

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos.: 98-O-01816 (98-O-03556;
	)	01-O-01537); 01-O-02013
	)	(01-O-04673); 01-O-04481
	)	(02-O-11247; 02-O-12210;
MERVYN HILLARD WOLF,	)	02-O-13031; 02-O-14094);
	)	04-O-11463 (04-O-13289;
	)	04-O-13933; 04-O-14034;
	)	04-O-14233; 04-O-14461;
Member No. 41639,	)	04-O-15189; 05-O-00534) (Cons.)
)	
	)	DECISION AND ORDER SEALING
	)	CERTAIN DOCUMENTS
A Member of the State Bar.)	
)	

INTRODUCTION

In this original disciplinary proceeding, respondent Mervyn Hillard Wolf (respondent) was accepted for participation in the State Bar Court’s Alternative Discipline Program (ADP).¹ 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 four (4) years, that execution of that period of suspension be stayed, and that he be placed on probation for four (4) years subject to certain conditions, including a one-year period

¹ The ADP was formerly known as the (Pilot) Program for Respondents with Substance Abuse or Mental Health Issues. The court will refer to the program as the ADP throughout this Decision.

of suspension with credit given for his period of inactive enrollment pursuant to Business and Professions Code section 6233.²

PERTINENT PROCEDURAL HISTORY

On September 26, 2002, prior to the filing of formal disciplinary charges against him, respondent contacted the State Bar's Lawyer Assistance Program (LAP) to assist him with his mental health issues. Respondent entered into a long-term Participation Agreement with the LAP on April 10, 2003.

On October 15, 2002, the State Bar of California's Office of the Chief Trial Counsel (State Bar) filed a Notice of Disciplinary Charges (NDC) against respondent in case nos. 98-O-01816 (98-O-03556; 00-O-15648; 01-O-01537; 01-O-04815).³

Judge Bacigalupo issued an order on December 19, 2002, provisionally accepting respondent into the ADP pending the execution of an ADP Contract and approval of a stipulation as to facts and conclusions of law.

In furtherance of his participation in the ADP, respondent submitted a declaration to the court on June 25, 2003, which established a nexus between respondent's mental health issues and his misconduct in case nos. 98-O-01816 (98-O-03556; 00-O-15648; 01-O-01537; 01-O-04815).

On July 2, 2003, the State Bar filed a NDC against respondent in case nos. 01-O-02013 (01-O-04673). The matter was assigned to Judge Talcott; however, effective April 1, 2004, case nos. 98-O-01816 (98-O-03556; 00-O-15648; 01-O-01537; 01-O-04815) and case nos. 01-O-02013 (01-O-04673) were reassigned to the undersigned judge.

The court received respondent's supplemental nexus declaration on March 9, 2005.

² Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

³ This matter was originally assigned to the Honorable Paul A. Bacigalupo. However, effective January 6, 2003, this matter was reassigned to the Honorable Robert M. Talcott.

On August 19, 2005, the State Bar filed a NDC in case nos. 04-O-11463 (04-O-13289; 04-O-13933; 04-O-14034; 04-O-14233; 04-O-14461; 04-O-15189; 05-O-00534).

In early December 2005, the parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) bearing case nos. 98-O-01816 (98-O-03556; 00-O-15648; 01-O-01537; 01-O-04815); 01-O-02013 (01-O-04673); 01-O-04481 (02-O-11247; 02-O-12210; 02-O-13031; 02-O-14094; 03-O-01155; 04-O-10461); 04-O-11463 (04-O-13289; 04-O-13933; 04-O-14034; 04-O-14233; 04-O-14461; 04-O-15189; 05-O-00534) which set forth the factual findings, legal conclusions, and aggravating circumstances in this matter.

Following briefing by the parties and the receipt of the parties' Stipulation, the court advised the parties of (1) the discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP and (2) the discipline which would be recommended if respondent failed to successfully complete, or was terminated from, the ADP. After agreeing to those alternative possible dispositions, the court memorialized in writing these alternative dispositions in a Confidential Statement of Alternative Dispositions and Orders (Confidential Statement); 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;⁴ the court accepted respondent for participation in the ADP; respondent's period of participation in the ADP began on May 16, 2006; and case nos. 98-O-01816 (98-O-03556; 01-O-01537); 01-O-02013 (01-O-04673); 01-O-04481 (02-O-11247; 02-O-12210; 02-O-13031; 02-O-14094); 04-O-11463 (04-O-13289; 04-O-13933; 04-O-14034; 04-O-14233; 04-O-14461; 04-O-15189; 05-O-00534) were consolidated.

