

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of ) Case No. **01-O-01459-LMA**  
)  
**PATRICK EARL MARSHALL,** )  
) **DECISION AND ORDER OF**  
**Member No. 64359,** ) **INVOLUNTARY INACTIVE**  
) **ENROLLMENT**  
)  
A Member of the State Bar. )  

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**I. INTRODUCTION**

In this original disciplinary proceeding, respondent **Patrick Earl Marshall** is charged with committing acts of moral turpitude and having inappropriate sexual relations with two incarcerated, indigent female clients during his representation as their public defender. The Hearing Department of the State Bar Court initially recommended that respondent be disciplined with a one-year stayed suspension after he had successfully completed the Alternative Discipline Program<sup>1</sup> (ADP). The State Bar appealed. The Supreme Court then remanded the matter to the State Bar Court; the Hearing Department’s original disciplinary recommendation was rejected.

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<sup>1</sup> It is the intent of the Legislature that the State Bar seek ways and means to identify and rehabilitate attorneys with impairment due to abuse of drugs or alcohol, or due to mental illness, affecting competency so that attorneys so afflicted may be treated and returned to the practice of law in a manner that will not endanger the public health and safety. (Bus. & Prof. Code, § 6230.) Consistent with the intent of the Legislature, the State Bar Court's Alternative Discipline Program was created. (Rules Proc. of State Bar, rule 800 et seq.)

After a three-day trial, this court finds that respondent is culpable on all four counts of the charged misconduct by clear and convincing evidence. Based upon the serious nature of culpability, as well as the applicable mitigating and aggravating circumstances, the court now recommends that respondent be disbarred from the practice of law.

## **II. PERTINENT PROCEDURAL HISTORY**

On May 11, 2004, the Office of Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a notice of disciplinary charges (NDC) against respondent. Respondent filed his response to the NDC on August 3, 2004.

Respondent was admitted to the court's ADP on July 25, 2005, over the opposition of the State Bar. (Rules Proc. of State Bar, rule 800 et seq.)

After participating in the ADP for 22 months, respondent successfully completed the program on May 17, 2007.

On July 17, 2007, the Hearing Department issued its Decision and Order Sealing Documents, recommending a one-year stayed suspension and a two-year probation.

On November 19, 2007, the State Bar filed a petition for writ of review with the Supreme Court. On February 13, 2008, the Supreme Court granted the State Bar's petition for writ of review. On February 11, 2009, the Supreme Court dismissed the petition for writ of review and remanded this case "to the State Bar Court to conduct such further proceedings as may be appropriate pursuant to the amended State Bar Rules of Procedure governing the Alternative Discipline Program. (Rules Proc. State Bar, rule 800 et seq.)"

On April 30, 2009, the Review Department rejected the July 2007 hearing decision and referred the matter to this court for further proceedings pursuant to the Supreme Court's February 2009 order.

Trial was held on February 8, 9 and 10, 2010. Deputy Trial Counsel Sherrie B. McLetchie represented the State Bar. Respondent represented himself.

Following the filing of post-trial briefs, the court took this case under submission for decision on March 29, 2010.<sup>2</sup>

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

This court's findings of fact are based on the documentary evidence and testimony presented at trial. A number of the court's findings of fact are based in large part on credibility determinations, which determinations the court carefully made after considering multiple relevant factors (e.g., Evid. Code, § 780). Except as otherwise noted, the court finds the testimony of the witnesses to be credible.

#### **A. Jurisdiction**

Respondent was admitted to the practice of law in the State of California on June 27, 1975, and has been a member of the State Bar of California since that time.

#### **B. The Natalie D. Matter<sup>3</sup>**

The facts are not in dispute. Respondent served as the contract public defender for San Benito County from July 1, 1993 through February 7, 2001.

In 1995, respondent represented Natalie D. (Natalie) in a criminal case. She was a convicted felon facing possible life imprisonment. Respondent visited Natalie in the San Benito County jail on several occasions.

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<sup>2</sup> The court hereby denies both parties' motions to strike portions of opposing sides' closing briefs. The court recognizes that the State Bar's brief exceeded the 15-page limit and respondent's brief referred to statements not on record. Indeed, only evidence on the record and relevant arguments will be considered.

<sup>3</sup> To prevent the publication of damaging disclosures concerning living victims of respondent's sexual misconduct, the names of these persons are omitted from this decision whenever their best interests would be served by anonymity.

