

**STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of	)	<b>Case No. 04-O-10876</b>
	)	
<b>RICHARD M. SEFF,</b>	)	<b>DECISION AND ORDER FILING AND</b>
	)	<b>SEALING CERTAIN DOCUMENTS</b>
<b>Member No. 150440,</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

**INTRODUCTION/PERTINENT PROCEDURAL HISTORY**

This disciplinary matter involving respondent Richard M. Seff (respondent) arises out of the following acts of misconduct: intentional or reckless failure to perform services with competence; failure to maintain client funds in a trust account; failure to pay promptly to a client funds in respondent’s possession which the client was entitled to receive; knowingly acquiring a pecuniary interest adverse to a client without complying with certain requirements of the Rules of Professional Conduct; and committing acts involving moral turpitude, dishonesty or corruption.

On November 24, 2004, respondent contacted the State Bar’s Lawyer Assistance Program (LAP) to assist him with his mental health issue, and on March 24, 2005, respondent executed a Participation Plan with the LAP.

On November 29, 2004, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed formal disciplinary charges against respondent.<sup>1</sup> Thereafter, this matter was referred to the State Bar Court’s Alternative Discipline Program (ADP)<sup>2</sup> before the undersigned judge.

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<sup>1</sup>This matter was originally assigned to the Honorable Pat E. McElroy. Effective January 3, 2005, this matter was assigned to the Honorable Richard A. Platel.

<sup>2</sup>The ADP was formerly known as the State Bar Court’s Pilot Program for Respondents with Substance Abuse or Mental Health Issues and the State Bar Court’s Program for

On March 5, 2005, respondent submitted a nexus statement to the court and a report from a physician which established that at the time of his misconduct, respondent was suffering from a mental health issue.

In June 2005, the parties executed a Stipulation Re Facts and Conclusions of Law in this matter. Respondent's statement, the physician's report, and the stipulated facts establish a causal connection between respondent's mental health issue and the misconduct found in this disciplinary proceeding. As such, the court found that respondent had adequately established a nexus between his mental health issue and his misconduct in this matter, i.e., that his mental health issue directly caused the misconduct set forth in this matter.

On June 23, 2005, the court received the parties' Joint Brief Re Discipline.

On September 1, 2005, the court lodged its Statement of Alternative Dispositions and Orders 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 ADP (Contract); the parties' Stipulation Re Facts and Conclusions of Law and the order approving the stipulation was lodged with the court; the court lodged an order requiring the State Bar's Office of Probation to monitor respondent's compliance with specified conditions set forth in the Contract; and respondent was accepted for participation in the ADP effective September 1, 2005.

Thereafter, respondent participated successfully in both the State Bar's LAP and the court's ADP.

The LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program dated January 9, 2008, which reflects that respondent has complied with the requirements set forth in the LAP Participation Agreement/Plan for at least one year prior to January 9, 2008, and that during this time period, respondent has maintained mental health and stability and has participated successfully in the LAP.

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Respondent's with Substance Abuse or Mental Health Issues. The ADP is also known as the State Bar Court's Program for Respondent's with Substance Abuse and/or Mental Health Issues. (Rules Proc. of State Bar, rules 800-807.)

On January 25, 2008, respondent submitted to the court a statement regarding his early termination from the ADP.

On February 5, 2008, the court filed an order following a February 2, 2008 status conference which set forth that respondent has successfully completed the ADP. On that same date, the parties' Stipulation Re Facts and Conclusions of Law, and the order approving the stipulation, was filed in this matter.

Accordingly, the court now issues this decision recommending that the Supreme Court impose on respondent the discipline set forth below in this decision.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

Furthermore, at the time respondent engaged in the misconduct for which he has been found culpable, respondent was suffering from a mental health issue, and respondent's mental health issue 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 these 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 November 2004 and has 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 from LAP, qualify as clear and convincing evidence that respondent no longer

suffers from the mental health issue which led to his 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, standard 1.2(e)(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.)

Prior to respondent being accepted for participation in the ADP, the State Bar and the respondent submitted a joint brief to the court on the appropriate discipline in this matter. After reviewing the parties' joint brief and considering the standards and case law cited therein, the parties' stipulation setting forth the facts, conclusions of law and aggravating and mitigating circumstances with respect to this disciplinary proceeding, the physician's report, and respondent's statement regarding the nexus between his mental health issue and his misconduct in this matter, the parties were advised 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 the ADP. Respondent thereafter entered into a 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 February 5, 2008, status conference order, the court found that respondent successfully completed the ADP. Accordingly, the court will recommend to the Supreme Court the imposition of the discipline set forth in the court's Statement of Alternative Dispositions and Orders if respondent successfully completed the ADP.

