

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case Nos. 00-O-14306-PEM; 00-O-14901;
)	01-O-03211; 01-O-05254;
CHERYL JEAN VAN CLARK,)	02-O-12170; 02-O-13758; and
)	and 04-O-00038
Member No. 158357,)	DECISION AND ORDER SEALING
)	DOCUMENTS
A Member of the State Bar.)	
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I. Introduction

After respondent **Cheryl Jean Van Clark** reached a Stipulation as to Facts and Conclusions of Law (stipulation) with the Office of the Chief Trial Counsel of the State Bar of California (State Bar), this court approved the stipulation and accepted respondent as a participant in the State Bar Court's Alternative Discipline Program (ADP).¹ (Rules Proc. of State Bar, rules 800-807.)

As set forth below in greater detail, respondent has successfully completed the ADP. Accordingly, pursuant to rule 803 of the Rules of Procedure of the State Bar of California,² the court hereby orders that respondent be publicly reprovved with conditions attached.

II. Significant Procedural History

On January 27, 2004, the State Bar filed a notice of disciplinary charges. Respondent filed a response on March 12, 2004.

Following discussions at a settlement conference, respondent's case was referred to the ADP to evaluate whether respondent met the requirements for participation in the program. A prerequisite

¹Also known as the State Bar Court's Program for Respondents with Substance Abuse and Mental Health Issues.

²References to rule are to the Rules of Procedure of the State Bar, unless otherwise noted.

to participation in the ADP is an attorney's acceptance in the State Bar Lawyer Assistance Program (LAP). (Rules Proc. of State Bar, rule 802(a).) Accordingly, respondent also was required to contact the LAP and determine if she wanted to enroll in that program. On August 26, 2004, after an extensive evaluation process, respondent entered into a five-year participation agreement with the LAP to assist in her recovery process from alcoholism.

On January 18, 2005, the parties submitted the stipulation for purposes of respondent's participation in the ADP. (Rules Proc. of State Bar, rule 802(a).) At the same time, this court issued its Decision Re Alternative Recommendations for Degree of Discipline (January 2005 Decision) pursuant to rule 803(a). After considering the court's disciplinary recommendations, respondent elected to participate in the ADP. Following the execution of a Contract and Waiver for Participation in the State Bar Court's Program for Respondents with Substance Abuse and Mental Health Issues (contract), this court accepted respondent into the ADP (formerly known as the Pilot Program) on January 18, 2005.

On July 16, 2007, this court found that respondent successfully completed the ADP and ordered that the stipulation be filed. The court indicated that it would issue this decision recommending the lower level of discipline reflected in the January 2005 Decision.

III. Findings of Fact and Conclusions of Law

The Stipulation Re Facts and Conclusions of Law (stipulation) approved by the court and filed on July 16, 2007, is attached and incorporated by reference as if set forth fully herein.

In summary, respondent admitted to 16 violations of professional misconduct in five client matters, including failure to perform services competently, failure to return unearned fees, failure to promptly return client file, failure to communicate, and failure to provide an accounting.

Pursuant to the stipulation and in the furtherance of justice, the court dismissed case Nos. 01-O-05254 (the Newton matter) and 02-O-12170 (the Cornells matter) without prejudice.

In aggravation, respondent stipulated that her misconduct evidences multiple acts of misconduct. (Rules Proc of State Bar, tit. IV, Stds. For Atty. Sanctions for Prof. Misconduct,

standard 1.2(b)(ii).)³

Respondent also has admitted that her misconduct caused significant harm to her clients. Two of whom were deprived of their documents relating to their respective cases, which respondent received but never returned. Another client was not able to obtain a reduction in his child support obligation in a timely manner as a result of respondent's inaction. (Standard 1.2(b)(iv).)

In mitigation, respondent has no record of prior discipline in about eight years of practice prior to the commencement of the misconduct upon which this proceeding is based. Such a short period of practice without prior discipline is not entitled to significant weight as a mitigating factor. (Standard 1.2(e)(i); *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737, 752 [eight years of practice without discipline is not a significant factor in mitigation].)

