

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 08-C-10541-LMA
)	
MARSHA HONDA,)	DECISION AND ORDER SEALING
)	CERTAIN DOCUMENTS
Member No. 100894,)	
)	
<u>A Member of the State Bar.</u>)	

PERTINENT PROCEDURAL HISTORY

On or about September 17, 2007, respondent Marsha Honda (respondent) contacted the State Bar’s Lawyer Assistance Program (LAP) to assist her with her mental health issues, and on April 4, 2008, respondent executed a Participation Plan with the LAP.

On April 17, 2008, a Notice of Hearing on Conviction was filed against respondent in Case No. 08-C-10541. Thereafter, in May 2008, the court referred this matter to the State Bar Court’s Alternative Discipline Program (ADP).

On June 5, 2008, respondent submitted a written statement to the court which established a nexus between her mental health issues and her misconduct. The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) on August 4, 2008.¹

¹ The Stipulation Re Facts and Conclusions of Law was received by the court that same date.

On September 29, 2008, respondent executed the Contract and Waiver for Participation in the State Bar Court's ADP (Contract), and the court lodged its Confidential Statement of Alternative Dispositions and Orders and the executed Contract. Also on September 29, 2008, the court executed an order approving the parties' Stipulation; the Stipulation was filed; and respondent was accepted into the ADP as of this date.

On March 25, 2009, respondent was terminated from the LAP.

On April 27, 2009, the court held a status conference in this matter. Thereafter, the court issued an order terminating respondent from the ADP, and this matter was taken under submission for decision on April 27, 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 conviction referral matter, respondent pled no contest to violating Penal Code section 12025(a)(2) [carrying a concealed firearm], a felony. Respondent's conviction resulted from discharging a firearm at an inhabited dwelling. Respondent stipulated that the facts and circumstances surrounding her violation of Penal Code section 12025(a)(2) did not involve moral turpitude, but did involve other misconduct warranting discipline. In mitigation, respondent has no prior record of discipline and displayed spontaneous cooperation and candor with the State Bar during disciplinary proceedings. There are no aggravating circumstances.

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. The Stipulation sets forth the factual findings, legal conclusions and mitigating circumstances in this matter.²

² As noted above, there are no aggravating circumstances in this matter.

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' joint brief on the issue of discipline and considering the standards and case law cited therein, the parties' Stipulation setting forth the facts, conclusions of law, and the mitigating circumstances with respect to this disciplinary proceeding, and respondent's statement regarding the nexus between her mental health issues and her 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 executed the Contract to participate in the ADP; the Contract was lodged with the court; and respondent was accepted for participation in the ADP.

In determining the appropriate discipline to recommend in this matter if respondent 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. The State Bar recommended that respondent be suspended for two years; that execution of the suspension be stayed; and that respondent be placed on probation for two years on conditions including a 90-day actual suspension and until she meets the requirements of standard 1.4(c)(ii), and complies with rule 9.20 of the California Rules of Court. Respondent sought a private reproof or no more than a total of six months' suspension with credit for time on interim suspension. Nevertheless, after considering standards 1.2(e), 1.3, 1.4, 1.5, 1.6, and 3.4 and *In re Hickey* (1990) 50 Cal.3d 571, the court determined that stayed suspension and probation were appropriate in light of the

fact that the misconduct in *In re Hickey* resulted in only a 30-day actual suspension, yet the misconduct in *Hickey* was more egregious than the misconduct in this matter.

On March 25, 2009, respondent was terminated from the LAP.

On April 27, 2009, the court held a status conference in this matter. Respondent was not in compliance with the conditions of the State Bar Court's ADP, and the court filed an order on that date terminating respondent from the ADP.³ The court took this matter under submission for decision on April 27, 2009.

Accordingly, the court recommends to the Supreme Court the imposition of the discipline set forth in the court's Confidential Statement of Alternative Dispositions and Orders in the event respondent was terminated from or failed to successfully complete the ADP.

RECOMMENDED DISCIPLINE

IT IS HEREBY RECOMMENDED that respondent MARSHA HONDA be suspended from the practice of law in California for two (2) years; that execution of that period of suspension be stayed; and that she be placed on probation for three (3) years subject to the following conditions:

1. During the probation period, respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct of the State Bar of California;
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

³ The ADP Contract executed by respondent stated, "Respondent understands that, if Respondent's participation in the LAP is terminated without successfully completing the LAP, Respondent's participation in the ADP will be terminated and discipline will be imposed or recommended"

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 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;
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 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 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;

5. Subject to 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;
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 State Bar Ethics School, and passage of the test given at the end of that session;
7. Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation;
8. Respondent must obtain an examination of her mental and physical condition with respect to her mental health issues pursuant to rule 184 of the Rules of Procedure of the State Bar of California (Rules of Procedure) from a qualified practitioner approved by the Office of Probation and must comply with any treatment/monitoring plan recommended following such examination. The examination and any further help/treatment/monitoring recommended by the examining practitioner will be at respondent's own expense. The examination must be conducted no later than thirty (30) days after the effective date of the Supreme Court's final disciplinary order in this matter. Help/treatment/monitoring should commence immediately after said examination and, in any event, no later than thirty (30) days after said examination. With each quarterly report, respondent must furnish to the

Office of Probation sufficient evidence, as specified by the Office of Probation, that she is so complying with this condition of probation.

Treatment/monitoring must continue for the period of probation or until a motion to modify this condition is granted and that ruling becomes final.

If the examining or treating practitioner determines that there has been a substantial change in respondent's condition, respondent or the State Bar's Office of Probation or the Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 550 of the Rules of Procedure. The motion must be supported by a written statement from the examining or treating practitioner, by affidavit or under penalty of perjury, in support of the proposed modification.

Upon the request of the Office of Probation, respondent must provide the Office of Probation with medical and confidentiality waivers and access to all of respondent's medical records necessary to monitor this probation condition. Revocation of any medical/confidentiality waiver is a violation of this condition. Any medical records obtained by the Office of Probation will be confidential and no information concerning them or their contents will be given to anyone except members of the Office of the Chief Trial Counsel, the Office of Probation, and the State Bar Court, who are directly involved with maintaining, enforcing or adjudicating this condition;

9. Probation will commence upon the effective date of the Supreme Court order in this matter (Cal. Rules of Court, rule 9.18); and
10. At the expiration of the period of probation, if Marsh Honda has complied with all conditions of probation, the two-year period of stayed suspension will be satisfied and that suspension will be terminated.

Respondent must provide proof of passage of the Multistate Professional Responsibility Examination (MPRE), administered by the National Conference of Bar Examiners, to the Office of Probation within one (1) year after the effective date of the Supreme Court's final disciplinary order in this matter. Failure to pass the MPRE results in actual suspension without further hearing until passage. (But see Cal. Rules of Court, rule 9.10(b); Rules Proc. of State Bar, rule 321(a) & (c).)

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, 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 proceedings 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: July _____, 2009

LUCY ARMENDARIZ
Judge of the State Bar Court