### **RECOMMENDED DISCIPLINE**

**IT IS HEREBY RECOMMENDED** that respondent **RICHARD M. SEFF** be suspended from the practice of law in the State of California for a period of two years and until he shows proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct, that execution of such suspension be stayed, and that respondent be placed on probation

for a period of three years on the following conditions:

1. Respondent must be actually suspended from the practice of law for the first 60 days of the period of probation;
2. Respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
3. Within thirty (30) days after the effective date of discipline, respondent must contact the State Bar's 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. Within ten (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 his 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;
5. 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 during which these probation conditions are in effect. Under penalty of perjury, respondent must state in each report whether he has complied with the State Bar Act, the Rules of Professional Conduct and all conditions of probation during the preceding calendar quarter. If the first report will cover less than thirty (30) calendar days, that report must be submitted on the reporting 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 twenty (20) calendar days before the last day of the period of probation and no later than the last day of the probation period;

6. Respondent must comply with all provisions and conditions of his Participation Agreement/Plan with the Lawyer Assistance Program (LAP) and must immediately report any non-compliance 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. Upon successful completion of his LAP Participation Agreement/Plan, respondent will be relieved of this condition, provided satisfactory proof of his successful completion of his LAP Participation Agreement/Plan has been provided to the Office of Probation;
7. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully, all inquiries of the Office of Probation which are directed to him personally or in writing relating to whether respondent is complying or has complied with the conditions of his probation;
8. Within one year after the effective date of the Supreme Court's final disciplinary order in this matter, respondent must provide the Office of Probation with satisfactory proof of his attendance at a session of State Bar Ethics School, given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015, and passage of the test given at the conclusion of that session, unless he has done so within two years prior to the effective date of the Supreme Court's final disciplinary order in this matter. Arrangements to attend Ethics School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Ethics School (Rules Proc. of State Bar, rule 3201).
9. Reporting requirements.

- A. If respondent possesses client funds at any time during the period covered by a required quarterly report, respondent must file with each required report a certificate from a certified public accountant or other financial professional approved by the Office of Probation, certifying that: respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a “Trust Account” or “Client’s Funds Account”; and respondent has kept and maintained the following:
- i. a written ledger for each client on whose behalf funds are held that sets forth:
    1. the name of such client;
    2. the date, amount , and source of all funds received on behalf of such client;
    3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and
    4. the current balance for such client;
  - ii. a written journal for each client trust fund account that sets forth:
    1. the name of such account;
    2. the date, amount, and client affected by each debit and credit; and
    3. the current balance in such account;
  - iii. all bank statements and canceled checks for each client trust account; and
  - iv. each monthly reconciliation (balancing) of (i), (ii), and (iii) above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii) above, the reason for the differences, and that respondent has maintained a written journal of securities or other properties held for a client that specifies:

1. each item of security and property held;
  2. the person on whose behalf the security or property is held;
  3. the date of receipt of the security or property;
  4. the date of distribution of the security or property; and
  5. the person to whom the security or property was distributed.
- B. If respondent does not possess any client funds, property or securities during the entire period covered by a report, respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, respondent need not file the accountant's certificate described above.
- C. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.
10. Within one (1) year after the effective date of the Supreme Court's final disciplinary order in this matter, respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015, and passage of the test given at the end of that session, unless he has done so within two year prior to the effective date of the Supreme Court's final disciplinary order in this matter. Arrangements to attend Ethics School Client Trust Accounting School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Trust Accounting School. (Rules Proc. of State Bar, rule 3201.)
11. These probation conditions will commence on the effective date of the Supreme Court's final disciplinary order in this proceeding;
12. At the expiration of the period of this probation, if respondent has complied with all



the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for two years and until he shows proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct will be satisfied and that suspension will be terminated.

The court also recommends that respondent be required to take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) within one year after the effective date of the Supreme Court's final disciplinary order in this matter, and that he be ordered to provide satisfactory proof of his passage of the MPRE to the Office of Probation within said year, unless he has done so within two year prior to the effective date of the Supreme Court's final disciplinary order in this matter.<sup>3</sup>

#### **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.

#### **ORDER FILING AND SEALING CERTAIN DOCUMENTS**

The court orders a court case administrator to file this Decision and Order Filing and 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 will be 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

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<sup>3</sup>When ordered to take and pass the MPRE by the Supreme Court, failure to do so within the specified time results in actual suspension by the Review Department of the State Bar Court, without further hearing, until passage. But see rule 9.10(b) (formerly rule 951), California Rules of Court, and rule 321(a)(1) and (3), Rules of Procedure of the State Bar of California.

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: March \_\_, 2008

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RICHARD A. HONN  
Judge of the State Bar Court