

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES**

In the Matter of)	Case No.: 02-O-10121
)	
PHILIP ALLEN PUTMAN,)	DECISION AND ORDER SEALING
)	CERTAIN DOCUMENTS
Member No. 51368,)	
)	
<u>A Member of the State Bar.</u>)	

Introduction¹

In this original disciplinary proceeding, respondent **Philip Allen Putman** was accepted for participation in the State Bar Court’s Alternative Discipline Program (ADP). As the court has now terminated respondent from the ADP, the court will recommend to the Supreme Court that respondent be suspended from the practice of law in California for two years, that execution of that period of suspension be stayed, and that he be placed on probation for five years subject to certain conditions, including a six-month period of suspension.

Significant Procedural History

The State Bar of California, Office of the Chief Trial Counsel (State Bar) filed a Notice of Disciplinary Charges (NDC) against respondent on August 1, 2003, in case no. 02-O-10121. The matter was originally assigned to the Honorable JoAnn M. Remke.

¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

On November 3, 2003, a settlement conference was held in this matter before the Honorable Richard A. Honn. On November 3, 2003, Judge Honn filed an order referring the matter to the Pilot Program (which has since been renamed the Alternative Discipline Program).²

Respondent contacted the State Bar's Lawyer Assistance Program (LAP) in December 2003 for assistance with his mental health issues. In furtherance of his participation in the Alternative Discipline Program (ADP), respondent signed a LAP Participation Plan on March 30, 2004, which was received by the State Bar Court on that same date.

Thereafter, respondent and the State Bar executed a Stipulation Re Facts and Conclusions of Law (Stipulation) in this matter on December 21, 2004 and January 13, 2005, respectively. The Stipulation sets forth the factual findings, legal conclusion, and mitigating and aggravating circumstances in this matter.

On February 28, 2005, respondent submitted his Fourth Amended Declaration of Philip A. Putman Regarding Nexus to the court, which met with the approval of the court and established a nexus between his mental health issues and his misconduct in this matter.

Following briefing by the parties, the court advised the parties of (1) the discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP and (2) the discipline which would be recommended if respondent failed to successfully complete, or was terminated from, the ADP. After agreeing to those alternative possible dispositions, respondent executed the Contract and Waiver for Participation in the State Bar Court's ADP; the court executed a Decision Re Alternative Recommendations For Degree of Discipline, formally advising the parties in writing of the alternative discipline recommendations in this matter; the

² On March 3, 2004, the matter, i.e., case No. 02-O-10121, was reassigned to Judge Honn for all further proceedings, effective April 1, 2004.

court accepted respondent for participation in the ADP; and respondent's period of participation in the ADP began on July 15, 2005.³

Respondent thereafter participated in both the LAP and the State Bar Court's ADP. However, on August 18, 2009, the court filed an Order to Show Cause (OSC) requiring respondent to show cause, in writing, on or before September 8, 2009, as to why respondent should not be terminated from the ADP and the high level of discipline imposed as a result of his failure to comply with the terms of his contract in the ADP and his termination from the LAP. Although respondent filed a motion to abate the proceedings, he filed no other documents in response to the order to show cause. Consequently, on September 25, 2009: (1) the court filed an order terminating respondent from the ADP; (2) the Stipulation re Facts and Conclusions of laws was filed; and (3) the matter was submitted for decision

On October 8, 2009, respondent filed a motion for reconsideration of the court's September 25, 2009 order. Consequently, on October 27, 2009, the court ordered the submission vacated, denied respondent's motion for reconsideration, and ordered the matter submitted as of October 27, 2009.

On December 4, 2009, respondent tendered his resignation with charges pending to the Supreme Court. On its own motion, on January 20, 2010, the court abated case No. 02-O-10121 pending the Supreme Court action on respondent's resignation and ordered the October 27, 2009 submission date vacated.

On May 13, 2011, the case was reassigned to the undersigned judge for all further proceedings.

³ The parties' Stipulation, the Decision Re Alternative Recommendations for Degree of Discipline, and the ADP Contract were all lodged on July 15, 2005. Additionally, on July 19, 2005, the court filed its Order Re Respondent's Evaluation for the Alternative Discipline Program, finding that respondent was accepted into the Alternative Discipline Program and that his participation commenced on July 15, 2005.

On August 10, 2011, the Supreme Court declined to accept respondent's resignation and directed that this disciplinary matter proceed promptly. On September 7, 2011, this court terminated the abatement of this matter. And, on September 26, 2011, the court further ordered that the matter be submitted.

Findings of Fact and Conclusions of Law

The parties' Stipulation, including the court's order approving the Stipulation, is attached hereto and hereby incorporated by reference, as if fully set forth herein.

In brief, in case no. 02-O-10121, respondent stipulated that: (1) he failed to maintain the respect due to the courts of justice and judicial officers by making statements wherein he falsely accused a judge of criminal acts of conspiracy and bribery and of acting in violation of judicial canons, interfered with the orderly administration of justice, and falsely created the appearance of impropriety by the court, in willful violation of section 6068, subdivision (d); and (2) he committed an act or acts involving moral turpitude, dishonesty or corruption by denigrating the honor or reputation of a judge without corroboration and in disregard of the truth in willful violation of section 6106.

Aggravation⁴

Prior Record of Discipline (Std. 1.2(b)(i).)

In aggravation, respondent has a record of two prior impositions of discipline.

