

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: <b>99-O-11662-RAH</b> (99-O-13709;
	)	00-O-10813; 00-O-15180; 01-O-00229;
	)	01-O-00774; 01-O-00781; 01-O-01239;
	)	01-O-01385; 01-O-01498; 01-O-01674;
<b>MICHAEL BERNARD TAGGART,</b>	)	01-O-01992; 01-O-04131; 02-O-15044;
	)	03-O-02115)
<b>Member No. 123638,</b>	)	
	)	<b>DECISION AND ORDER SEALING</b>
	)	<b>CERTAIN DOCUMENTS</b>
	)	
A Member of the State Bar.	)	
_____	)	

After the filing of the formal disciplinary charges against respondent Michael Bernard Taggart (respondent) on July 30, 2004, this proceeding was referred to the court's Alternative Discipline Program (ADP) in an order filed on September 20, 2004.<sup>1</sup> Previously, respondent had contacted the State Bar of California's Lawyer Assistance Program (LAP) to assist him with his mental health issues. And, on October 15, 2004, respondent executed a Participation Plan with the LAP.

On March 30, 2004, respondent submitted, to the court, a declaration that establishes a nexus between his mental health issues and his misconduct in this matter. Then, in late October 2005, the parties entered into a Stipulation Re Facts and Conclusions of Law.

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<sup>1</sup> This matter was reassigned to the undersigned judge in an order filed on October 19, 2004.

On January 27, 2006, the court lodged: (1) its Confidential Statement of Alternative Dispositions and Orders; (2) a Contract and Waiver for Participation in the State Bar Court's ADP (Contract);<sup>2</sup> and (3) the parties' Stipulation Re Facts and Conclusions of Law. Thereafter, the court accepted respondent into the ADP in an order filed on February 2, 2006.

In accordance with Business and Professions Code section 6233, the court involuntarily enrolled respondent as an inactive member of the State Bar effective August 1, 2008. Respondent thereafter remained on involuntary inactive enrollment as a condition of his ADP participation until January 1, 2009.

In an order filed on January 5, 2009, the court found that respondent has successfully completed the court's ADP.<sup>3</sup> The matter was therefore submitted for decision on January 5, 2009. Accordingly, the court now issues this decision recommending that the Supreme Court impose upon respondent the discipline set forth below in this decision.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

In this matter, respondent stipulated to misconduct in 14 separate client matters and to failing to cooperate in 10 State Bar disciplinary investigations. Respondent stipulated to (1) failing to competently perform legal services in seven client matters; (2) failing to refund substantial unearned fees upon the termination of his employment in six client matters; (3) failing to take reasonable steps to avoid prejudice to the client upon the termination of his employment in three client matters; (4) gross negligence in the handling of client funds in three client matters (resulting in the misappropriation of \$2,000 in one of the matters); (5) failing to account for fees in one client matter; (6) improper handling of client funds in two client matters;

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<sup>2</sup> Respondent and his counsel executed the Contract on January 27, 2006.

<sup>3</sup> Respondent adequately complied with each of the restitution and fee arbitration conditions in the court's Confidential Statement of Alternative Dispositions and Orders and in the Contract.

(7) failing to payout client funds upon request in one client matter; (8) failing to release the client file upon the termination of his employment in one client matter; and (9) failing to communicate with his client in one client matter. In mitigation, respondent displayed candor to the State Bar during its investigations. In aggravation, respondent has one prior record of discipline; his misconduct evidenced multiple acts of wrongdoing or demonstrated a pattern of misconduct; his misconduct caused significant harm; and his misconduct involved trust funds for which he was unable to account.

The parties' Stipulation Re Facts and Conclusions of Law and the court's order approving the stipulation, which were filed on January 2, 2009, are attached hereto and hereby incorporated by reference, as if fully set forth herein. The Stipulation Re Facts and Conclusions of Law sets forth the factual findings, the legal conclusions, and the aggravating and mitigating circumstances in this matter.

Furthermore, at the time respondent engaged in his misconduct, he was suffering from mental health issues, and respondent's mental health issues directly caused the misconduct which forms the basis for this proceeding. 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.)

Respondent has been participating in the LAP since, at least, October 15, 2004. The LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program dated December 18, 2008, which reflects that respondent has complied with requirements set forth in his LAP Participation Plan for at least one year prior to the date of the certificate and that, during this time period, respondent has maintained mental health and stability and has participated successfully in the LAP.

Respondent also successfully completed the ADP. Respondent's successful completion of the ADP, which required his successful participation in the LAP, as well as the Certificate of One Year Participation in the Lawyer Assistance Program from LAP, qualify as clear and convincing evidence that respondent no longer suffers from the mental health issues which led to his misconduct. Accordingly, it is appropriate to consider respondent's successful completion of the ADP as a further mitigating circumstance. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(e)(iv) (all further references to standards are to this source).)

