

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of) Case Nos.: **05-O-00167 (05-O-01242;**
) **05-O-05034; 06-O-12274)**
STANLEY LEWIS EVANS,)
) **DECISION AND ORDER SEALING**
Member No. 119091,) **CERTAIN DOCUMENTS**
)
A Member of the State Bar.)

SIGNIFICANT PROCEDURAL HISTORY

On September 28, 2006, the State Bar of California, Office of the Chief Trial Counsel (State Bar) filed a Notice of Disciplinary Charges (NDC) against respondent Stanley Lewis Evans (respondent) in case nos. 05-O-00167 (05-O-01242; 05-O-05034; 06-O-12274).

Respondent thereafter sought to participate in the State Bar Court's Alternative Discipline Program (ADP), and on November 21, 2006, this matter was referred to the ADP for a status conference on January 22, 2007.

As a condition of respondent's acceptance into the ADP, respondent was enrolled as an inactive member of the State Bar for one year, effective November 1, 2008.

On September 25, 2007, respondent signed a declaration establishing a nexus between his substance abuse and mental health issues and his misconduct.

The parties subsequently entered into a Stipulation Re Facts and Conclusions of Law on October 1, 2007.

On April 28, 2008, the court lodged the Confidential Statement of Alternative Dispositions and Orders and the Contract and Waiver for Participation in the State Bar Court's ADP (Contract),

and filed the parties' Stipulation Re Facts and Conclusions of Law. That same day, the court issued an order formally accepting respondent into the ADP.

On June 2, 2011, the State Bar requested an Order to Show Cause (OSC) regarding respondent's termination from the ADP. The State Bar's request was based on the fact that respondent was not in compliance with his LAP requirements, and respondent has continued to commit serious misconduct since being in the ADP. Upon motion of the State Bar, the court ordered respondent to appear in person on June 22, 2011, for a hearing regarding whether respondent should be terminated from the ADP.

At the June 22, 2011 hearing, at which respondent appeared in person, the court found that respondent was not in compliance with the conditions of the court's ADP in that respondent admitted that he tested positive for alcohol and admitted to having an alcoholic beverage while in the ADP. As a result, respondent was terminated from the ADP. This matter was submitted for decision that same day.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

The Stipulation sets forth the factual findings, legal conclusions, and aggravating and mitigating circumstances in this matter. Respondent stipulated to multiple counts of misconduct in four client matters. The misconduct stipulated to matters includes the following:

- Failing to competently perform legal services;
- Failing to release client files;
- Failing to return unearned fees;
- Failing to maintain client funds in trust accounts;
- Failing to pay client funds promptly;

- Misappropriating client funds;
- Failing to provide an accounting of client funds when requested by client; and
- Failing to cooperate with the State Bar's disciplinary investigation of his matters.

In aggravation, respondent's misconduct involved trust funds, was surrounded by dishonesty and concealment, evidenced multiple acts of wrongdoing, and resulted in significant harm. In addition, respondent had a prior record of discipline consisting of a public reproof with conditions effective December 29, 1990. In mitigation, respondent had participated in the Lawyers Assistance Program.¹

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 Ca1.3d 103, 111.)

After considering the parties' discipline recommendations, the court advised the parties of the discipline that would be recommended to the Supreme Court 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 to recommend in this matter if respondent was terminated from the ADP, the court considered the discipline recommended by the parties, as well as standards 1.3, 1.4, 1.5, 1.6, 1.7(a), 2.2, 2.3, 2.4(b), 2.6, and 2.10. The court also considered all relevant case law presented by the parties.

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 was terminated from the ADP, as set forth in the court's June 22, 2011 order. Accordingly, the court recommends imposition of the discipline set forth in the

¹ Due to respondent's termination from the ADP, his participation in the ADP does not warrant consideration as a mitigating circumstance. (See Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(e)(iv).)

Confidential Statement of Alternative Dispositions and Orders relating to a termination from or failure to successfully complete the ADP.

RECOMMENDED DISCIPLINE

It is recommended that respondent Stanley Lewis Evans be suspended from the practice of law for four (4) years, that execution of that period of suspension be stayed, and that respondent be placed on probation for five (5) years, subject to the following conditions:

1. Respondent is suspended from the practice of law for a minimum of the first two (2) years of probation, and he will remain suspended until the following requirement is satisfied:
 - a. Respondent must provide proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)
2. Respondent 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 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 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 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 shall 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 select a licensed medical laboratory approved by the Office of Probation. Respondent must furnish to the laboratory blood and/or urine samples as may be required to show that respondent has abstained from alcohol and/or drugs. The samples must be furnished to the laboratory in such a manner as may be specified by the laboratory to ensure specimen integrity. Respondent must cause the laboratory to provide to the Office of Probation, at the respondent's expense, a screening report on or before the tenth day of each month of the probation period, containing an analysis of respondent's blood and/or urine obtained not more than ten (10) days previously.

At the expiration of the period of probation, if respondent has complied with all conditions of probation, the four (4) year period of stayed suspension will be satisfied and that suspension will be terminated.

It is further recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) during the period of his suspension and provide

satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.²

The court also recommends that respondent be ordered to comply with California Rules of Court, rule 9.20 and that he be ordered to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.³

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 5.388(c) (former rule 806(c)) of the Rules of Procedure of the State Bar of California (Rules of Procedure),⁴ all other documents not previously filed in this matter are ordered sealed pursuant to rule 5.12 (former 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

² Failure to pass the MPRE within the specified time results in actual suspension by the Review Department, without further hearing, until passage. (But see Cal. Rules of Court, rule 9.10(b), and Rules Proc. of State Bar, rule 5.162(A) and (E).)

³ Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Ca1.3d 337, 341.)

⁴ Effective January 1, 2011, new Rules of Procedure of the State Bar of California became effective.

disclosed will be given a copy of this order sealing the documents by the person making the disclosure.

IT IS SO ORDERED.

Dated: June _____, 2011

PAT McELROY
Judge of the State Bar Court