

**STATE BAR COURT OF CALIFORNIA**  
**HEARING DEPARTMENT – SAN FRANCISCO**

In the Matter of	)	Case No. <b>00-C-15145-PEM (02-C-14559)</b>
	)	
<b>RICHARD HAMM,</b>	)	
	)	
<b>Member No. 61401,</b>	)	<b>DECISION AND ORDER SEALING</b>
	)	<b>DOCUMENTS</b>
A Member of the State Bar.	)	
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**I. Introduction**

In this disciplinary proceeding, respondent **Richard Hamm** stipulated to a February 16, 2000 misdemeanor conviction of Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level of 0.08 or more), and that circumstances surrounding his conviction did not involve moral turpitude.

In April 2003, this court accepted respondent as a participant in the State Bar Court's Pilot Program for Respondents with Substance Abuse or Mental Health Issues (Pilot Program or ADP).<sup>1</sup> (Rules Proc. of State Bar, rules 800-807.)<sup>2</sup>

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<sup>1</sup>This program is currently known as the State Bar Court's Alternative Discipline Program (ADP) and also formerly known as the Pilot Program.

<sup>2</sup>References to rule are to the Rules of Procedure of the State Bar, unless otherwise stated.

However, respondent has recently been terminated from the State Bar Court's ADP because he was again convicted of Vehicle Code section 23152, subdivision (b),<sup>1</sup> on October 17, 2007.

Accordingly, pursuant to rule 803 and in light of his admitted misconduct, the court hereby recommends that respondent be suspended from the practice of law for two years and until he shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4 (c)(ii), Standards for Attorney Sanctions for Professional Misconduct (std.), that execution of the suspension be stayed, and that respondent be placed on probation for five years on conditions that include an actual suspension for 30 days.

## **II. Significant Procedural History**

### **A. Respondent's Acceptance into the Alternative Discipline Program**

By minute order filed November 13, 2001, the State Bar Court Review Department referred the matter to the Hearing Department for a hearing and decision as to whether the facts and circumstances surrounding respondent's misdemeanor conviction of Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level of 0.08 or more), involve moral turpitude or other misconduct warranting discipline and, if so found, a recommendation as to the discipline to be imposed.

On November 21, 2001, this court filed a Notice of Hearing on Conviction. On January 4, 2002, respondent filed a response.

On April 18, 2003, the court approved a stipulation re facts and conclusions of law (Stipulation) submitted by the parties for purposes of respondent's participation in the Pilot

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<sup>1</sup> Respondent's 2007 conviction referral matter is currently pending before the State Bar Court, case No. 07-C-13275.

Program (currently known as ADP). (Rules Proc. of State Bar, rule 802(a).) On the same day, this court issued its decision re alternative recommendations for degree of discipline (2003 Decision). Following the execution of a Contract and Waiver for Participation in the State Bar Court's Pilot Program for Respondents with Substance Abuse or Mental Health Issues (Contract), this court accepted respondent into the Pilot Program on April 18, 2003.

Respondent's eligibility and acceptance into the Pilot Program was based on, among other things: 1) his participation in the Lawyer Assistance Program (LAP); 2) the Stipulation; 3) the nexus evidence he provided; and 4) his agreement to accept the court's low and high levels of recommended discipline set forth in the 2003 Decision. (Rules Proc. of State Bar, rule 802.)

Respondent agreed to fulfill all of the requirements set forth by the Pilot Program Judge as conditions for respondent's ongoing participation in the Pilot Program.

#### **B. Respondent's Termination from the Alternative Discipline Program**

On April 7, 2008, the court held an order to show cause hearing on whether respondent should be terminated from the ADP because he was not in compliance with the conditions of the ADP as a result of his recent misdemeanor conviction in October 2007.

By order filed April 9, 2008, the court terminated respondent from the ADP based upon his noncompliance with the conditions of the ADP. Respondent had repeated unexcused missed lab tests, absences from LAP group/therapy sessions and relapses with alcohol. But the main reason for terminating respondent from the ADP is his July 12, 2007 arrest for driving with a blood alcohol level of 0.08 or more, to which he pled guilty.

The court also ordered the Stipulation to be filed April 9, 2008, and now issues this decision recommending the high level of discipline set forth in the 2003 Decision.

Pursuant to the Stipulation, the court dismissed case No. 02-C-14559 with prejudice because respondent had paid restitution.

### **III. Findings of Fact and Conclusions of Law**

Respondent was admitted to the practice of law in California on December 18, 1974, and has been a member of the State Bar of California at all times since.

The Stipulation is attached and hereby incorporated by reference, as if fully set forth herein. The Stipulation set forth the factual findings, legal conclusions and aggravating and mitigating circumstances in this matter.

