addressing the problem that led to his misconduct. Since his acceptance into the ADP, respondent has complied with all the terms and conditions of the program. Accordingly, based upon respondent's dedication to his mental health and emotional stability and to the ADP and the LAP, the court found in July 2006 that respondent had successfully completed the ADP.

Respondent is entitled to significant mitigating credit for his participation in the LAP and his successful completion of the court's ADP.

### **DISCUSSION**

The purpose of disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; Standard 1.3.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline.

In this case, the standards provide for the imposition of sanctions ranging from actual suspension to disbarment. In addition, standard 1.6(a) states, in pertinent part, "If two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by these standards for said acts, the sanction imposed shall be the more or most severe of the different applicable sanctions."

Furthermore, standard 1.7(a) provides that if a member is found culpable of misconduct in any proceeding and the member has a record of one prior imposition of discipline, the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior

proceeding unless the prior discipline was remote in time and the offense was minimal in severity. The standards, however, are only guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) “[E]ach case must be resolved on its own particular facts and not by application of rigid standards.” (*Id.* at p. 251.)

In considering the appropriate discipline in this matter, the court has considered both the recommendations of the parties and relevant case law. The State Bar recommends that respondent be actually suspended from the practice of law for a period of 90 days if he successfully completes the ADP. On the other hand, respondent recommends that this proceeding be dismissed if he successfully completes the ADP.

In determining the appropriate disposition in this matter, the court is guided by Supreme Court case law. The Court has particularly considered *Chasteen v. State Bar* (1985) 40 Cal.3d 586. In that case, the attorney was found culpable of multiple acts of misconduct occurring over a period of approximately six years. The attorney’s misconduct included (a) practicing law while suspended for nonpayment of State Bar annual membership fees; (b) failure to competently perform the legal services for which he was retained in three client matters, one of which resulted in the dismissal of the client’s legal malpractice action; (c) commingling and temporary misappropriation of client funds in the amount of \$5,000; (d) failure to communicate with clients in two matters; and (e) misrepresentations to clients regarding the status of their cases in two matters. The attorney had a prior record of discipline in one matter for commingling and writing 48 insufficiently funded checks. In mitigation, however, the Supreme Court found that the attorney had a serious alcohol abuse problem that had existed for approximately 25 years and, additionally, that he was suffering from severe depression due to the breakup of his marriage. The Supreme Court also found that the attorney had admitted himself to a hospital alcohol rehabilitation unit, participated in a six-month program of follow up care and was attending Alcoholics Anonymous at least twice per week. Finding that the attorney was beginning to come to terms with his alcoholism and was participating in an ongoing treatment

program, the Supreme Court concluded that an actual suspension of two months was appropriate, along with a lengthy probationary period that provided for close supervision of his employment.

In *Aronin v. State Bar* (1990) 52 Cal.3d 276, the Supreme Court found an attorney culpable of multiple acts of misconduct in four client matters, including failure to deposit client funds into trust accounts, commingling funds, signing his clients' names to purportedly verified pleadings and misappropriation of client funds. The attorney had no prior record of discipline in 17 years of practice. In mitigation, the Supreme Court found that, at the time of his misconduct, the attorney had been under stress caused by his wife's compulsive gambling and willingness to write bad checks and forge the attorney's name to checks. The Supreme Court suspended the attorney for a period of three years, stayed execution of the suspension and placed him on probation for three years on conditions which included his actual suspension for a period of nine months.

Supreme Court and Review Department case law establish that extreme emotional difficulties are a mitigating factor where expert testimony establishes that those 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.)

At the time respondent engaged in the misconduct for which he has been found culpable, respondent was suffering from a mental health disorder, and respondent's mental health disorder directly caused the misconduct in this proceeding. Furthermore, respondent has been participating in the LAP since 2003 and has successfully completed the ADP. Respondent's successful completion of the ADP, which required his compliance with all terms and conditions

set forth by the LAP, as well as the letter from his mental health professional pursuant to rule 804 of the Rules of Procedure and the Certificate of One Year Participation in the Lawyer Assistance Program from the LAP, qualify as clear and convincing evidence that he no longer suffers from the mental health issue.

Because of his good character evidence and the fact that respondent has established that he no longer suffers from the mental health disorder which led to his misconduct, the court concludes that discipline less than that imposed in *Chasteen* or *Aronin* is warranted in this matter. The court finds that based upon respondent's participation in the ADP and the LAP, and his commitment to his mental health stability, the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys; and the preservation of public confidence in the legal profession will be adequately addressed in this case by the discipline set forth below. Therefore, based upon consideration of the case law, the standards, and the strong mitigating circumstances in this case, the court concludes that the discipline set forth below is appropriate in this matter.

#### **DISCIPLINE ORDER**

Accordingly, it is ordered that respondent **FRED G. GLANTZ** is hereby privately reprimanded. Pursuant to the provisions of rule 270(a) of the Rules of Procedure, the private reprimand will be effective when this decision becomes final. Furthermore, pursuant to rule 956(a) of the California Rules of Court and rule 271 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 private reprimand imposed in this matter. Failure to comply with any conditions attached to this reprimand may constitute cause for a separate proceeding for wilful breach of rule 1-110 of the Rules of Professional Conduct. Respondent is hereby ordered to comply with the following conditions attached to his private reprimand for a period of one year following the effective date of the private reprimand imposed in this matter:

1. Respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;

2. Within ten (10) days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office of the State Bar and to the Office of Probation;
3. Respondent must comply with all provisions and conditions of his Participation Agreement with the Lawyer Assistance Program;
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 these conditions. Under penalty of perjury, respondent must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions set forth in this Decision during the preceding calendar quarter. If the first report will cover less than thirty (30) days, that report must be submitted on the reporting due date for the next calendar quarter and must cover the extended period. In addition to all quarterly reports, respondent must submit a final report, containing the same information required by the quarterly reports. The final report must be submitted no earlier than twenty (20) days before the last day of the period during which these conditions apply and no later than the last day of said period;
5. 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 him personally or in writing, relating to whether respondent is complying or has complied with these conditions;
6. Within one (1) year after the effective date of the Decision in this proceeding, respondent must provide to the Office of Probation satisfactory proof of his attendance at a session of State Bar Ethics School, and of passage of the test given at the end of that session;

7. The period during which these conditions apply will commence on the effective date of this Decision.

**ORDER FILING AND SEALING CERTAIN DOCUMENTS**

The court orders the Clerk to file the parties' Stipulation Re Facts and Conclusions of Law lodged on December 16, 2003, the court's Order Approving Stipulation lodged on February 26, 2004, and this Decision and Discipline Order; Order Filing and Sealing Certain Documents. Thereafter, pursuant to rule 806(c) of the Rules of Procedure, all other documents not previously filed in this matter will be sealed pursuant to rule 23 of the Rules of Procedure.

**IT IS SO ORDERED.**

Dated: August \_\_\_\_, 2006

---

ROBERT M. TALCOTT  
Judge of the State Bar Court