

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case Nos.: **07-O-10024; 08-O-10270 (Cons).**
)
JEFFREY ALAN AGNEW,) **DECISION AND DISCIPLINE ORDER;**
) **ORDER SEALING CERTAIN**
Member No. 105268,) **DOCUMENTS**
)
)
A Member of the State Bar.)

INTRODUCTION

In this consolidated disciplinary proceeding, respondent Jeffrey Alan Agnew (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 impose upon respondent a public reproof with conditions for one year.

PERTINENT PROCEDURAL HISTORY

On September 25, 2007, 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 no. 07-O-10024. This matter was initially assigned to the Honorable Richard A. Platel.

On December 10, 2007, Judge Platel filed an order referring case no. 07-O-10024 to the State Bar Court’s Alternative Discipline Program (ADP) before the undersigned for evaluation of respondent’s eligibility for participation in the program.

In furtherance of his participation in the ADP, respondent submitted a declaration to the court on February 28, 2008, which established a nexus between respondent's mental health issues and his misconduct in case no. 07-O-10024.

On March 12, 2008, respondent contacted the State Bar's Lawyer Assistance Program (LAP) to assist him with his mental health issues.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) which set forth the factual findings, legal conclusions, and aggravating and mitigating circumstances with respect to case no. 07-O-10024.¹ The stipulation was received by the court on May 15, 2008.²

The State Bar filed a NDC against respondent in case no. 08-O-10270 on June 10, 2008. Case no. 08-O-10270 was assigned to the undersigned.

On July 21, 2008, respondent entered into a long-term Participation Plan with the LAP.³

Following briefing by the parties, the court advised the parties of (1) the discipline which would be imposed upon respondent if he successfully completed the ADP, and (2) the discipline which would be recommended to the Supreme Court if respondent failed to successfully complete, or was terminated from, the ADP in case no. 07-O-10024. After agreeing to the alternative possible dispositions, the court memorialized in writing these alternative dispositions in a Confidential Statement of Alternative Dispositions and Orders (Confidential Statement); respondent executed the Contract and Waiver for Participation in the State Bar Court's ADP in case no. 07-O-10024; the court signed an order approving, as modified, the parties' Stipulation in case no. 07-O-10024; the Stipulation in case no. 07-O-10024 was filed on August 28, 2008; the

¹ The court ultimately modified the Stipulation to delete the aggravating circumstance stipulated to by the parties.

² Page 3 of the Stipulation was removed and replaced with a revised page 3 in February 2009.

³ On December 10, 2010, respondent agreed to an amendment to his Participation Plan.

court accepted respondent for participation in the ADP; and respondent's period of participation in the ADP began on August 28, 2008.

Respondent and the State Bar entered into a Stipulation Re Facts and Conclusions of Law in case no. 08-O-10270 in September 2008. The Stipulation was received by the court on September 15, 2008.⁴

In order to officially incorporate case no. 08-O-10270 into the ADP, on April 2, 2009, respondent executed an Amended Contract and Waiver for Participation in the State Bar Court's ADP in case nos. 07-O-10024; 08-O-10270 which was lodged with the court on April 14, 2009.⁵ Also, on April 14, 2009, the court executed an Order Amending Confidential Statement of Alternative Dispositions and Orders; Further Order in case nos. 07-O-10024; 08-O-10270 which was lodged with the court that same date.⁶

The court issued an order on September 7, 2010, involuntarily enrolling respondent as an inactive member of the State Bar pursuant to section 6233 effective September 23, 2010, and until further order of the court. Respondent's involuntary inactive enrollment terminated effective October 20, 2010.

After respondent was accepted for participation in the ADP in 2008, respondent participated in both the LAP and the State Bar Court's ADP. On February 2, 2011, after receiving a recommendation from a mental health professional that was satisfactory to the court, the court filed an order finding that respondent has successfully completed the ADP. This matter was submitted for decision on February 18, 2011.

⁴ On April 14, 2009, the court executed an order approving the Stipulation in case no. 08-O-10270, and the Stipulation was filed on that same date.

⁵ The court found sufficient evidence of a nexus between respondent's mental health issues and his misconduct in case no. 08-O-10270.