Respondent had extreme emotional and physical difficulties at the time of her misconduct. (Standard 1.2(b)(iv).) Beginning 1999, respondent began experiencing a number of traumatic events, including: (1) the onset of menopause in 1999; (2) gall bladder surgery in 2003; (3) her husband's two serious strokes in 1999 and 2001; (4) her husband's diabetes and cardiac surgery in 2003; (5) her brother-in-law's death from lung and brain cancer in 2003; (6) the year-long illness and subsequent death of her secretary in 2000; and (7) her father's stroke in 2000 and subsequent death two years later. Other than the ongoing cardiac issues relating to her husband, respondent no longer suffers from any emotional or physical difficulties relating to these events.

Respondent was candid and cooperative with the State Bar during the investigation and resolution of these matters. (Standard 1.2(e)(v).)

At the time of the misconduct, respondent suffered from severe emotional stress which resulted from circumstances beyond her control.

In April 2004, respondent contacted LAP and completed the intake process. On April 20, 2004, respondent signed an application agreement to be considered by LAP for long-term participation. Respondent cooperated with that assessment process, and entered into the long-term participation plan on August 26, 2004. She has remained in full compliance with LAP since her

³All further references to standards are to this source.

first contact with the program. Her participation requirements included attending weekly LAP group meetings and participating in group therapy.

The evaluation report of Barry M. Rosen, M.D., Medical Director of the Sequoia Center, dated May 24, 2004, supported the conclusion that at the time of her prior misconduct, respondent was suffering from alcohol dependency. Respondent experienced extreme emotional and physical difficulties due to her family members' serious illnesses and deaths, her own health issues and her secretary's death. As a consequence, respondent abused alcohol that caused the charged misconduct.

On May 10, 2007, the LAP submitted to the court for respondent a Certificate of One Year Participation in the Lawyer Assistance Program (Certificate). (Rules Proc. of State Bar, rule 804.) The Certificate confirms that respondent has complied with all requirements, including lab testing, set forth in her LAP Participation Agreement/Plan for at least one year, that no unauthorized substances were detected and that the LAP is not aware of the use of any unauthorized substances during this period.

In addition to participating in LAP, respondent was accepted into the ADP as a result of her misconduct in this matter. Respondent fully complied with all terms and conditions of the program.

Under the conditions of the contract, within 90 days of the date of her execution of the contract, respondent must provide satisfactory proof to the Office of Probation:

- that she had made restitution to Barry L. Bellan in the amount of \$500, plus 10% interest per annum from September 1, 2000, and to Shelly Wilson-Hale in the amount of \$1,000, plus 10% interest per annum from February 9, 2001; and
- that she had written a letter to Linda L. Schaffer to initiate and participate in an attorney- client fee arbitration and that she agreed to promptly comply with any final order made in that fee arbitration proceeding.

Respondent had so complied with these conditions, completing restitution and satisfying the fee arbitration order.

Rule 804 provides that a respondent must participate in the ADP for a period of 36 months, and that the court may shorten the time to not less than 18 months with earned incentives. Based on her compliance with all aspects of her recovery program, the court found it appropriate to reduce the

length of time that respondent was required to participate in the ADP from 36 months to 30 months. Accordingly, on July 16, 2007, the court found that respondent successfully completed the ADP.

Respondent is entitled to significant mitigating credit for her participation in LAP and her successful completion of the ADP.

IV. Degree of Discipline

In determining the appropriate disposition in this matter, the court looks at the purposes of disciplinary proceedings and sanctions. The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession and maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; Standard 1.3.) Standard 1.6(b) provides that the specific discipline for a particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions. The standards applicable to this proceeding are standards 2.2(b), 2.4(b) and 2.10.

The State Bar recommended that if respondent successfully completes the ADP, she should be publicly reprovved with a two-year probation, citing *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509 in support of its recommendation. Respondent, on the other hand, recommended that she receive an admonition or privately reproof if she successfully completes the ADP.

