

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case Nos. 02-O-11698-PEM; 02-O-14389;
)	02-O-16001
ROBERT G. PADRICK)	
)	
Member No. 103971,)	DECISION AND ORDER SEALING
)	DOCUMENTS
A Member of the State Bar.)	
_____)	

I. Introduction

Respondent **Robert G. Padrick** has successfully completed the State Bar Court’s Alternative Discipline Program (ADP).¹ (Rules Proc. of State Bar, rules 800-807.) The court hereby recommends that respondent be suspended from the practice of law for two years, that execution of such suspension be stayed and that respondent be placed on probation for three years. (Rules Proc. of State Bar, rule 803.)²

II. Significant Procedural History

Following the execution of a Contract and Waiver for Participation in the State Bar Court’s Alternative Discipline Program (contract), this court accepted respondent into the ADP on July 18, 2005. On September 17, 2007, this court found that respondent successfully completed the ADP.

III. Findings of Fact and Conclusions of Law

The stipulation filed on September 17, 2007, is attached and incorporated by reference as if set forth fully herein.

¹Also known as the State Bar Court’s Program for Respondents with Substance Abuse and Mental Health Issues.

²References to rule are to the Rules of Procedure of the State Bar, unless otherwise noted.

In summary, respondent admitted to seven violations of professional misconduct in three client matters, including failure to perform services competently, failure to communicate, and failure to provide an accounting.

Pursuant to the stipulation and in the furtherance of justice, the court dismissed case No. 02-O-13963 without prejudice.

In aggravation, respondent stipulated that his misconduct evidences multiple acts of misconduct to multiple clients and caused significant harm to one client. (Rules Proc of State Bar, tit. IV, Stds. For Atty. Sanctions for Prof. Misconduct, standard 1.2(b)(ii).)³

Respondent has the following mitigation: 1) no record of prior discipline in about 13 years of practice prior to the commencement of the misconduct upon which this proceeding is based; 2) remorse and recognition of his wrongdoing in that he made restitution to all of his clients; 3) candor and cooperation with the State Bar during the investigation and resolution of these matters; and 4) health problems that interfered with his ability to practice law.

On December 16, 2004, respondent entered into the long-term participation plan with LAP, a five-year commitment. He has remained in full compliance with LAP ever since. The evaluation report of Paul Y. Klein, Psy.D., supported the conclusion that at the time of his misconduct, respondent experienced a series of financial and professional setbacks that triggered a deep depression which had an impact on his law practice.

On August 14, 2007, the LAP submitted to the court for respondent a Certificate of One Year Participation in the Lawyer Assistance Program (Certificate). (Rules Proc. of State Bar, rule 804.) The Certificate from a mental health professional confirms that respondent has complied with all requirements set forth in his LAP Participation Agreement/Plan for at least one year and has maintained mental health stability during this period.

In addition to participating in LAP, respondent was accepted into the ADP as a result of his misconduct in this matter. Respondent fully complied with all terms and conditions of the program.

Rule 804 provides that a respondent must participate in the ADP for a period of 36 months,

³All further references to standards are to this source.

and that the court may shorten the time to not less than 18 months with earned incentives. Based on his compliance with all aspects of his recovery program, the court found it appropriate to reduce the length of time that respondent was required to participate in the ADP from 36 months to 27 months.

Respondent is entitled to significant mitigating credit for his successful completion of ADP.

IV. Degree of Discipline

In determining the appropriate disposition in this matter, the court looks at the purposes of disciplinary proceedings and sanctions. 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; Standard 1.3.)

The parties submitted their disciplinary recommendations if respondent successfully completes the ADP: (1) respondent recommended a public reproof as the lower level of discipline and (2) the State Bar recommended a two-year stayed suspension and a three-year probation.

After having carefully considered the parties' recommendations and relevant case law, the court finds these cases to be instructive – *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509; *Wells v. State Bar* (1984) 36 Cal.3d 199; and *Colangelo v. State Bar* (1991) 53 Cal.3d 1255. The court also looks to standards 1.6(b), 2.2(b), and 2.4(b) for guidance. Furthermore, in light of the facts and circumstances surrounding respondent's misconduct, the mitigating and aggravating factors and case law, the court concludes that the recommended disposition as set forth below is appropriate.

V. Recommended Discipline

IT IS HEREBY RECOMMENDED that respondent **ROBERT G. PADRICK** be suspended from the practice of law for two years, that execution of such suspension be stayed, and that respondent be placed on probation for three years on the following conditions:

1. Respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;
2. 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 number, 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;
3. Respondent must comply with all provisions and conditions of his Participation Agreement with the Lawyer Assistance Program (LAP) and must execute an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of his 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;
 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 these probation conditions 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 said 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 he is complying or has complied with these probation conditions;
 6. Within one year of the effective date of the Supreme Court's final disciplinary order in this proceeding, respondent must provide to the Office of Probation satisfactory proof of his attendance at a session of State Bar Ethics School, and of his passage of the test given at the end of that session;
 7. The period of probation will commence on the effective date of the final order of the Supreme Court imposing discipline in this proceeding; and

8. At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for two years that is stayed will be satisfied and that suspension must be terminated.

It is further recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners, and to provide proof of passage of the MPRE to the Office of Probation, within one year of the effective date of the Supreme Court's final disciplinary order in this proceeding. Failure to pass the MPRE, and to provide proof of such passage, within the specified time will result in actual suspension by the State Bar Court Review Department, without further hearing, until respondent provides the required proof of passage of the MPRE.

The court recommends that costs be awarded to the State Bar under 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.

VI. Order Sealing Documents

In the course of determining respondent's eligibility for participation in the ADP, and while respondent was participating in the ADP, various documents were submitted to the court for review under confidential cover, including reports and evaluations by mental health professionals and respondent's recommended treatment for participation in the LAP. 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.

ACCORDINGLY, the court orders this Order Sealing Documents be filed. Thereafter, pursuant to rule 806(c) of the Rules of Procedure, all other documents not previously filed in this matter will be sealed under rule 23 of the Rules of Procedure.

FURTHERMORE, the following documents are to remain confidential and sealed:

1. All reports and evaluations by mental health professionals that were submitted to the court as part of respondent's participation in the Alternative Discipline Program;

2. All information concerning the nature and extent of respondent's treatment provided by the LAP, including, but not limited to, participation reports, application agreements and participation agreements; and
3. The Contract and Waiver for Participation in the State Bar Court's Alternative Discipline Program.

IT IS FURTHER ORDERED that the foregoing 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 2, 2007

PAT McELROY
Judge of the State Bar Court