

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 02-O-15195 (02-O-15209;
)	03-O-02285; 03-O-05006;
JAMES CHISHOLM ASHWORTH,)	04-O-10185); 04-O-11785 (Cons.)
)	
Member No. 151272,)	DECISION AND ORDER SEALING
)	CERTAIN DOCUMENTS
A Member of the State Bar.)	
)	

On July 12, 2005, a Notice of Disciplinary Charges (NDC) was filed against respondent James C. Ashworth (respondent) in case no. 04-O-11785. This matter was originally assigned to the Honorable Richard A. Platel; however, effective July 21, 2005, this matter was reassigned to the undersigned judge.

A NDC was filed against respondent in case no(s). 02-O-15195 (02-O-15209; 03-O-02285; 03-O-05006; 04-O-10185) on September 16, 2005.

On November 1, 2005, the court issued an order consolidating case nos. 02-O-15195 (02-O-15209; 03-O-02285; 03-O-05006; 04-O-10185) and 04-O-11785 and referring this matter to the State Bar Court’s Alternative Discipline Program (ADP).¹

¹ The ADP was formerly known as the Program for Respondent’s with Substance Abuse or Mental Health Issues.

Thereafter, on November 4, 2005, respondent contacted the State Bar of California's Lawyer Assistance Program (LAP) to assist him with his substance abuse issues. Respondent executed a Participation Plan with the LAP on March 16, 2006.

The parties entered into a Stipulation Re Facts and Conclusions of Law on August 1, 2006 with respect to case no. 02-O-15195 (02-O-15209; 03-O-02285; 03-O-05006; 04-O-10185); 04-O-11785.

On August 21, 2006, respondent submitted a declaration establishing a nexus between his substance abuse issues and his misconduct.

On September 25, 2006, the court lodged its Confidential Statement of Alternative Dispositions and Orders,² the Contract and Waiver for Participation in the State Bar Court's ADP (Contract),³ and the parties' Stipulation Re Facts and Conclusions of Law, and respondent's period of participation in the ADP began on this date.⁴ In addition, respondent's period of inactive enrollment pursuant to Business and Professions Code section 6233⁵ began on September 25, 2006, and was terminated effective March 26, 2007.

On July 28, 2009, the court issued an order finding that respondent has successfully completed the ADP. Thereafter, on that same date, the parties' Stipulation Re Facts and Conclusions of Law was filed, and this matter was submitted for decision.

² Although the caption of the Confidential Statement of Alternative Dispositions and Orders does not include case no. 02-O-15209, this appears to be an error, as this case number is included in both the ADP Contract and the parties' Stipulation Re Facts and Conclusions of Law.

³ The Contract was executed by respondent on this date.

⁴ On September 26, 2006, the court filed an order formally reflecting that respondent was accepted into the ADP, and that his participation in the ADP commenced on September 25, 2006.

⁵ Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In this consolidated matter, respondent stipulated that he violated: (1) rule 3-110(A) of the Rules of Professional Conduct of the State Bar of California⁶ by failing to perform competently the legal services for which he was employed (four matters); (2) section 6106 by committing acts of dishonesty in one matter and by committing acts of moral turpitude by dishonestly or with gross negligence misappropriating client funds in another matter; (3) rule 3-700(D)(2) by failing to promptly refund unearned attorney fees (two matters); (4) sections 6125 and 6126 by holding himself out to the court as entitled to practice law and actually practicing law when he was not an active member of the State Bar; (5) rule 4-100(A) by failing to maintain client funds in a trust account in one matter and by failing to deposit funds received for the benefit of a client in a bank account labeled “trust account” or words of similar import in another matter; (6) rule 4-100(B)(3) by failing to render appropriate accounts to a client regarding all client funds coming into respondent’s possession; and (7) section 6068, subdivision (m) in one matter by failing to inform his client of significant developments in her matter and in another matter by failing to respond promptly or at all to reasonable client status inquires.

In mitigation, respondent contacted the LAP and ultimately entered into a long-term participation plan with the LAP.

In aggravation, respondent has a prior record of discipline. Effective June 14, 1998, respondent was privately reprimanded in case no. 97-C-18230 for violating section 6068, subdivision (a), based on his violation of Vehicle Code section 23152. In addition, respondent’s misconduct significantly harmed five clients, and the stipulated misconduct involved multiple cases.

⁶ Unless otherwise indicated, all further references to rule(s) refer to the Rules of Professional Conduct of the State Bar of California.

The parties' stipulation as to facts and conclusions of law, including the court's order approving the stipulation, is attached hereto and hereby incorporated by reference, as if fully set forth herein. The stipulation as to facts and conclusions of law set forth the factual findings, legal conclusions, and aggravating and mitigating circumstances in this consolidated matter.

Furthermore, at the time respondent engaged in his misconduct, he was suffering from substance abuse issues, and respondent's substance abuse issues directly caused or contributed to the misconduct which forms the basis for this proceeding. Supreme Court case law establishes that an attorney's rehabilitation from alcoholism or other substance abuse problems can be accorded significant 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 executed a Participation Plan with the LAP on March 16, 2006,⁷ and thereafter has participated in the LAP. The LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program – Substance Use which reflects that the LAP is not aware of respondent's use of any unauthorized substance for at least one year prior to June 15, 2009.