In 1995, respondent had sexual relations with his client in the county jail on at least three of those occasions.<sup>4</sup> On at least one occasion, the sexual relations included respondent's kissing and fondling Natalie. On at least two of these occasions, the sexual relations included respondent's having oral sex with his client, as well as his kissing and fondling her. The sexual relations also included mutual genital rubbing with hands, fellatio and oral-vaginal contact. Respondent also digitally penetrated Natalie's vagina.

***Count Two – Sexual Relations with Client (Rules Prof. Conduct, Rule 3-120(B)(2))***<sup>5</sup>

The State Bar charges that respondent willfully employed coercion, intimidation, or undue influence in entering into sexual relations with a client by having sexual relations with Natalie D. in jail.

Respondent argues that the sexual relations were consensual, mutual and voluntary.

Rule 3-120(B)(2) of the Rules of Professional Conduct<sup>6</sup> prohibits an attorney from employing coercion, intimidation, or undue influence in entering into sexual relations with a client.

The term "sexual relations" is defined as sexual intercourse or the touching of an intimate part of another person for the purpose of sexual arousal, gratification, or abuse. (Rules Prof. Conduct, rule 3-120(A).)

Business and Professions Code section 6106.8, subdivision (a), provides that it is difficult to separate sound judgment from emotion or bias which may result from sexual involvement between a lawyer and his or her client during the period that an attorney-client relationship

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<sup>4</sup> Descriptions of respondent's sexual relations are graphic but necessary to demonstrate respondent's egregious misconduct.

<sup>5</sup> Count two (Rules Prof. Conduct, rule 3-120(B)(2)) is discussed before count one ((Bus. & Prof. Code, § 6106).

<sup>6</sup> References to rules are to the Rules of Professional Conduct, unless otherwise stated.

exists, and that emotional detachment is essential to the lawyer's ability to render competent legal services. Therefore, in order to ensure that a lawyer acts in the best interest of his or her client, rule 3-120 governing sexual relations between attorneys and their clients was adopted.

Rule 3-120 is intended to prohibit sexual exploitation by a lawyer in the course of a professional representation. Often, based upon the nature of the underlying representation, a client exhibits great emotional vulnerability and dependence upon the advice and guidance of counsel. Attorneys owe the utmost duty of good faith and fidelity to clients. (*Greenbaum v. State Bar* (1976) 15 Cal.3d 893, 903.)

The relationship between an attorney and client is a fiduciary relationship of the very highest character and all dealings between an attorney and client that are beneficial to the attorney will be closely scrutinized with the utmost strictness for unfairness. (*Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 472.) Where attorneys exercise undue influence over clients or take unfair advantage of clients, discipline is appropriate. In all client matters, attorneys are advised to keep clients' interests paramount in the course of the attorneys' representation.

Accordingly, the court rejects respondent's argument that the sexual relations were consensual, mutual and voluntary. Natalie was unable to exercise free choice – respondent was her appointed counsel and she had no other support. Respondent knew that she was facing life imprisonment, that she was a drug addict and that she had essentially been abandoned by all of her family because of her addiction. She was clearly in a vulnerable position, completely dependent on his legal assistance. Because Natalie felt that respondent had the power to fight for her or dump her, she was afraid to refuse his sexual advances.

Natalie stated: "I didn't want to get dumped on....I wanted to go home....I believed that [respondent] had my life in his hands. I believed that he had the power whether I ever got a date to go home or stayed forever. He was my only hope."

Because of the inherent power that appointed public defenders have on indigent clients and the very nature of their attorney-client relationship, there was no balance of power and the sexual relations could not have been consensual. Nobody really supervised respondent. In light of Natalie's predicament, respondent, who was clearly in a dominant position, took unfair advantage of her and sexually exploited her in the course of his professional representation. Respondent's conduct is particularly egregious because he was an experienced criminal attorney, who knew or should have known that criminal defendants like Natalie trusted him and that he represented their only hope.

Respondent further contends, among other things, whether intimidation and coercion should be under an objective or subjective standard in determining that he should reasonably know his conduct would cause the client to be intimidated or be coerced into conduct which she did not want to participate in. He asserts that she did not stop him. Claiming that there was no clear notice as to when his conduct was offensive to his client, he also questions the uncertainty of what constitutes undue influence.