⁴ In the order approving the stipulation, the parties' dismissal of certain counts was granted without prejudice. This resulted in certain cases being dismissed in their entirety: case nos. 00-O-15648, 01-O-04815, 03-O-01155; and 04-O-10461. For this reason, these case nos. do not appear in the caption of this decision.

The court ordered respondent inactive pursuant to section 6233 effective July 10, 2006. Respondent filed a compliance declaration pursuant to rule 955 of the California Rules of Court⁵ on August 3, 2006. Respondent's inactive enrollment pursuant to section 6233 was terminated effective October 14, 2009, more than three years after its effective date.⁶

After being accepted for participation in the State Bar's Court's ADP, respondent participated in both the LAP and the ADP. On November 4, 2009, the court filed an order extending respondent's participation in the ADP nunc pro tunc from June 15, 2009, until further order.

Thereafter, respondent continued to participate in both the LAP and the ADP. As respondent neared the point where the court was considering respondent's graduation from the ADP, the court ordered the deputy trial counsel representing the State Bar to meet and confer with respondent and respondent's counsel regarding respondent's graduation from the ADP and to provide the court with a document with respect to respondent's graduation from the ADP. However, after the court received this information from the parties, as well as a satisfactory recommendation from a mental health professional, the State Bar filed a request for at least a 30-day stay of a determination that respondent successfully completed the ADP in light of certain recent developments and information received by the State Bar. Further pleadings were thereafter filed by the parties on this issue.

On June 3, 2010, the court granted the State Bar's request, and a determination with respect to respondent's graduation from the ADP was stayed for 30 days. On June 25, 2010, the State Bar filed a written request that the stay remain in place pending further developments.

⁵ Rule 955 has since been renumbered as rule 9.20.

⁶ As such, respondent was precluded from practicing law as a result of his involuntary inactive enrollment pursuant to section 6233 for over three years --- more than two years longer than the one-year recommended discipline in this matter if respondent successfully completes the ADP.

Respondent filed a response opposing the State Bar's request for a further stay. On July 9, 2010, the court filed an order graduating respondent from the ADP. In doing so, the court necessarily found that respondent has successfully completed the ADP, and this matter was submitted for decision.⁷

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties' Stipulation with respect to case nos. 98-O-01816, etc., including the court's order approving the Stipulation, is attached hereto and hereby incorporated by reference, as if fully set forth herein. Respondent stipulated in eighteen original disciplinary matters to the following violations:

Rule 4-100(A) of the Rules of Professional Conduct of the State Bar of California⁸ in eleven matters [failure to deposit or maintain client funds in a trust account];

Section 6106 of the Business and Professions Code⁹ in fifteen matters [moral turpitude, dishonesty or corruption: fourteen matters involving misappropriation of funds and one matter for repeatedly issuing checks on insufficient funds];

Rule 4-100(B)(4) in nine matters [failure to (promptly) pay client funds as requested by client(s)];

Rule 4-100(B)(3) in two matters [failure to render appropriate accounts to client];

Section 6068, subdivision (m) in five matters [failure to communicate];

Rule 3-110(A) in five matters [failure to perform services with competence]; and

Rule 3-700(D)(1) in three matters [failure to release client file].

⁷ Other matters which were unable to be incorporated into this ADP proceeding were returned to standard proceedings pursuant to an order filed on November 4, 2009.

⁸ Unless otherwise indicated, all further references to rule(s) refer to the Rules of Professional Conduct of the State Bar of California.

⁹ Unless otherwise indicated, all further references to section(s) are to provisions of the Business and Professions Code.

In aggravation, respondent has a record of two prior impositions of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i).)¹⁰

Effective November 12, 1995, respondent was suspended from the practice of law for one year; the execution of the suspension was stayed; and respondent was placed on probation for three years in State Bar Court case no. 93-O-16826. Discipline was imposed for respondent's violation of rule 3-510, 4-100(A), 4-100(B)(4) and section 6068, subdivision (m).

