

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)
) Case Nos.: **00-O-15512** (01-O-02014;
) 01-O-02150; 02-O-15157;
) 03-O-00315; 03-O-03200);
ANDREW HENRY LUND,)
) 05-O-04462 (Cons.)
)
) **DECISION AND ORDER SEALING**
Member No. 130209,) **CERTAIN DOCUMENTS**
)
)
)
A Member of the State Bar.)

On April 12, 2004, respondent Andrew Henry Lund (respondent) contacted the State Bar of California’s Lawyer Assistance Program (LAP) to assist him with his substance abuse issue.

The State Bar of California, Office of the Chief Trial Counsel (State Bar), filed a Notice of Disciplinary Charges (NDC) against respondent on June 18, 2004, in case nos. 00-O-15512 (01-O-02014; 01-O-02150; 02-O-15157; 03-O-00315; 03-O-03200). This matter was originally assigned to the Honorable JoAnn M. Remke.

On August 31, 2004, Judge Remke filed an order in case nos. 00-O-15512 (01-O-02014; 01-O-02150; 02-O-15157; 03-O-00315; 03-O-03200) referring this matter to the State Bar

Court's Alternative Discipline Program (ADP)¹ before the undersigned judge. On September 8, 2004, this matter was reassigned to the undersigned judge for all further proceedings.

Respondent executed a Participation Agreement with the LAP on January 2, 2005.

Respondent submitted a declaration to the court on March 23, 2006, establishing a nexus between his substance abuse issue and his misconduct in this matter.

On July 31, 2006, the court lodged its Confidential Statement of Alternative Dispositions and Orders (Confidential Statement) which set forth 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. Also on July 31, 2006, respondent executed the Contract and Waiver for Participation in the State Bar Court's ADP (Contract), and respondent's period of participation in the ADP commenced.² The Confidential Statement and Contract were lodged on July 31, 2006.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) in case nos. 00-O-15512 (01-O-02014; 01-O-02150; 02-O-15157; 03-O-00315; 03-O-03200) and an addendum to the Stipulation regarding investigation matter 05-O-04462 which were lodged and approved by the court on August 3, 2006.

Respondent thereafter participated in both the State Bar's LAP and the court's ADP. On June 4, 2009, the court found that respondent has successfully completed the ADP, and the parties' Stipulation and addendum were filed. This matter was submitted for decision after receipt of a final report from the Office of Probation.

¹ The ADP was previously known as the Pilot Program for Respondents with Substance Abuse or Mental Health Issues.

² On August 4, 2006, the court filed an order finding that respondent is accepted into the ADP, and the start date of respondent's participation in the ADP is July 31, 2006.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In this consolidated matter involving seven different clients, respondent stipulated that he: (1) intentionally, recklessly or repeatedly failed to perform legal services with competence in violation of rule 3-110(A)³ of the Rules of Professional Conduct of the State Bar of California [five client matters];⁴ (2) failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client in violation of rule 3-700(A)(2) [two client matters]; (3) failed to refund unearned fees in violation of rule 3-700(D)(2) [six client matters]; (4) failed, upon termination of employment, to release promptly to a client, at the client's request, all of the client's papers and property in violation of rule 3-700(D)(1) [one client matter]; (5) failed to respond to reasonable inquiries in violation of Business and Professions Code section 6068, subdivision (m) [two client matters];⁵ and (6) willfully disobeyed court orders requiring him to do acts in the course of his profession which he ought in good faith to do in violation of section 6103 [one client matter].

In aggravation, respondent has two prior records of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i).) Effective May 16, 1998, respondent was privately reprovved in case no. 91-O-10043 with conditions for two years due to a violation of rule 4-100(A). Effective December 8, 2000, respondent was suspended for one year; the execution of the suspension was stayed; and respondent was placed on probation for two years with conditions including a 90-day actual suspension in Supreme Court matter S091385

³ Although the court's order approving the Stipulation and addendum modified the 3-110 violation which the parties stipulated to in the Cottone matter (case no. 05-O-04462) to 3-100(A), this appear to be a typographical error. The court intended to modify the Stipulation and addendum to reflect a willful violation of rule 3-110(A), rather than 3-100(A).

⁴ Unless otherwise indicated, all further references to rule(s) are to this source.

⁵ Unless otherwise indicated, all further references to section(s) are to this source.

(00-H-11931; 99-O-11990 (Cons.). Discipline was imposed for violations of sections 6103, 6068, subdivision (b) and rules 1-110 and 3-110(A).