In *Kaplan*, the attorney received a two-year stayed suspension, two years probation, and a three-month actual suspension for numerous instances of misconduct in nine client matters caused primarily by his failure to supervise his office staff properly. Namely, the attorney failed to communicate, failed to forward files, failed to perform services, failed to return settlement drafts, and failed to pay sanctions. The attorney had practiced law for nine years without prior discipline and was experiencing severe marital difficulties at the time of the misconduct.

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 to be a mitigating factor. (*Kaplan v. State Bar* (1991) 52 Cal.3d 1067, 1072-1073; *In re Naney*, *supra*, 51 Cal.3d at p. 197.)

Additionally, Supreme Court case law establishes that an attorney's rehabilitation from alcoholism or other substance abuse problems can be accorded significant mitigating weight if it is established that (1) the abuse was addictive in nature; (2) 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 had a substance abuse problem involving alcohol and her problem was addictive in nature. Dr. Rosen's expert evaluation established that respondent had substance abuse problems that causally contributed to her misconduct. Thus, the first two prongs of the three-part test established by the Supreme Court had been met.

Respondent's successful completion of the ADP, which required her compliance with all provisions and conditions of her Participation Agreement with the LAP, qualifies as clear and convincing evidence of her rehabilitation from her alcohol dependency. She has demonstrated that she has undergone a meaningful and sustained period of rehabilitation from chemical dependency. Therefore, her rehabilitation satisfied the third prong of the Supreme Court's test.

In light of the facts and circumstances surrounding respondent's misconduct, the mitigating and aggravating factors and the analogous case law, the court concludes that a public reproof is appropriate.

V. Order of Public Reproval

IT IS ORDERED that respondent **Cheryl Jean Van Clark** is hereby publicly reproofed, and for a period of two years from the effective date of this order, must comply with the following conditions:

1. Respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;

2. Within 10 calendar days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including her current office address and telephone number, respondent must report such change in writing to both the Office of Probation and to the Membership Records Office of the State Bar;
3. Respondent must comply with all provisions and conditions of her Participation Agreement with the Lawyer Assistance Program (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 her compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition;
4. Respondent must submit written quarterly reports to the Office of Probation no later than each January 10, April 10, July 10 and October 10 of the period of probation. Under penalty of perjury, respondent must state whether she has complied with the State Bar Act, the Rules of Professional Conduct, and these conditions 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 probation period 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 she is complying or has complied with the conditions attached to her public reproof;
6. Within one year of the effective date of the public reproof in this proceeding, respondent must provide to the Office of Probation satisfactory proof of her attendance at a session of State Bar Ethics School, and of her passage of the test

given at the end of that session; and

7. The conditions attached to this public reproval will commence on the finality of this decision.

It is further recommended that costs be awarded to the State Bar pursuant to Business and Professions Code section 6086.10 and that such costs be made payable in accordance with Business and Professions Code section 6140.7 and as a money judgment.

VI. Order Sealing Documents

In the course of determining respondent's eligibility for participation in the ADP, and while respondent was participating in the ADP, various documents were submitted to the court for review under confidential cover, including reports and evaluations by mental health professionals and respondent's recommended treatment for participation in the LAP. Pursuant to Business and Professions Code section 6234, subdivision (a), and rule 806 of the Rules of Procedure of the State Bar of California, all information concerning the nature and extent of a respondent's treatment is absolutely confidential and is not to be disclosed to the public absent an express written waiver by the respondent.

ACCORDINGLY, the court orders this Order Sealing Documents be filed. 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.

FURTHERMORE, the following documents are to remain confidential and sealed:

1. All reports and evaluations by mental health professionals that were submitted to the court as part of respondent's participation in the Alternative Discipline Program;
2. All information concerning the nature and extent of respondent's treatment provided by the LAP, including, but not limited to, participation reports, application agreements and participation agreements; and
3. The Contract and Waiver for Participation in the State Bar Court's Program for Respondents with Substance Abuse or Mental Health Issues.

IT IS FURTHER ORDERED that the foregoing 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: July ____, 2007

PAT McELROY
Judge of the State Bar Court