These are dismal arguments, particularly in light of respondent's many years of therapy with the Lawyer Assistance Program (LAP), the ADP, Keystone Center Extended Care Unit, personal psychotherapy, and Sexaholics Anonymous Twelve Step program. His lack of comprehension of his misconduct is disturbing. Rather than acknowledging his bad acts, respondent still attempts to justify his behavior as mutual, consensual sex.

“The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for his acts and come to grips with his culpability. [Citation.]” (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.)

Here, respondent was the public defender and was appointed to represent Natalie, an indigent criminal defendant facing life imprisonment. As discussed above, based upon the very

nature of the underlying representation, Natalie exhibited great emotional vulnerability and dependence upon his advice and guidance. “The essence of a fiduciary or confidential relationship is that the parties do not deal on equal terms, because the person in whom trust and confidence is reposed and who accepts that trust and confidence is in a superior position to exert unique influence over the dependent party.” (*Beery v. State Bar* (1987) 43 Cal.3d 802, 813.) Respondent owed the high duty of honesty and obedience to fiduciary duty as her attorney. Instead, he took unfair advantage of and manipulated her vulnerability for his own pleasure.

Therefore, respondent, by clear and convincing evidence, exerted undue influence, coercion and intimidation in entering into sexual relations with Natalie, an incarcerated client, in willful violation of rule 3-120(B)(2).

***Count One – Moral Turpitude (Bus. & Prof. Code, § 6106)***<sup>7</sup>

The State Bar alleges that respondent willfully committed acts involving moral turpitude by having sexual relations with Natalie in jail.

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption.

Moral turpitude has been described as “an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.” (*In re Craig* (1938) 12 Cal.2d 93, 97.) It has been described as any crime or misconduct without excuse (*In re Hallinan* (1954) 43 Cal.2d 243, 251) or any dishonest or immoral act. Crimes which necessarily involve an intent to defraud, or dishonesty for personal gain, such as perjury (*In re Kristovich* (1976) 18 Cal.3d 468, 472); grand theft (*In re Basinger* (1988) 45 Cal.3d 1348, 1358); and embezzlement (*In re Ford* (1988) 44 Cal.3d 810) may establish moral turpitude. Although an

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<sup>7</sup> References to sections are to the provisions of the Business and Professions Code.

evil intent is not necessary for moral turpitude, at least gross negligence of some level of guilty knowledge is required. (*In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.)

As discussed in count one, respondent's claim that the sexual conduct was consensual, mutual and voluntary is without merit. Respondent knew or should have known that his misconduct for personal gain was depraved and violated his private and social duties owed to his client and to society in general.

Therefore, by having sexual relations with an incarcerated client, Natalie, respondent committed an act of moral turpitude, dishonesty and/or corruption in willful violation of section 6106.

**C. The Cynthia M. Matter**

On January 5, 2001, as the contract public defender for San Benito County, respondent represented Cynthia M. (Cynthia) in a criminal case. He visited Cynthia at the San Benito County Jail on that day for the first time. During the visit, respondent hugged Cynthia and patted her buttocks without her consent.

***Count Three – Moral Turpitude (Bus. & Prof. Code, § 6106)***

The State Bar charges that respondent committed acts involving moral turpitude by having sexual relations with Cynthia on January 5, 2001.

Respondent admitted his touching of Cynthia was abrupt, impulsive and done without her consent. Thus, he took deliberate advantage of her for purposes of his own sexual gratification. In doing so, he violated his fiduciary obligations to Cynthia as her attorney.

By having sexual relations with his incarcerated client, including the touching of an intimate part of Cynthia for the purpose of sexual arousal, gratification, or abuse, respondent



committed an act of moral turpitude, dishonesty and/or corruption in willful violation of section 6106.

***Count Four –Sexual Relations with Client (Rules Prof. Conduct, Rule 3-120(B)(2))***

The State Bar charges that respondent willfully employed coercion, intimidation, or undue influence in entering into sexual relations with a client by having sexual contacts with Cynthia in jail on January 5, 2001.

As Cynthia’s public defender, respondent owed the utmost duty to his incarcerated client. Their relationship was unequal in that Cynthia was emotionally fragile and had to place a great deal trust in him and rely heavily on his agreement to provide legal assistance. His position of trust provided him an opportunity to manipulate her for his sexual benefit. Impulsive conduct is no excuse. Thus, by clear and convincing evidence, respondent exerted undue influence and intimidation in entering into sexual relations with an incarcerated client in willful violation of rule 3-120(B)(2).

