

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of) Case Nos.: **03-O-05188-PEM**
) (03-O-05193); 05-O-01860;
JANENE RAE WEBER,) (05-O-04071; 06-O-10560;
) 06-O-10568) (Cons.)
Member No. 155021,)
) **DECISION AND ORDER SEALING**
A Member of the State Bar.) **CERTAIN DOCUMENTS**
_____)

I. INTRODUCTION

In this disciplinary proceeding, respondent Janene Rae Weber (“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, the court will recommend to the Supreme Court that respondent be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that she be placed on probation for two years subject to certain conditions, including an 80-day period of suspension.

II. PERTINENT PROCEDURAL HISTORY

On October 5, 2005, 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. 03-O-05188 (03-O-05193).

On November 7, 2005, respondent contacted the State Bar's Lawyer Assistance Program ("LAP") to assist her with her substance abuse issue. Respondent sought to participate in the State Bar Court's ADP. On November 14, 2005, this matter was referred to the ADP. Respondent signed a LAP Participation Plan on March 7, 2006.

On July 5, 2006, respondent submitted a declaration to the court, which established a nexus between respondent's substance abuse issue and the charges in this matter.

On December 20, 2006, the State Bar filed a second NDC against respondent in case nos. 05-O-01860 (05-O-04071; 06-O-10560; 06-O-10568). This matter was subsequently consolidated with case nos. 03-O-05188 (03-O-05193).

The parties entered into a Stipulation Re Facts and Conclusions of Law ("Stipulation") in December 2006. The Stipulation set forth the factual findings, legal conclusions and mitigating and aggravating circumstances involved in case nos. 03-O-05188 (03-O-05193); 05-O-01860 (05-O-04071; 06-O-10560; 06-O-10568) (Cons.).

Following briefing by the parties, the court issued a Confidential Statement of Alternative Dispositions and Orders dated March 12, 2007, formally advising 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 dispositions, respondent and her counsel executed the Contract and Waiver for Participation in the State Bar Court's ADP; the court accepted respondent for participation in the ADP; and respondent's period of participation in the ADP began on March 12, 2007.

In January 2008, the parties entered into a stipulation to modify the restitution conditions reflected in the Stipulation. Consequently, the court lodged an Amended Confidential Statement of Alternative Dispositions and Orders on February 26, 2008.

On July 26, 2010, the court issued an order enrolling respondent as an inactive member of the State Bar pursuant to Business and Professions Code section 6233.¹ This order was effective August 1, 2010.

On October 14, 2010, the court issued an order granting respondent's request to terminate her involuntary inactive enrollment pursuant to section 6233 and return to active status. Respondent was entitled to resume the practice of law in this state on October 20, 2010.

Respondent participated successfully in both the LAP and the State Bar Court's ADP. On November 3, 2010, after receiving a Certificate of One Year of Participation in the LAP - Substance Use, the court filed an order finding that respondent has successfully completed the ADP.

III. 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 stipulated, in six disciplinary matters, to the following violations:

- Rule 3-110(A) of the California Rules of Professional Conduct² in two matters [failing to perform with competence];
- Section 6068, subdivision (m), in two matters [failing to promptly respond to reasonable client status inquiries];
- Rule 3-700(D)(2) in four matters [failing to promptly refund unearned fees];
- Rule 3-700(D)(1) in two matters [failing to return client documents]; and
- Rule 4-100(B)(3) in one matter [failure to account].

In aggravation, respondent's misconduct evidences multiple acts of wrongdoing. (Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional

¹ All further references to section(s) are to the Business and Professions Code, unless otherwise stated.

² Unless otherwise indicated, all further references to rule(s) refer to the California Rules of Professional Conduct.

Misconduct, std. 1.2(b)(ii).)³ In mitigation, respondent was candid and cooperative with the State Bar (Std. 1.2(e)(v)) and had no prior record of discipline (Std. 1.2(e)(i)). In addition, respondent successfully completed the ADP. Respondent's successful completion of the ADP, which required her successful participation in the LAP, as well as the Certificate of One Year Participation in the Lawyer Assistance Program - Substance Use, qualify as clear and convincing evidence that respondent no longer suffers from the substance abuse issue which led to her 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).)

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 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 1.3, 1.4, 1.5, 1.6, 2.2(b), 2.4(b), 2.6, and 2.10, and *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585; *In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267; and *In re Silverton* (2005) 36 Cal.4th 81.

Because respondent has now successfully completed the ADP, this court, in turn, recommends to the Supreme Court the imposition of the lower level of discipline, set forth more

³ All further references to standard(s) or std. are to this source.

fully below, contained in the Amended Confidential Statement of Alternative Dispositions and Orders.

V. DISCIPLINE

It is hereby recommended that respondent **Janene Rae Weber**, State Bar Number 155021, be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that she be placed on probation⁴ for a period of two years subject to the following conditions:

1. Respondent Janene Rae Weber is suspended from the practice of law for 80 days (with credit given for inactive enrollment, which was effective August 1, 2010 through October 19, 2010 (Bus. & Prof. Code § 6233.)).
2. Respondent Janene Rae Weber 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

⁴ 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.)

calendar quarter. Respondent must also state whether there are any proceedings pending against her 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;

- 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 State Bar Ethics School, and passage of the test given at the end of that session;
- g. Unless respondent has been terminated from the Lawyer Assistance Program (“LAP”) prior to respondent’s successful completion of the LAP, respondent must comply with all provisions and conditions of respondent’s Participation Agreement with the LAP and 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 respondent’s compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. However, if respondent has successfully completed the LAP, respondent need not comply with this condition; and
- h. Respondent must abstain from use of any alcoholic beverages, and shall not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription.

At the expiration of the period of probation, if Janene Rae Weber has complied with all conditions of probation, the one-year period of stayed suspension will be satisfied and that suspension will be terminated.

It is also recommended that Janene Rae Weber take and pass the Multistate Professional Responsibility Examination (“MPRE”) administered by the National Conference of Bar

Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) and provide proof of passage to the State Bar's Office of Probation in Los Angeles, within one year after the effective date of the discipline herein. Failure to pass the MPRE within the specified time results in actual suspension by the Review Department, without further hearing, until passage. (But see Cal. Rules of Court, rule 9.10(b), and Rules Proc. of State Bar, rule 321(a)(1) and (3).)

During respondent's participation in the ADP, she satisfactorily completed all restitution conditions laid out in the Amended Confidential Statement of Alternative Dispositions and Orders. Therefore, it is not recommended that respondent be ordered to make restitution.

VI. 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.

VII. 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 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: January _____, 2011

PAT McELROY
Judge of the State Bar Court