### **DISCUSSION**

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

After reviewing the parties' briefs on discipline and considering the standards and case law cited therein, the parties' stipulation setting forth the facts, conclusions of law, and the aggravating and mitigating circumstances with respect to this disciplinary proceeding, and respondent's declaration regarding the nexus between his mental health issues and his misconduct in this matter, the court advised the parties of the discipline which would be

recommended to the Supreme Court if respondent successfully completed the ADP and the discipline which would be recommended if respondent was terminated from, or failed to successfully complete, the ADP.

Respondent recommended that, if he successfully completed the ADP, he be placed on three years' stayed suspension and three years' probation with conditions, including six months of actual suspension with credit given for the nine months' actual suspension he served in his prior disciplinary proceeding. In contrast, the State Bar recommended that respondent be placed on three years' stayed suspension and four years' probation on conditions, including one year's actual suspension.

In determining the appropriate discipline to recommend in this matter if respondent successfully completed the ADP, the court considered the discipline recommended by the parties. The court also considered the aggravating and mitigating circumstances, the standards, and case law. In that regard, the court considered standards 1.7(a), 2.2(b), 2.3, and 2.4 and found the following cases instructive: *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071 (five years' stayed suspension, five years' probation, and one year's actual suspension based on more serious misconduct than in the present matter); and *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509 (two years' stayed suspension, three years' probation, and ninety days' actual suspension on less misconduct than in the present matter).

After agreeing to the discipline which the court would recommend to the Supreme Court if respondent successfully completed or was terminated from, or failed to successfully complete, the ADP, respondent executed the Contract to participate in the ADP; the Contract was lodged with the court; and respondent's period of participation in the ADP commenced.

Thereafter, respondent successfully participated in the ADP and, as noted above, the court has found that respondent successfully completed the ADP. Accordingly, the court will

recommend to the Supreme Court the imposition of the discipline set forth in the court's Confidential Statement of Alternative Dispositions and Orders if respondent successfully completed the ADP.

### **RECOMMENDED DISCIPLINE**

**IT IS HEREBY RECOMMENDED** that respondent **MICHAEL BERNARD TAGGART** be suspended from the practice of law in the State of California for a period of four years and until he has shown proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law in accordance with standard 1.4 (c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct; that execution of such suspension be stayed; and that he be placed on probation for four years on the following conditions.<sup>4</sup>

1. Respondent is to be actually suspended from the practice of law for the first five months of the period of probation. However, beginning on August 1, 2008, respondent was involuntarily enrolled as an inactive member of the State Bar as a condition of his participation in the ADP. Respondent thereafter remained on involuntary inactive status as a condition of his participation in the ADP until January 1, 2009. Therefore, credit towards the period of actual suspension should be given for the period of inactive enrollment, which began on August 1, 2008, and ended on January 1, 2009. (Bus. & Prof. Code, § 6233.)
2. 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 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;

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<sup>4</sup> During his participation in the ADP, respondent successfully completed the State Bar's Ethics and Client Trust Accounting Schools. Accordingly, the court does not recommend that respondent be required to repeat those two schools. Of course, respondent's attendance at those two schools is separate from his Minimum Continuing Legal Education (MCLE) requirement. Accordingly, respondent is not to claim or to receive any MCLE credit for attending either of those two schools. (Accord, Rules Proc. of State Bar, rule 3201.)

4. 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. Respondent must promptly meet with the probation deputy as directed and upon request;
5. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct of the State Bar of California, 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;
6. Subject to assertion of applicable privileges, respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to respondent personally or in writing relating to whether respondent is complying or has complied with the probation conditions;
7. 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;
8. If respondent possesses client funds at any time during the period covered by a required quarterly report, respondent shall file with each required report a certificate from a certified public accountant or other financial professional approved by the Office of Probation, certifying that: 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 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 canceled 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 that respondent has maintained a written journal of securities or other properties held for a client that specifies:
  1. each item of security and property held;
  2. the person on whose behalf the security or property is held;
  3. the date of receipt of the security or property;
  4. the date of distribution of the security or property; and
  5. 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.

9. Respondent's probation will commence on the effective date of the Supreme Court's final disciplinary order in this proceeding.
10. At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for four years (and until he complies with standard 1.4 (c)(ii)) will be satisfied and the suspension will be terminated.

### **MPRE**

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE), administered by the National Conference of Bar Examiners, because he took and passed that examination during his participation in the ADP.



### **RULE 9.20**

It is not recommended that respondent be ordered to comply with California Rules of Court, rule 9.20 (formerly rule 955) because respondent filed a rule 955 compliance declaration on August 8, 2008, in connection with his involuntary inactive enrollment and because respondent will be given credit for the period of his involuntary inactive enrollment, he will not be actually suspended for any period of time after the effective date of the Supreme Court's final disciplinary order in this matter.

### **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 Stipulation Re Facts and Conclusions of Law lodged on November 8, 2005, 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 disclosure. Any person to whom

protected material is disclosed is to be given a copy of this sealing order by the person making the disclosure.

**IT IS SO ORDERED.**

Dated: April 3, 2009.

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**RICHARD A. HONN**  
Judge of the State Bar Court