**IV. LEVEL OF DISCIPLINE**

The parties bear the burden of establishing mitigation and aggravation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(b) and (e).)<sup>8</sup>

**A. Mitigation**

Respondent was admitted to the practice of law in 1975 and has no prior record of discipline. Respondent’s 20 years of discipline-free practice at the time of his misconduct in 1995 is a mitigating factor. (Std. 1.2(e)(i).) “Absence of a prior disciplinary record is an important mitigating circumstance when an attorney has practiced for a significant period of time.” (*In re Young* (1989) 49 Cal.3d 257, 269.)

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<sup>8</sup>All further references to standards are to this source.

At the time of his misconduct, respondent reasons that his tough case load contributed to the misconduct. However, office workload does not generally serve to substantially mitigate misconduct. (See *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366.) (Std. 1.2(e)(iv).) Therefore, the court does not find respondent's workload as mitigation.

However, significant mitigating weight is given to respondent's participation in and completion of the LAP. (Std. 1.2(e)(iv).) The parties stipulated to the following:

1. Respondent commenced his participation in the LAP on May 17, 2004.
2. Respondent signed a LAP Participation Agreement with LAP on September 24, 2004.
3. Under the terms of said agreement respondent was to:
  - a. Attend group therapy sessions led by a group leader once a week (excepting legal holidays) for the entire period of respondent's LAP participation.
  - b. Be professionally evaluated for the underlying psychological causes leading to his misconduct, and to follow all recommendations made by the evaluating authority for treatment of said causes in order to continue to practice law.
  - c. Successfully complete his LAP commitment in order to obtain the lower level of discipline as outlined by the Hearing Department in its July 17, 2007 order. (Superseded and rendered "null" by order of the Supreme Court.)
4. Respondent completed the following components of this LAP commitment:
  - a. Average of 44 weeks of group LAP meetings per year for a total of 220 weekly group LAP meetings. During the course of these meetings respondent was required to prepare, present to group, and send on to his case manager a semi-annual report on his recovery program and progress.
  - b. Professional evaluation, October, 2004, at the Sexual Recovery Institute, 821 So. Robertson Blvd., Ste. 303, Los Angeles, CA, over a period of five days.
  - c. Thirty-day in-patient treatment at the Keystone Center Extended Care Unit, 2000 Providence Ave., Chester, PA from December 29, 2004 through January 28, 2005 specializing in the treatment of sexual compulsion and addiction.
  - d. Personal psychotherapy with Dr. Elizabeth Lee, Psy. D., 455 San Benito St., Hollister, CA from February 24, 2005 through January 24, 2008, a period of 2 years 11 months. These one-hour sessions occurred once a week for approximately two years, and then once every two weeks.
  - e. Sexaholics Anonymous Twelve Step program (SA) meetings commencing on March 14, 2005 at the rate of two meetings per week, reduced to one meeting per week starting in March 2007 until SA requirement met on May 18, 2009. Total meetings attended over four years two months period was 244.
  - f. Oversight by "work-site wellness monitor" who filed quarterly reports with respondent's LAP case manager as to respondent's mental fitness starting March 2007 through the end of respondent's LAP commitment in May 2009.

Respondent's "wellness monitor" was Kevin P. Courtney, Esq., 17415 South Monterey Rd., Morgan Hill, CA. Respondent and Mr. Courtney were in telephonic contact with one another from one to three times per week, and had meetings with one another approximately 15-20 times during the time period noted.

- g. Completed ten hours' requirement of independent participation in attending seminars suited to respondent's psychological development, and independent reading of "self-help" literature to assist respondent in reordering and revitalizing his life and relationships.
5. On July 11, 2007, LAP case manager Anna Gray, MFT, certified that respondent had "complied with requirements set forth in the LAP Participation Agreement/Plan for one year prior to the date of this certificate. During this time period, Mr. Marshall has maintained mental health and stability and participated successfully in the LAP."
6. On May 20, 2009, respondent completed his total LAP commitment.

Compelling mitigation is given to respondent's completed LAP participation even though there was no evidence of recovery or that treatment had been successful.

Moreover, the court gives significant weight in mitigation to respondent's successful completion of the ADP which he participated from July 25, 2005, through May 17, 2007.