In addition, effective January 4, 1998, respondent was suspended from the practice of law for two years; the execution of the suspension was stayed; respondent was placed on probation for two years; and respondent was actually suspended for 45 days in State Bar Court case no. 96-O-07673. Discipline was imposed for respondent's violation of rule 3-700(D)(2) and section 6068, subdivision (k).

As additional factors in aggravation, the parties stipulated that respondent's misconduct harmed significantly a client, the public or the administration of justice (std. 1.2(b)(iv)); respondent's misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct (std. 1.2(b)(ii)); and the misconduct involved trust funds or property and respondent was unable or refused to account to the client or the person who was the object of the misconduct for improper conduct toward the funds or property.

The parties did not stipulate to any mitigating circumstances. However, it is appropriate to now 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

¹⁰ All further references to standard(s) or std. are to this source.

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 standards 1.2, 1.3, 1.4, 1.5, 1.6, 1.7(b), 2.2(a), 2.2(b), 2.3, 2.4(b), and 2.10 and *Waysman v. State Bar* (1986) 41 Cal.3d 452; *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280; *In the Matter of Priamos* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824, *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071; *Kaplan v. State Bar* (1991) 52 Cal.3d 1067; *Chang v. State Bar* (1989) 49 Cal.3d 114 and *Chefsky v. State Bar* (1984) 36 Cal.3d 116.

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.

DISCIPLINE

Recommended Discipline

It is hereby recommended that respondent **Mervyn Hillard Wolf, State Bar Number 41639**, be suspended from the practice of law in California for four (4) years, that execution of that period of suspension be stayed, and that he be placed on probation¹¹ for a period of four (4) years subject to the following conditions:

1. Respondent Mervyn Hillard Wolf is suspended from the practice of law for the first year of probation (with credit given for the period of inactive enrollment

¹¹ 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.)

pursuant to Business and Professions Code section 6233 which commenced on July 10, 2006 and ended on October 14, 2009).¹²

2. Respondent Mervyn Hillard Wolf must also comply with the following additional conditions of probation:
 - a. 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;
 - b. 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;
 - c. 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. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request;
 - d. 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 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;

¹² The State Bar contends that respondent should not receive credit for the period of inactive enrollment under section 6233, because respondent did not comply with the conditions of his program participation. The court, however, rejects this argument and finds that full credit should be given to respondent for his period of inactive enrollment. The court notes that respondent was enrolled inactive under section 6233 for more than three years, despite the fact that the recommended period of suspension in this matter if respondent successfully completed the ADP was one year.

- e. 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 respondent personally or in writing relating to whether respondent is complying or has complied with the probation conditions;
- f. 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;
- g. Respondent must comply with all provisions and conditions of his Participation 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 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;
- h. Within ninety (90) days of the effective date of the Supreme Court's final disciplinary order in this matter, respondent must return by certified mail, return receipt requested, the entire client case file of Penelope Summers to Ms. Summers and furnish satisfactory proof thereof to the State Bar's Office of Probation within said period, unless respondent has previously provided such proof to the Office of Probation.

Within ninety (90) days of the effective date of the Supreme Court's final disciplinary order in this matter, respondent must return by certified mail, return receipt requested, the entire client case file of Nichole Hanson to Ms. Hanson and furnish satisfactory proof thereof to the State Bar's Office of Probation within said period, unless respondent has previously provided such proof to the Office of Probation;

- i. Respondent must pay restitution to the following individuals of the amounts set forth below, plus ten percent (10%) interest per year, accruing from the date specified below (or to the Client Security Fund [CSF] to the extent of any payment from the fund to any such individual(s), plus interest and costs, in accordance with Business and Professions Code section 6140.5) and provide satisfactory proof thereof to the Office of

Probation.¹³ Any restitution to the CSF is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d). To the extent the CSF has paid only principal amounts, respondent will still be liable for interest payments to said individual(s), as set forth above.