Effective February 25, 1995, respondent was privately reprimanded by the State Bar of California in case Nos. 92-0-10820; 93-0-17134 (Cons.) for: (1) violating rule 1-320(A) of the Rules of Professional Conduct of the State Bar of California by willfully sharing legal fees with a person not licensed to practice law, and (2) violating section 6068, subdivision(m) and rules 3-

⁴ Unless otherwise indicated, all references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

110(A), former rule 3-110(A) and 3-700(D)(1) by failing to perform and communicate and failing to return medical records at a client's request.

Effective October 27, 2000, in Supreme Court matter S090156 (State Bar Court case No. 95-0-16163; 96-H-03466 (Cons.)), the Supreme Court suspended respondent from the practice of law for nine months, stayed execution of that suspension, and placed respondent on probation for two years subject to conditions of probation, including a 90-day period of actual suspension, for: (1) violating a condition of an earlier private reproof by failing to timely file six quarterly reports in willful violation of rule 1-110(A); and (2) failing to comply with a court order regarding payment of a non-discovery sanction and failing to report the sanction to the State Bar, in willful violation of sections 6103 and 6068, subdivision (o)(3) respectively.

Mitigation

Candor/Cooperation to Victims/State Bar (Std. 1.2(e)(v).)

Respondent was candid and cooperative with the State Bar during its investigation of his misconduct and during the disciplinary proceedings.

Discussion

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

In determining the appropriate alternative discipline recommendations if respondent successfully completed the ADP or was terminated from, or failed to successfully complete, the ADP, the court considered certain standards and case law. In particular, the court considered standards 1.2, 1.3, 1.4, 1.5, 1.6, 1.7(b), 2.3, and 2.6, and *Ramirez v. State Bar* (1980) 28 Cal.3d 402.

Because respondent has now been terminated from the ADP, this court, in turn, now recommends to the Supreme Court the imposition of the higher level of discipline, set forth more fully below.

Recommendations

It is hereby recommended that respondent **Philip Allen Putman**, State Bar Number 51368, be suspended from the practice of law in California for two years, that execution of that period of suspension be stayed, and that he be placed on probation⁵ for a period of five years subject to the following conditions:

1. Respondent Philip Allen Putman is suspended from the practice of law for the first six months of probation.
2. Respondent Philip Allen Putman 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 30 days after the effective date of discipline, respondent must contact the Office of Probation of the State Bar of California (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;
 - c. Within 10 calendar days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone number, respondent must report such change in writing to both the Office of Probation and to the Membership Records Office of the State Bar;

⁵ The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

- d. Unless respondent was terminated from the Lawyer Assistance Program (LAP), prior to his successful completion of the LAP, respondent must comply with all provisions and conditions of his Participation Agreement with the LAP and must immediately report any non-compliance 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;
- e. If respondent was terminated from the Lawyer Assistance Program prior to his successful completion of the Lawyer Assistance Program, respondent must obtain psychiatric or psychological help/treatment from a duly licensed psychiatrist, psychologist or clinical social worker at respondent's own expense a minimum of two times per month, and must furnish evidence to the Office of Probation that respondent is so complying with each quarterly report. Help/treatment should commence immediately, and in any event, no later than 30 days after the effective date of the discipline in this matter. Treatment must continue for the period of probation or until a motion to modify this condition is granted and that ruling becomes final.

If the treating psychiatrist, psychologist or clinical social worker determines that there has been a substantial change in respondent's condition, respondent or the Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 5.300 (former rule 550) of the Rules of Procedure of the State Bar.⁶ The motion must be supported by a written statement from the psychiatrist, psychologist, or clinical social worker, by affidavit or under penalty of perjury, in support of the proposed modification.

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 will be confidential and no information concerning them or their contents will be given 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 this condition.

- f. 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 during which these probation conditions are in effect. Under

⁶ Effective January 1, 2011, new Rules of Procedure of the State Bar of California became effective.

penalty of perjury, respondent must state in each report whether he has complied with the State Bar Act, the Rules of Professional Conduct and all conditions of probation during the preceding calendar quarter. If the first report will cover less than 30 calendar days, that report must be submitted on the reporting 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 calendar days before the last day of the period of probation and no later than the last day of the probation period;

- g. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully, all inquiries of the Office of Probation which are directed to him personally or in writing relating to whether respondent is complying or has complied with the conditions of his probation;
- h. Within one year after the effective date of the discipline herein, respondent must provide the Office of Probation with satisfactory proof of his attendance at a session of State Bar Ethics School, given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015, and passage of the test given at the conclusion of that session. Arrangements to attend Ethics School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education Requirement (MCLE), and respondent will not receive MCLE credit for attending Ethics School (Rules Proc. of State Bar, rule 3201).

3. At the expiration of the period of probation, if Philip Allen Putman has complied with all conditions of probation, the two-year period of stayed suspension will be satisfied and that suspension will be terminated.

Multistate Professional Responsibility Examination

It is further recommended that Philip Allen Putman be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court's final disciplinary order in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

California Rules of Court, Rule 9.20

It is further recommended that respondent Philip Allen Putman be ordered to comply with the requirements of rule 9.20 of the California Rules of Court (former rule 955 of the California Rules of Court), and 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's final disciplinary order in this matter.

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

IT IS SO ORDERED.

Dated: October _____, 2011

LUCY ARMENDARIZ
Judge of the State Bar Court