Respondent also claims that he took objective steps demonstrating remorse and recognition of the wrongdoing found by seeking in-patient treatment at the Keystone Center Extended Care Unit and other treatments. (Std. 1.2(e)(vii).) While it was commendable that respondent admitted himself into Keystone Center Extended Care Unit, respondent's claimed remorsefulness is given no weight in mitigation because he still insists that the sexual relations were consensual and mutually initiated and that his clients were felons. As noted above, respondent has not fully accepted responsibility for his acts and come to grips with his culpability. Here, respondent keeps bringing up the prior felony convictions of the victims even after admitting the sexual relations. He lacks recognition of his wrongdoing, of the harm he had caused his clients and of their vulnerability as incarcerated, indigent inmates.

## **B. Aggravation**

There are several aggravating factors.

Respondent committed multiple acts of wrongdoing, including committing acts of moral turpitude and having sexual relations with two incarcerated, indigent female clients. (Std. 1.2(b)(ii).)

Respondent significantly harmed the clients, the public and the administration of justice by failing to uphold his fiduciary duties as a public defender. (Std.1.2(b)(iv).) The clients believed that respondent would not adequately represent them if they had refused to have sexual relations with him. Respondent's abuse of power has negatively impacted the reputation of the public defender's office and the public trust in the justice system.

## **V. DISCUSSION**

The purpose of disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession and to 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.)

Respondent's misconduct involved two client matters that occurred in 1995 and 2001. The standards provide a broad range of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and the harm to the client. The applicable standards in this matter are standards 1.6, 2.3 and 2.10. The standards, however, are only guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) "[E]ach case must be resolved on its own particular facts and not by application of rigid standards." (*Id.* at p. 251.) While the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

Standard 2.3 provides that culpability of moral turpitude and intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person must result in actual suspension or disbarment. As discussed above, respondent's sexual relations with two incarcerated inmates were acts of moral turpitude.

Standard 2.10 provides that culpability of a violation of any provision of the Business and Professions Code or Rules of Professional Conduct not specified in these standards must result in reproof or suspension, depending on the gravity of the offense or the harm to the client.

Also, Business and Professions Code section 6106.8, subdivision (d), provides that intentional violation of rule 3-120 must constitute a cause for suspension or disbarment.

This case is one of first impression. The State Bar urges disbarment while respondent maintains that a stayed suspension would be proper. There are apparently no California disciplinary cases construing rule 3-120. The State Bar and respondent thus propounded cases from other jurisdictions to support their recommended level of discipline.

Respondent cited several cases involving sexual relations with a client in which the level of discipline ranges from a public reprimand to a one-year actual suspension, including *In the Matter of James V. Tsoutsouris* (Ind. 2001) 748 N.E.2d 856 [30-day actual suspension for engaging in a sexual relationship with a client in a marital dissolution matter]; *In the Matter of Disciplinary Proceedings Against Donald J. Kraemer* (Wis. 1996) 547 N.W.2d 186 [six months' actual suspension for sexual relations with a client in a civil matter]; and *Iowa Supreme Court Board of Professional Ethics and Conduct v. Ralph William Hill* (Iowa 1995) 540 N.W.2d 43 [one-year actual suspension for unwelcome sexual advances toward an incarcerated female client].

The State Bar also cited cases regarding sex with clients from other states in which the attorneys were disbarred, including *In re David J. Hassenstab* (1997) 325 Ore. 166 [disbarment

for sexual relations with indigent clients who feared their legal matters would be jeopardized if they refused to engage in sex with the attorney]; *People of the State of Colorado v. John J. Gibbons* (Colo. 1984) 685 P.2d 168 [disbarment for conflict of interest in representing multiple co-defendants, for inappropriate sexual relationship with one of the female co-defendants who was unduly dependent on the attorney and unable to exercise free choice and for false and misleading information]; and *In the Matter of Jerry L. Berg* (1998) 264 Kan. 254 [disbarment for engaging in sexual conduct with three vulnerable clients who had mental and substance abuse problems and who allowed the attorney's advances as a necessity to protect their representation].

These cases from other jurisdictions provide some guidance in analyzing the facts and circumstances of respondent's inappropriate sexual relations with indigent, criminal defendants/clients and in determining the recommended level of discipline.

“The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role, in violation of the lawyer's basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment.... this Rule prohibits the lawyer from having sexual relations with a client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client.” (*In the Matter of James V. Tsoutsouris, supra*, 748 N.E.2d 856, 859 [citing Comment 17 to Proposed ABA Model Rule 1.8].)