Regarding mitigation, respondent's conduct before this court while participating in the ADP prevent the court from making a finding that respondent has established his sustained rehabilitation by clear and convincing evidence. Therefore, the court will not give respondent any mitigation credit for his participation in the LAP or the ADP.

Furthermore, although the parties stipulated that respondent was candid and cooperative with the State Bar during its resolution of these matters, the mitigating force of this factor is dramatically reduced based on respondent's termination from the ADP. (Std. 1.2(e)(v).)

### **IV. Discussion**

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession and maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

After considering the Stipulation, the scope of respondent's acts of misconduct, the mitigating and aggravating circumstances, the standards, the relevant case law, and respondent's declaration regarding the nexus between his substance abuse issues and his misconduct in this matter, the court had advised respondent and the State Bar of the low and high levels of discipline which would be recommended to the Supreme Court, depending on whether

respondent successfully completed the ADP or was terminated from the ADP. The recommended discipline was set forth in the 2003 Decision.

Accordingly, because respondent was terminated from the ADP in April 2008, the court hereby recommends the high level of discipline to the Supreme Court.

## **V. Recommendation**

**It is hereby recommended** that respondent **Richard Hamm** be suspended from the practice of law in the State of California for two years and until respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4 (c)(ii), that execution of such suspension be stayed and that respondent be placed on probation for five years on the following conditions:

1. Respondent must be actually suspended from the practice of law for the first 30 days of the period of probation;<sup>2</sup>
2. Respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;
3. Within 10 calendar 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 his current office address and telephone or, if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office of the State Bar and to the Office of Probation;

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<sup>2</sup> It is not necessary to order respondent actually suspended until he made restitution as noted in the 2003 Decision because respondent had satisfied that condition in May 2006.

4. Respondent must submit written quarterly reports to the Office of Probation no later than each January 10, April 10, July 10 and October 10 of the period of probation. Under penalty of perjury, respondent must state whether he has complied with the State Bar Act, the Rules of Professional Conduct and the conditions of probation 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 period and no later than the last day of such period;
5. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully, any inquiries of the Office of Probation that are directed to him personally or in writing, relating to whether he is complying or has complied with these probation conditions;
6. 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;
7. Respondent must attend at least eight meetings per month of abstinence-based self help programs. As a separate reporting requirement, respondent must provide to the Office of Probation satisfactory proof of attendance during each month, on or before the 10th day of the following month, during the probation period;
8. Respondent must select a licensed medical laboratory approved by the Office of Probation. Respondent must furnish to the laboratory such 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 respondent's expense, a screening report on or before the 10th day of each month of the probation period, containing an analysis of respondent's blood and/or urine obtained not more than 10 days earlier;

9. Respondent must return any call from the Office of Probation concerning testing of respondent's blood or urine within 12 hours. For good cause, the Office of Probation may require respondent to deliver respondent's urine and/or blood sample(s) for additional reports to the laboratory no later than six hours after actual notice to respondent that the Office of Probation requires an additional screening report;
10. Upon the request of the Office of Probation, respondent must provide the Office of Probation with medical waivers and access to all of respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation must be confidential and no information concerning them or their contents will be given to anyone except members of the Office of the Chief Trial Counsel, the Office of Probation, and the State Bar Court, who are directly involved with maintaining, enforcing or adjudicating these conditions;
11. The period of probation will commence on the effective date of the final disciplinary order of the Supreme Court imposing discipline in this proceeding; and
12. At the expiration of the period of this probation, if respondent has complied with all of the terms and conditions of probation, the order of the Supreme Court suspending

respondent from the practice of law for two years will be satisfied and that suspension will be terminated.

As indicated in the 2003 Decision, it is not recommended that respondent be ordered to take and pass the State Bar Ethics School or the Multistate Professional Responsibility Examination (MPRE) since he was previously ordered to do so in Supreme Court case No. S088578.

## **VI. Costs**

It is further 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.

## **VII. Order Sealing Documents**

In the course of determining respondent's eligibility for participation in the State Bar Court's Alternative Discipline Program, and while respondent was participating in the Program, various documents were submitted to the court for review under confidential cover. Pursuant to Business and Professions Code section 6234, subdivision (a), and rule 806 of the Rules of Procedure of the State Bar of California, all information concerning the nature and extent of a respondent's treatment is absolutely confidential and is not to be disclosed to the public absent an express written waiver by the respondent.

In light of the foregoing,

**IT IS HEREBY ORDERED** that, pursuant to rules 23 and 806, all other documents not previously filed are to remain confidential and sealed.

**IT IS FURTHER ORDERED** that the 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: \_\_\_\_\_, 2008

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**PAT McELROY**  
Judge of the State Bar Court