As further aggravating circumstances in this matter, the parties stipulated that respondent's misconduct harmed significantly a client, the public or the administration of justice (std. 1.2(b)(iv)), and respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. (Standard 1.2(b)(ii).)

In mitigation, respondent displayed spontaneous cooperation and candor to the victims of his misconduct and to the State Bar during disciplinary investigation and proceedings. (Std. 1.2(e)(v).) In addition, these disciplinary proceedings were excessively delayed. The delay is not attributable to respondent, but it did cause prejudice to him. (Std. 1.2(e)(ix).)

The parties' stipulation as to facts and conclusions of law, including the addendum and the court's order approving the stipulation and addendum as modified by the court, is attached hereto and hereby incorporated by reference, as if fully set forth herein. The stipulation as to facts and conclusions of law, and the addendum thereto, set forth the factual findings, legal conclusions, and aggravating and mitigating circumstances in these consolidated matters.

In addition to the mitigating circumstances set forth above, at the time that respondent engaged in misconduct, he was suffering from a substance abuse issue, and respondent's substance abuse issue directly caused or contributed to the misconduct which forms the basis for the 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; (1) 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.)

Respondent executed a Participation Agreement with the LAP on January 2, 2005. The LAP issued a certificate of one-year participation in the LAP dated May 7, 2009, which reflects that respondent has complied with the requirements set forth in his LAP Participation Agreement for at least one year prior to May 7, 2009, and that the LAP is not aware of the use of any unauthorized substances for at least one year prior to May 7, 2009.

Respondent also successfully participated in the ADP, and the court found that respondent has successfully completed the ADP. Respondent's successful completion of the ADP, which required his successful participation in the LAP, as well as the certificate from the LAP, qualify as clear and convincing evidence that respondent no longer suffers from the substance abuse issue 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, to preserve public confidence in the legal profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

After reviewing the parties' briefs on the issue of discipline, and considering the Standards for Attorney Sanctions for Professional Misconduct and case law cited therein, the parties' Stipulation and addendum thereto setting forth the facts, conclusions of law, and the aggravating and mitigating circumstances in these matters, and respondent's declaration regarding the nexus between his substance abuse issue and his misconduct, 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.

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, 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), 2.4, 2.6, and 2.10, and certain case law cited in the State Bar's discipline brief, including *Baker v. State Bar* (1989) 49 Cal.3d 804; *Conroy v. State Bar* (1991) 53 Cal.3d 495; *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131; and *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071.

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, and his period of participation in the ADP commenced.

Thereafter, respondent successfully participated in the ADP and, as set forth in the court's June 4, 2009 order, the court found that respondent has 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 **ANDREW HENRY LUND**, State Bar Number 130209, 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 a period of three (3) years⁶ subject to the following conditions:

1. Respondent Andrew Henry Lund is suspended from the practice of law for the first sixty (60) days of probation.
2. Respondent Andrew Henry Lund 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;

⁶ 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.)

- 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. Respondent must pay restitution to the following individuals of the principal amounts set forth below, plus ten percent (10%) interest per annum, 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. Any restitution to the Client Security Fund 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 individuals(s), as set forth above.

<u>Principal Amount</u>	<u>Date Incurred</u>	<u>Party Owed</u>
\$1,043.00	June 2, 2000	Esther Garcia
\$ 475.00	April 20, 2001	Carol Andreozzi
\$ 250.00	January 2, 2001	CSF ⁷
\$ 200.00	February 1, 2001	CSF ⁸

⁷ Respondent originally was required to make restitution to Jeffrey Madl. However, as respondent could not locate Mr. Madl, the court ordered that restitution be made to the State Bar's Client Security Fund (CSF).

⁸ See footnote 7.

\$ 500.00	November 10, 2001	Nancy Curtis
\$3,000.00	March 29, 2000	Eldoris Chapman
\$ 900.00	March 13, 2003	Alfonzo Ortiz

Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation, respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

<u>Payee/CSF (as applicable)</u>	<u>Minimum Payment Amount</u>	<u>Payment Frequency</u>
All individual payee(s) to be completely paid before beginning payments to CSF	\$1,000.00	Monthly

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 payments provided satisfactory proof of such is or has been shown to the Office of Probation.

3. At the expiration of the period of probation, if Andrew Henry Lund has complied with all conditions of probation, the four (4) year period of stayed suspension will be satisfied and that suspension will be terminated.

It is further recommended that Andrew Henry Lund 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).)

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 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. 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 _____, 2010

RICHARD A. HONN
Judge of the State Bar Court