In respondent's closing argument in this proceeding, he still held fast to the position that his sexual relations were consensual and mutual. Although he cursorily admitted

remorsefulness, he has not genuinely expressed contriteness. He has not fully accepted responsibility for his misconduct. As a public defender, he knew or should have known that emotional detachment was essential to his ability to render competent legal services and that any sexual relations with an incarcerated client would be considered an abuse of power and a byproduct of undue influence.

“Because the lawyer stands in a fiduciary relationship with the client, an unsolicited sexual advance by the lawyer debases the essence of the lawyer-client relationship. [Citation.] Often the lawyer-client relationship is characterized by the dependence of the client on the lawyer's professional judgment, and a sexual relationship may well result from the lawyer's exploitation of the lawyer's dominant position.” (*People v. Good* (Colo. 1995), 893 P.2d 101, 103.)

Despite respondent's successful completion of the ADP and LAP and years of therapy, respondent still has not fully grasped the egregiousness of his offenses and the extreme harm he had caused the administration of justice and the integrity of the legal profession. In his closing brief, he audaciously put forth this claim: “Frankly, in total time re the misconduct as between the two victims would probably not exceed an hour's total duration. But for these incidents I have been free of any conduct warranting discipline by the Bar. ... I have been practicing law on an unlimited basis, now, for a period of 9 years, 2 months since the January, 2001 incident.”

Violation of one's professional and ethical duties is not measured by the length of time. Having improper sexual relations with a client breaches the basic notions of trust and integrity and endangers public confidence in the legal profession, irrespective of its duration. If an attorney misappropriated client funds to pay for personal expenses for a brief moment, taking the money is still theft, regardless of the intent to repay the funds at some future date. Moreover, respondent's misconduct was not an isolated incident; he had repeatedly violated that trust. The

fact that respondent has been practicing law on an unrestricted basis is fortuitous. Although an absence of similar misconduct in the past nine years speaks somewhat positively of respondent's progress towards rehabilitation, his moral deficiency is still profound.

Indeed, respondent's failure to understand the gravity of his misconduct and the severity he had harmed the administration of justice and the integrity of the legal profession concerns this court. Other than his lack of a prior record of discipline and his participation in the LAP and ADP, respondent did not present any other compelling mitigation. The court understands that this disciplinary matter must have been like an albatross around respondent's neck during the years participating in the LAP and ADP. Unfortunately, those years of therapy had not really rehabilitated respondent. His persistent claims that the sexual relations were consensual and that Natalie never told him to stop are indeed troubling and adversely reflect on his fitness to practice law. As the Iowa Supreme Court stated: "the professional relationship renders it impossible for the vulnerable layperson to be considered 'consenting.'" (*Iowa Supreme Court Board of Professional Ethics and Conduct v. Ralph William Hill, supra*, 540 N.W.2d 43, 44.)

"[Natalie and Cynthia] felt compelled to engage in sexual activity with [respondent], for fear that refusal would affect their legal matters adversely or leave them without legal assistance. [Respondent] abused his power over his clients and destroyed the trust that all clients should have in their lawyers." (*In re David J. Hassenstab* (1997) 325 Ore. 166, 181.)

For the foregoing reasons, the case law and the standards and after balancing all relevant factors, including the underlying misconduct and the mitigating and aggravating circumstances, the court concludes that disbarment is necessary to protect the public, to preserve public confidence in the profession, to maintain the highest possible professional standards for attorneys and to deter other attorneys from engaging in similar, reprehensible misconduct. Because of the



high ethical standard demanded of a public defender, respondent's misconduct, and betrayal of trust and abuse of power in not *one* but *two* client matters warrant disbarment.

## VI. RECOMMENDATIONS

### A. Discipline

Accordingly, the court recommends that respondent **Patrick Earl Marshall** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

### B. California Rules of Court, Rule 9.20

It is also recommended that the Supreme Court order respondent to comply with California Rules of Court, rule 9.20, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter.<sup>9</sup>

### C. 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. It is further recommended that respondent be ordered to reimburse the Client Security Fund to the extent that the misconduct found in this matter results in the payment of funds and that such payment be enforceable as provided for under Business and Professions Code section 6140.5.

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<sup>9</sup>Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

**VII. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

It is ordered that respondent be transferred to involuntary inactive enrollment status under section 6007, subdivision (c)(4), and rule 220(c) of the Rules of Procedure of the State Bar. The inactive enrollment will become effective three calendar days after this order is filed.

Dated: June \_\_\_\_\_, 2010

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LUCY ARMENDARIZ  
Judge of the State Bar Court