⁶ Including case no. 08-O-10270 in the ADP did not result in any increase in the court's alternative levels of disciplines. The court filed an order on May 27, 2009, consolidating case no. 08-O-10270 with case no. 07-O-10024.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties' Stipulation in case no. 07-O-10024 and the Stipulation in case no. 08-O-10270, including the court's orders approving each Stipulation, are attached hereto and hereby incorporated by reference, as if fully set forth herein.

In case no. 07-O-10024, respondent stipulated that he: (1) intentionally, repeatedly, or recklessly failed to perform legal services with competence in willful violation of rule 3-110(A) of the Rules of Professional Conduct;⁷ (2) failed to refund any part of an advanced fee that was not earned in willful violation of rule 3-700(D)(2); (3) committed acts involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code section 6106⁸ by repeatedly making misrepresentations to his client; and (4) failed to cooperate in a disciplinary investigation in willful violation of section 6068, subdivision (i).

In case no. 08-O-10270, respondent stipulated that he failed to promptly refund any part of a fee paid in advance that had not been earned in willful violation of rule 3-700(D)(2).

In mitigation, respondent had no prior record of discipline (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e)(i));⁹ his good character was attested to by a wide range of references in the general and legal communities who were aware of the full extent of his misconduct (std. 1.2(e)(vi)); at the time of his misconduct, respondent was a defendant in a lawsuit which exacerbated his emotional difficulties (std. 1.2(e)(iv)); and prior to the disciplinary investigation in this matter, respondent took proactive steps to treat his mental health issues. In addition, it is appropriate to now consider respondent's successful

⁷ Unless otherwise indicated, all further references to rule(s) refer to the Rules of Professional Conduct of the State Bar of California.

⁸ Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

⁹ All further references to standard(s) or std. are to this source.

completion of the ADP as a further mitigating circumstance in this matter. (Std. 1.2(e)(iv).)
There were no aggravating circumstances.

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 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, 2.3, 2.4(b), 2.6, and 2.10 and *In the Matter of Respondent G* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 175; *Van Sloten v. State Bar* (1989) 48 Cal.3d 921; *Layton v. State Bar* (1990) 50 Cal.3d 889; *Wren v. State Bar* (1983) 34 Cal.3d 81; *Hansen v. State Bar* (1979) 23 Cal.3d 68; and *Natali v. State Bar* (1988) 45 Cal.3d 456.

Because respondent has now successfully completed the ADP, this court, in turn, now orders the imposition of the lower level of discipline, set forth more fully below.

DISCIPLINE ORDER

Accordingly, it is ordered that respondent **Jeffrey Alan Agnew, State Bar No. 105268**, is hereby publicly reprovved. Pursuant to the provisions of rule 5.127 (former rule 270(a))¹⁰ of the Rules of Procedure of the State Bar (Rules of Procedure), the public reprovval will be effective when this decision becomes final. Furthermore, pursuant to rule 9.19(a) of the California Rules of Court and rule 5.128 (former rule 271) of the Rules of Procedure, the court

¹⁰ Effective January 1, 2011, new Rules of Procedure of the State Bar of California became effective.

finds that the interest of respondent and the protection of the public will be served by the following specified conditions being attached to the public reproof imposed in this matter.

Failure to comply with any condition(s) attached to this public reproof may constitute cause for a separate proceeding for willful breach of rule 1-110 of the Rules of Professional Conduct.

Respondent is hereby ordered to comply with the following conditions attached to his public reproof for one year following the effective date of the public reproof.

1. During the reproof period, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;
2. 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;
3. 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 reproof. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the reproof period, 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 reproof. 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 reproof 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 reproof and no later than the last day of the reproof 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 the reproof conditions;

6. 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; and
7. Respondent must comply with all provisions and conditions of his Participation Agreement/Plan 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/Plan 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.¹¹

Multistate Professional Responsibility Examination

Respondent **Jeffrey Alan Agnew** is also ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the public reproof 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 further disciplinary proceedings.

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.

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¹¹ It is not recommended that respondent pay restitution in this matter as he did so during the pendency of this proceeding.

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 5.388(c) (former rule 806(c)) of the Rules of Procedure, all other documents not previously filed in this matter are ordered sealed pursuant to rule 5.12 (former 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: May _____, 2011

RICHARD A. HONN
Judge of the State Bar Court