

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case Nos. 04-O-15901-PEM (04-O-15902;
)	05-O-00710); 05-O-05355 ;
AVA DELILAH LANDERS,)	06-O-12776 (Cons.)
)	
Member No. 171859,)	
)	DECISION AND ORDER SEALING
A Member of the State Bar.)	DOCUMENTS
_____)	

I. Introduction

In this disciplinary proceeding, respondent **Ava Delilah Landers** stipulated to professional misconduct in five client matters, including failing to perform competently, failing to communicate, failing to maintain client funds, failing to properly withdraw from employment and failing to promptly return client files.

Respondent has successfully completed the State Bar Court’s Alternative Discipline Program (ADP). (Rules Proc. of State Bar, rules 800-807.) The court recommends that respondent be suspended from the practice of law for one year, that execution of such suspension be stayed, and that respondent be placed on probation for one year with conditions. (Rules Proc. of State Bar, rule 803.)¹

¹References to rule are to the Rules of Procedure of the State Bar, unless otherwise noted.

II. Significant Procedural History

In 2005 respondent sought to participate in the State Bar's Lawyer Assistance Program (LAP). On April 24, 2006, respondent executed a Participation Agreement with the LAP.

A. Case Nos. 04-O-15901; 04-O-15902; 05-O-00710; 05-O-05355

On November 28, 2005, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed a Notice of Disciplinary Charges (NDC) against respondent in case Nos. 04-O-15901; 04-O-15902; and 05-O-00710.

In or about March 2006, respondent was notified of an additional complaint (case No. 05-O-05355).

Thereafter, respondent submitted a declaration to the court which established that at the time of her misconduct, she was suffering from mental health issues. Respondent also executed a stipulation regarding facts and conclusions of law in this matter. Respondent's declaration and the stipulated facts, as well as the opinions of two medical professionals, establish a causal connection between respondent's mental health issues and the misconduct found in this disciplinary proceeding. As such, the court found that respondent had adequately established a nexus between her mental health issues and her misconduct in this matter, i.e., that her mental health issues directly caused the misconduct set forth in this matter.

On June 26, 2006, the court lodged its Confidential Statement of Alternative Dispositions and Orders (Statement), 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 Alternative Discipline Program; the parties' stipulation was lodged with the court; and respondent was accepted as a participant in the ADP.

B. Case No. 06-O-12776

On August 15, 2006, the State Bar notified the court that it received another complaint against respondent (case No. 06-O-12776).

Subsequently, on May 21, 2007, the following documents were lodged with the court:

- Amended Confidential Statement of Alternative Dispositions and Orders (Amended Statement), setting forth the recommended discipline if respondent successfully completed or was terminated from the court's ADP;
- Amended Contract and Waiver for Participation in the State Bar Court's Alternative Discipline Program; and
- the parties' stipulation in case No. 06-O-12776.

On December 15, 2009, the LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program — Mental Health (certificate), setting forth that respondent has complied with the requirements of the LAP Participation Agreement/Plan for one year prior to the date of this certificate, and that during this period, respondent has maintained mental health stability and has participated successfully in the LAP.

On January 6, 2010, the court found that respondent successfully completed the ADP and subsequently ordered the stipulations lodged June 26, 2006, and May 21, 2007, to be filed. The court also indicated that it would issue this decision recommending to the Supreme Court the imposition of the lower level of discipline reflected in the Amended Statement.

III. Findings of Fact and Conclusions of Law

The two Stipulations Re Facts and Conclusions of Law (stipulations) approved by the court and filed on January 6, 2010, are incorporated by reference as if set forth fully herein. The stipulations set forth the factual findings, conclusions of law and certain aggravating and mitigating circumstances in this matter.

Briefly, respondent stipulated to professional misconduct in five client matters, including failing to perform competently, failing to communicate, failing to maintain client funds, failing to properly withdraw from employment and failing to promptly return client files.

At the time respondent engaged in the misconduct for which she has been found culpable, respondent was suffering from mental health issues which 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 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 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 2006 and has successfully completed the ADP. Respondent had satisfied one of the two restitution obligations pursuant to the stipulations. Respondent's successful completion of the ADP, as well as the certificate, qualify as clear and convincing evidence that respondent no longer suffers from the mental health issues which led to her 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,² std. 1.2(e)(iv).)

² Future references to standard(s) or std. are to this source.

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.)

After reviewing the parties' briefs on discipline and considering the standards and case law cited therein, the parties' stipulations setting forth the facts, conclusions of law and aggravating and mitigating circumstances with respect to this disciplinary proceeding and respondent's declaration 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 that would be recommended if respondent was terminated from the ADP.

After agreeing to the recommended discipline, respondent executed the 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 order filed on January 6, 2010, 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 Amended Statement if respondent successfully completed the ADP.

V. Recommended Discipline

Therefore, the court recommends that respondent **Ava Delilah Landers** be suspended from the practice of law for one year, that execution of such suspension be stayed, and that respondent be placed on probation for a period of one year, on the following conditions:

1. Respondent must make restitution to Sara Escobar in the amount of \$950 plus 10% interest per annum from June 7, 2006 (or to the Client Security Fund to the extent of any

payment from the fund to Sara Escobar, plus interest and costs, in accordance with Business and Professions Code section 6140.5); and furnish satisfactory proof of payment thereof to the State Bar's Office of Probation;³

2. During the period of probation, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;
3. Within 10 days of any change in the information required to be maintained on the State Bar's membership records pursuant to Business and Professions Code section 6002.1, subdivision (a), including her current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report any such change in writing to the Membership Records Office of the State Bar and to the Office of Probation;
4. Unless respondent has successfully completed the Lawyer Assistance Program, respondent must comply with all provisions and conditions of her Participation Agreement with the LAP and must execute an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of her participation in the LAP and her compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. If respondent has successfully completed the LAP, respondent must provide the Office of Probation with satisfactory certification of completion of the LAP;
5. Respondent must submit written quarterly probation reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of probation. Under

³ According to the Office of Probation, respondent's restitution payment to Jenny Miller Woltz for \$1,500 plus interest has been fully satisfied.

penalty of perjury, respondent must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions set forth in this Decision 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 and no later than the last day of said period;

6. Within 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;
7. 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 these probation conditions; and
8. These probation conditions will commence on the effective date of the Supreme Court's final disciplinary order in this proceeding.⁴

It is further recommended that respondent take and pass the Multistate Professional Responsibility Examination within one year. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) Failure to pass the MPRE within the specified time results in actual suspension by

⁴ Respondent is not required to take the State Bar Ethics School because she has already done so.

the Review Department, without further hearing, until passage. (But see Cal. Rules of Court, rule 951(b), and Rules Proc. of State Bar, rule 3201(a)(1) and (3).)

Finally, it is recommended that costs be awarded to the State Bar pursuant to Business and Professions Code section 6086.10, and be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

VI. Order Sealing Documents

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.

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: March _____, 2010

PAT McELROY
Judge of the State Bar Court