Respondent also successfully completed the ADP. Respondent's successful completion of the ADP, which required his 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 issues which led to his misconduct. Accordingly, it is appropriate to consider respondent's successful completion of the ADP as a mitigating circumstance in this matter. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(e)(iv).)

⁷ Although respondent executed a LAP Participation Plan on this date, he initially contacted the LAP on November 4, 2005.

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 each parties' discipline recommendation and considering the Standards for Attorney Sanctions for Professional Misconduct (standard(s)) and certain case law, the parties' stipulation setting forth the facts, conclusions of law, and the aggravating and mitigating circumstances, and respondent's declaration regarding the nexus between his substance abuse issues and his misconduct, 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.

In determining the appropriate discipline to recommend in this matter if respondent successfully completed the ADP, the court considered the discipline recommended by the parties, as well as certain standards and case law. Respondent recommended a two-year stayed suspension and three-year period of probation with no period of actual suspension or an amount less than that recommended by the State Bar. In contrast, the State Bar recommended that respondent be suspended for two years and until compliance with standard 1.4(c)(2), that execution of the suspension be stayed, and that respondent be placed on probation for three years and actually suspended for one year. The court also considered standards 1.2, 1.3, 1.4, 1.5, 1.6, 1.7(a), 2.2(a), 2.2(b), 2.3, 2.4(b), 2.6, and 2.10 and *Howard v. State Bar* (1990) 51 Cal.3d 215, *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354, and *In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944.

After agreeing to the discipline which the court would recommend to the Supreme Court if respondent successfully completed, or 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's period of participation in the ADP commenced.

Thereafter, respondent successfully participated in the ADP and, as set forth in the court's July 28, 2009 order, the court found that respondent has successfully completed the ADP. Accordingly, the court will recommend to the Supreme Court the imposition of the discipline set forth in the court's Confidential Statement of Alternative Dispositions and Orders if respondent successfully completed the ADP.

RECOMMENDED DISCIPLINE

IT IS HEREBY RECOMMENDED that respondent **JAMES CHISHOLM ASHWORTH, State Bar Number 151272**, be suspended from the practice of law in California for two (2) years, that execution of that period of suspension be stayed, and that he be placed on probation for a period of three (3) years subject to the following conditions:

1. Respondent James Chisholm Ashworth is suspended from the practice of law for the first six (6) months of probation⁸ (with credit given for the period of inactive enrollment pursuant to Business and Professions Code section 6233 which commenced on September 25, 2006 and terminated on March 26, 2007).
2. Respondent James Chisholm Ashworth 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

⁸ 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.)

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 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 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/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;

- h. Respondent must abstain from use of any alcoholic beverages, and must not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription; and
- i. Respondent must make restitution to Dr. William Ginzburg in the amount of \$3,000 plus 10% interest per year from November 1, 2002 (or reimburse the State Bar's Client Security Fund, to the extent of any payment from the fund to Dr. William Ginzburg, in accordance with Business and Professions Code section 6140.5) and furnish proof to the State Bar's Office of Probation in Los Angeles.

Respondent must make restitution to Scott Krantz in the amount of \$14,006 plus 10% interest per year from November 1, 2002 (or reimburse the State Bar's Client Security Fund, to the extent of any payment from the fund to Scott Krantz, in accordance with Business and Professions Code section 6140.5) and furnish proof to the State Bar's Office of Probation in Los Angeles.

Respondent must make restitution to Carmen Arce in the amount of \$13,200 plus 10% interest per year from February 22, 2002 (or reimburse the State Bar's Client Security Fund, to the extent of any payment from the fund to Carmen Arce, in accordance with Business and Professions Code section 6140.5) and furnish proof to the State Bar's Office of Probation in Los Angeles.

Respondent must make restitution to Mark Tully in the amount of \$1,695.24 plus 10% interest per year from May 1, 2001 (or reimburse the State Bar's Client Security Fund, to the extent of any payment from the fund to Mark Tully, in accordance with Business and Professions Code section 6140.5) and furnish proof to the State Bar's Office of Probation in Los Angeles.

Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d).

With each written quarterly report required herein, respondent must provide to the Office of Probation satisfactory proof of all restitution payments made by him during that quarter or applicable reporting period.

To the extent that respondent has paid any restitution prior to the effective date of the Supreme Court's final disciplinary order in this proceeding,

respondent will be given credit for such payments provided satisfactory proof of such is or has been shown to the Office of Probation.⁹

3. At the expiration of the period of probation, if James Chisholm Ashworth has complied with all conditions of probation, the two (2) year period of stayed suspension will be satisfied and that suspension will be terminated.

It is also recommended that James Chisholm Ashworth take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court's disciplinary order 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 an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

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 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

⁹ The Confidential Statement of Alternative Disposition and Orders lodged on September 25, 2006, also provided for the installment payment of restitution. However, as respondent has paid restitution during his period of participation in the ADP, the court will not require respondent to comply with set installment payments during his period of probation. Respondent nevertheless must complete restitution during his period of probation.

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: October _____, 2009

PAT McELROY
Judge of the State Bar Court