

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 05-C-01740-RAH
)	
JAMES STUART LOCHEAD,)	
)	DECISION AND DISCIPLINE ORDER;
Member No. 146932,)	ORDER SEALING CERTAIN
)	DOCUMENTS
<u>A Member of the State Bar.</u>)	

INTRODUCTION

In May 2002, respondent **James Stuart Lohead** (“respondent”) was arrested for stalking his estranged wife. Respondent was subsequently convicted, and this matter was referred to this court for a hearing and decision as to whether the facts and circumstances surrounding this conviction involved moral turpitude or other misconduct warranting discipline and, if so found, a recommendation as to the discipline to be imposed. Thereafter, respondent participated in and successfully completed the State Bar Court’s Alternative Discipline Program (“ADP”). Accordingly, the court hereby orders, as set forth below, the imposition of discipline relating to a successful completion of the ADP.

PROCEDURAL HISTORY

In early September 2002, respondent appeared in the Los Angeles Superior Court and entered a guilty plea to the crime of stalking, Penal Code section 646.9(A). Respondent was subsequently sentenced to, among other things, 195 days in jail with credit for time served.

On August 30, 2005, the Office of the Chief Trial Counsel of the State Bar of California (“Office of the Chief Trial Counsel”) transmitted a certified copy of respondent’s record of conviction, in Case No. 05-C-01740, to the State Bar Court pursuant to Business and Professions Code sections 6101-6102 and California Rules of Court, rule 9.5, et seq. On September 8, 2005, the Review Department of the State Bar Court issued an order referring Case No. 05-C-01740 to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the facts and circumstances surrounding respondent’s conviction are found to involve moral turpitude or other misconduct warranting discipline.

Respondent sought to participate in the ADP, and on February 15, 2006, this matter was referred to the ADP.

On April 3, 2006, respondent submitted a nexus statement establishing a nexus between his substance abuse issue and his misconduct. The parties entered into a Stipulation Re Facts and Conclusions of Law which was received by the State Bar Court on December 7, 2006.

On August 3, 2007, the court lodged the Confidential Statement of Alternative Dispositions and Orders, the Contract and Waiver for Participation in the State Bar Court’s ADP (“Contract”), and the parties’ Stipulation Re Facts and Conclusions of Law. On August 13, 2007, the court issued an order formally accepting respondent into the ADP.

On June 16, 2010, the court issued an order finding that respondent 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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Stipulation Re Facts and Conclusions of Law, including the court’s order approving the Stipulation Re Facts and Conclusions of Law, is attached hereto and hereby incorporated by reference, as if fully set forth herein.

The Stipulation Re Facts and Conclusions of Law sets forth the factual findings, legal conclusions, and aggravating and mitigating circumstances in this matter. Below is an abbreviated summary of this matter.

In 2001, respondent's wife filed for divorce and moved out along with their minor children. In May 2002, respondent, in an effort to salvage his marriage, began calling his estranged wife. Respondent's estranged wife told him that she did not want to talk to him, but he continued to call her. Respondent left several messages that his estranged wife did not return. Respondent grew angrier and left two messages threatening his estranged wife's life.

On May 7, 2002, respondent went to his estranged wife's residence where he slashed the tires of the car sitting out front and threw eggs at her house. Respondent was arrested that next day. Ultimately, he was charged with making a criminal threat and stalking.

In early September 2002, respondent appeared in the Los Angeles Superior Court and entered a guilty plea to stalking. Respondent was sentenced to 195 days in jail (credit for time served), 3 years formal probation, abstention from alcohol, completion of a residential treatment program, psychiatric counseling, and no contact with the victim.

Respondent was released to a treatment program, but deserted it one hour after arriving. A warrant was issued and respondent was promptly arrested. In November 2002, the Superior Court imposed a sentence of 365 days in custody, to be served at the Aware Foundation program.

In February 2004, respondent was arrested for shoplifting. In January 2005, the Superior Court found that respondent's new arrest violated the terms of his probation. Respondent was sentenced to continue on the same terms and conditions of his then-existing probation.¹

¹ This shoplifting charge was ultimately dismissed.

Respondent stipulated that although the facts and circumstances surrounding his violation of Penal Code section 646.9(A) do not involve moral turpitude, they do involve other conduct warranting discipline.

Aggravation and Mitigation

The parties stipulated to the following factors in aggravation and mitigation. In aggravation, respondent's misconduct caused significant harm to the public and his shoplifting offense constituted uncharged misconduct. In mitigation, respondent: (1) had no prior record of discipline; (2) displayed candor and cooperation with the Office of the Chief Trial Counsel; (3) was suffering from extreme difficulties in his personal life; and (4) traveled to state prison camps speaking on Alcoholics Anonymous panels.

In addition, respondent 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 issue 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).)

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.)

The parties submitted briefs on the issue of discipline. After considering the parties' briefs, including the case law and standards cited therein, the court advised the parties of the

discipline that would be ordered if respondent successfully completed the ADP and the discipline that would be recommended to the Supreme Court if respondent was terminated from, or failed to successfully complete, the ADP.

In determining the appropriate discipline in this matter if respondent successfully completed the ADP, the court considered the discipline recommended by the parties, as well as standards 1.3, 1.4, 1.5, 1.6, and 3.4. The court also considered and distinguished *In re Otto* (1989) 48 Cal.3d 970, *In re Hickey* (1990) 50 Cal.3d 571, and *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52.

After agreeing to the court's proposed high and low levels of discipline, respondent executed the Contract to participate in the ADP, 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 June 16, 2010 order—successfully completed the ADP. Accordingly, the court orders imposition of the discipline set forth in the Confidential Statement of Alternative Dispositions and Orders relating to a successful completion of the ADP.

DISCIPLINE ORDER

Accordingly, it is ordered that respondent **James Stuart Lohead**, State Bar Number 146932, is hereby publicly reprovved. Pursuant to the provisions of rule 270(a) of the Rules of Procedure of the State Bar of California, the public reprovval will be effective when this decision becomes final. Furthermore, pursuant to rule 9.19(a) of the California Rules of Court and rule 271 of the Rules of Procedure, the court finds that the interests of respondent and the protection of the public will be served by the following specified conditions being attached to the public reprovval imposed in this matter. Failure to comply with any conditions attached to this public reprovval may constitute cause for a separate proceeding for willful breach of rule 1-110 of the

Rules of Professional Conduct of the State Bar of California. Respondent is hereby ordered to comply with the following conditions attached to his public reproof for a period of two years following the effective date of the public reproof imposed in this matter:

1. During the reproof period, respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct;
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 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 reproof. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all reproof conditions 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 reproof period and no later than the last day of the reproof 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 respondent is complying or has complied with the reproof 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(s) 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 comply with all provisions and conditions of his Participation Agreement with the Lawyer Assistance Program (“LAP”) and must provide the Office of Probation with certification of completion of the LAP. Respondent must immediately report any non-compliance with any provision(s) or condition(s) of his Participation Agreement 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. Respondent will be relieved of this condition upon providing to the Office of Probation satisfactory certification of completion of the LAP; and
9. The period during which these conditions are in effect will commence upon the date this decision imposing the public reproof becomes final.

Based on the nature of the misconduct and the discipline imposed, it is not ordered that respondent take and pass the Multistate Professional Responsibility Examination.

COSTS

The court orders 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 Discipline Order; 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 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: August _____, 2010

RICHARD A. HONN
Judge of the State Bar Court