<u>Party Owed/Case No.</u>	<u>Principal Amount</u>	<u>Date Incurred</u>
CSF/98-O-01816	\$ 6,800.00	1-1-98
David Benson/01-O-02013	\$ 9,958.00	3-15-96
Arnoldo & Betty Iztol/02-O-14094	\$16,750.00	9-24-96
Mark Greenspan, M.D./01-O-04481	\$ 1,200.00	3-2-99
Edmund Dooman, D.C./01-O-04481	\$ 400.00	3-2-99
Kenneth Geiger/01-O-04481	\$ 1,605.00	3-2-99
CSF/02-O-12210	\$45,128.44	6-24-03
Jeanelle Faircloth/04-O-13289	\$ 5,041.45	9-12-03
Nichole Hanson/04-O-13933	\$ 6,301.50	6-11-04
Penelope Summers/04-O-14034	\$ 6,473.00	9-24-03
Roy A. Decauwer/04-O-15189	\$10,000.00	***

*** Pursuant to an agreement between respondent and Mr. Decauwer, respondent will not pay interest on this amount to Mr. Decauwer. Interest will only accrue if the Client Security Fund makes payment to Mr. Decauwer. If so, respondent will then pay interest to the CSF from the date such payment was made.

With each written quarterly report required herein, respondent must provide to the Office of Probation satisfactory proof of all restitution payments made by him during that quarter or applicable reporting period.

To the extent that respondent has paid any restitution prior to the effective date of the Supreme Court's final disciplinary order in this proceeding, respondent will be given credit for such payment(s) provided satisfactory proof of such is or has been shown to the Office of Probation.

- j. If respondent possesses client funds at any time during the period covered by a required quarterly report, respondent must file with each required report a certificate from a certified public accountant or other financial professional approved by the Office of Probation (accountant's certificate), certifying that:
 1. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Client's Funds Account"; and

¹³ As noted elsewhere in this decision, respondent remained on inactive enrollment far in excess of the time recommended as his low level of discipline. During this period of inactive enrollment, respondent paid a substantial part of his restitution obligation.

2. Respondent has kept and maintained the following:
 - i. a written ledger for each client on whose behalf funds are held that sets forth:
 1. the name of such client;
 2. the date, amount and source of all funds received on behalf of such client;
 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 4. the current balance for such client.
 - ii. a written journal for each client trust fund account that sets forth:
 1. the name of such account;
 2. the date, amount and client affected by each debit and credit; and
 3. the current balance in such account.
 - iii. all bank statements and cancelled checks for each client trust account; and,
 - iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reason for the differences; and
3. Respondent has maintained a written journal of securities or other properties held for a client that specifies:
 - i. each item of security and property held;
 - ii. the person on whose behalf the security or property is held;
 - iii. the date of receipt of the security or property;
 - iv. the date of distribution of the security or property; and,
 - v. the person to whom the security or property was distributed.

If respondent does not possess any client funds, property or securities during the entire period covered by a report, respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance,

respondent need not file the accountant's certificate described above.

The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct of the State Bar of California; and

- k. Within one (1) year after the effective date of the discipline herein, respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015, and passage of the test given at the end of that session. Arrangements to attend Ethics School Client Trust Accounting School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Trust Accounting School. (Rules Proc. of State Bar, rule 3201.)
3. At the expiration of the period of probation, if Mervyn Hillard Wolf has complied with all conditions of probation, the four (4) year period of stayed suspension will be satisfied and that suspension will be terminated.

Multistate Professional Responsibility Examination

It is further recommended that Mervyn Hillard Wolf be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court's disciplinary order 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.

Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)¹⁴

¹⁴ It is recommended that respondent receive credit for the period of his inactive enrollment under section 6233 toward the period of suspension imposed in this matter. If such recommendation is adopted by the Supreme Court, respondent will not serve any period of suspension after the effective date of the Supreme Court's order imposing discipline in this matter. As such, it is not recommended that respondent be ordered to comply with rule 9.20 (formerly rule 955) of the California Rules of Court. Furthermore, the court notes that in connection with respondent's agreement to be placed on inactive status, he agreed to comply with the notice, delivery, refund, and filing requirements set forth in former rule 955, subdivisions (a) and (b), and to file with the Office of Probation and the Clerk of the State Bar Court an affidavit as required by rule 955, subdivision (c). Respondent filed his Rule 955 Compliance Declaration with the court on August 3, 2006.

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 the parties' Stipulation Re Facts and Conclusions of Law lodged on May 16, 2006, and this Decision and Order Sealing Certain Documents. Thereafter, pursuant to rule 806(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 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: September _____, 2010

RICHARD A. HONN
Judge of the State Bar Court