

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 04-O-10750-PEM
)	
ELAINE JOY HARRISON,)	DECISION AND DISCIPLINE ORDER;
)	ORDER SEALING CERTAIN
Member No. 168040,)	DOCUMENTS
)	
<u>A Member of the State Bar.</u>)	

I. Introduction

In this disciplinary proceeding, respondent **Elaine Joy Harrison** stipulated to acts of professional misconduct involving violations of a trust account matter, including: (1) failing to deposit client funds in a trust account (two counts) and (2) commingling.

Respondent has successfully completed the State Bar Court’s Alternative Discipline Program (ADP). (Rules Proc. of State Bar, rules 800-807.) Accordingly, respondent is hereby publicly reprovved with conditions for two years.

II. Significant Procedural History

On March 22, 2007, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed a Notice of Disciplinary Charges (NDC) against respondent.

In January 2007, respondent sought to participate in the State Bar's Lawyer Assistance Program (LAP), and signed a pre-enrollment evaluation plan. On June 6, 2007, respondent executed a Participation Agreement with the LAP.

Respondent submitted a declaration to the court which established that at the time of her misconduct, she was suffering from mental health issues. Respondent also executed a stipulation regarding facts and conclusions of law in this matter. Respondent's declaration and the stipulated facts, as well as the opinion of a medical professional, establish a causal connection between respondent's mental health issues and the misconduct found in this disciplinary proceeding. As such, the court found that respondent had adequately established a nexus between her mental health issues and her misconduct in this matter, i.e., that her mental health issues directly caused the misconduct set forth in this matter.

On November 5, 2007, the court lodged its Confidential Statement of Alternative Dispositions and Orders (Statement), setting forth the recommended discipline if respondent successfully completed or was terminated from the court's ADP. On that same day, respondent entered into a Contract and Waiver for Participation in the State Bar Court's Alternative Discipline Program; the parties' stipulation was lodged with the court; and respondent was accepted as a participant in the ADP.

On May 22, 2009, the LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program (certificate), setting forth that respondent complied with the requirements of the LAP Participation Agreement/Plan for one year prior to the date of the certificate, and that during the one-year period, respondent maintained mental health and stability and participated successfully in the LAP.

On November 9, 2009, the court held an Alternative Discipline Program Status Conference. On that same date, the court signed its Alternative Discipline Program Status

Conference Order, finding that respondent successfully completed the ADP. In its status conference order, the court also indicated that it would issue this decision imposing the lower level of discipline reflected in the November 2007 Statement. Subsequently, in its Successful Completion of the Alternative Discipline Program, filed on November 10, 2009, the court ordered that the Stipulation re Facts and Conclusions of law, lodged November 5, 2007, be filed.

III. Findings of Fact and Conclusions of Law

The Stipulation Re Facts and Conclusions of Law (stipulation) approved by the court and lodged on November 5, 2007, are incorporated by reference as if set forth fully herein. The stipulation sets forth the factual findings, conclusions of law and certain aggravating and mitigating circumstances in this matter. Specifically, respondent stipulated to depositing client funds into a business checking account instead of a client trust account and commingling her own personal funds with a client trust account funds.

At the time respondent engaged in the misconduct for which she has been found culpable, respondent was suffering from mental health issues which directly caused the misconduct in this proceeding. 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.)

Respondent has been participating in the LAP since 2007 and has successfully completed the ADP. Respondent's successful completion of the ADP, as well as the certificate, qualify as clear and convincing evidence that respondent no longer suffers from the mental health issues which led to her 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,¹ 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, 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' letter briefs on discipline, as well as certain standards and case law,² the parties' stipulation setting forth the facts, conclusions of law and aggravating and mitigating circumstances with respect to this disciplinary proceeding, and respondent's declaration regarding the nexus between her mental health and her misconduct in this matter, the court advised the parties of the discipline that would be recommended to the Supreme Court if respondent successfully completed the ADP and the discipline that would be recommended if respondent was terminated from the ADP. After agreeing to the recommended discipline, respondent executed the contract to participate in the ADP and was accepted for participation in the ADP.

Thereafter, respondent successfully participated in the ADP; and, as set forth in the Alternative Discipline Program Status Conference Order, signed and dated November 9, 2009,

¹ Future references to standard(s) or std. are to this source.

² In particular, the court considered standards 1.2, 1.3, 1.4, 1.5, 1.6, and 2.2(b), and *In re Silvertown* (2005) 36 Cal.4th 81 and *Kelly v. State Bar* (1991) 53 Cal.3d 509.

the court found that respondent successfully completed the ADP. Accordingly, the court imposes the discipline set forth in the Statement if respondent successfully completed the ADP.

V. Disposition and Discipline

Therefore, respondent **Elaine Joy Harrison** is hereby publicly reprovved with the following conditions for two years:

1. During the reprovral period, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;
2. Within 10 days of any change in the information required to be maintained on the State Bar's membership records pursuant to Business and Professions Code section 6002.1, subdivision (a), including her current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report any such change in writing to the Membership Records Office of the State Bar and to the Office of Probation;
3. Within 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 reprovral. 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 reprovral, respondent must promptly meet with the probation deputy as directed and upon request;
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 reprovral. Under penalty of perjury, respondent must state whether she 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 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 20 days before the last day of the period of reprobation 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 respondent personally or in writing, relating to whether respondent is complying or has complied with these reprobation conditions;
6. 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/Plan 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;

The court will not order Elaine Joy Harrison to attend a session of the Ethics School and provide satisfactory proof of attendance thereof to the Office of Probation, as a reprobation condition, since she completed Ethics School given by the State Bar of California during her period of participation in the State Bar Court's Alternative Discipline Program.

Additionally, as Elaine Joy Harrison took and passed the Multistate Professional Responsibility Examination (MPRE) during her period of participation in the State Bar Court's Alternative Discipline Program, the court will not order her to again take and pass the MPRE.

Pursuant to the provisions of rule 270(a) of the Rules of Procedure of the State Bar of California, the public reproof will be effective when this decision becomes final.

VI. Costs

Costs are 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 Discipline Order; Order 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 under 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 official 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: February _____, 2010

PAT E. McELROY
Judge of the State Bar Court

