

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

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| In the Matter of |) | Case No.: 03-O-03682 (04-O-14083; |
| |) | 04-O-14180) |
| FRANK A. D'ALFONSI, |) | |
| |) | DECISION AND ORDER FILING AND |
| Member No. 146104, |) | SEALING CERTAIN DOCUMENTS |
| |) | |
| A Member of the State Bar. |) | |

PERTINENT PROCEDURAL HISTORY

The State Bar of California, Office of the Chief Trial Counsel (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) against respondent **Frank A. D'Alfonsi** (respondent) on February 28, 2005. Thereafter, respondent sought to participate in both the State Bar of California's Lawyer Assistance Program (LAP) and the State Bar Court's Alternative Discipline Program (ADP).

On September 19, 2005, respondent contacted the LAP to assist him with his substance abuse and mental health issues, and on February 15, 2006, respondent executed a Participation Plan with the LAP.

On December 5, 2005, respondent submitted a declaration to the court which established a nexus between his substance abuse and mental health issues and his misconduct in this matter. The parties also entered into a Stipulation Re Facts and Conclusions of Law in early December

2005.

On January 6, 2006, the State Bar submitted to the court its discipline recommendations in this matter, and on January 17, 2006, the court received respondent's response to the State Bar's discipline recommendations.

Thereafter, on May 22, 2006, the court lodged its Confidential Statement of Alternative Dispositions and Orders and the parties' Stipulation Re Facts and Conclusions of Law;¹ respondent signed the Contract and Waiver for Participation in the State Bar Court's Alternative Discipline Program (Contract) and it was lodged with the court; and the court accepted respondent as a participant in the ADP.

After respondent was terminated on May 24, 2008, from the LAP for failing to comply with a requirement of his LAP participation, the court received from the State Bar a motion to remove respondent from the ADP.

Following an in person status conference on July 14, 2008, the court issued an order on July 15, 2008, terminating respondent from the ADP and the Stipulation Re Facts and Conclusions of Law was filed.

Accordingly, the court now issues this decision recommending that the Supreme Court impose upon respondent the discipline set forth below in this decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties' Stipulation Re Facts and Conclusions of Law, including the court's order modifying and approving the stipulation, are attached hereto and hereby incorporated by reference, as if fully set forth herein. The Stipulation Re Facts and Conclusions of Law set forth the factual findings, legal conclusions and aggravating and mitigating circumstances in this

¹ The court also executed on this day an order modifying and approving the parties' stipulation.

matter.

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 Cal.3d 103, 111.)

After reviewing the State Bar's disciplinary recommendations and respondent's response thereto, the parties' stipulation setting forth the facts, conclusions of law, and the aggravating and mitigating circumstances with respect to this disciplinary proceeding, respondent's declaration regarding the nexus between his substance abuse and mental health issues and his misconduct in this matter, and after considering the Standards for Attorney Sanctions for Professional Misconduct (standards(s)) and case law, the court advised the parties of the discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP and the discipline which would be recommended if respondent was terminated from the ADP. Thereafter, respondent executed the Contract to participate in the ADP; the Contract was lodged with the court; and respondent was accepted for participation in the ADP.

For a time, respondent successfully participated in both the LAP and the ADP. However, during his period of participation in the ADP, respondent repeatedly failed to comply with restitution requirements. In addition, on May 14, 2007, respondent met with the LAP Evaluation Committee regarding his participation in the LAP. The LAP Evaluation Committee determined that respondent must comply with a certain requirement by May 23, 2008. Respondent was warned that failure to so comply would result in respondent's termination from the LAP.

The LAP Evaluation Committee terminated respondent from the LAP effective May 24, 2008, as a result of his failure to comply with a certain requirement of his participation in the LAP. Thereafter, on June 3, 2008, the court received from the State Bar a motion to remove respondent from the ADP.

The court held an in person status conference with the parties on July 14, 2008. Respondent appeared in person at the status conference. On July 15, 2008, the court issued an order terminating respondent from the ADP due to respondent's termination from the LAP and his failure to comply with ADP restitution conditions.

Accordingly, the court recommends to the Supreme Court the imposition of the discipline set forth in the court's Confidential Statement of Alternative Dispositions and Orders in the event respondent was terminated from the ADP.

RECOMMENDED DISCIPLINE

It is recommended that **FRANK A. D'ALFONSI** be suspended from the practice of law for a period of two years; that execution of the suspension be stayed; and that respondent be placed on probation for a period of three years on the following conditions:

1. Respondent must be actually suspended from the practice of law in the State of California during the first year of the period of his probation and until he pays restitution and provides satisfactory proof of payment to the State Bar's Office of Probation, as follows:

- a. Respondent must pay restitution to Mariann Meseke in the amount of \$8,000 plus interest at the rate of 10% per annum from May 1, 2001 (or to the Client Security Fund to the extent of any payment from the fund to Mariann Meseke, plus interest and costs, in accordance with Business and Professions Code section 6140.5);

- b. Respondent must pay restitution to Mariann Meseke in the amount of \$1,709.59 plus interest at the rate of 10% per annum from May 1, 2003 (or to the Client Security Fund to the extent of any payment from the fund to Mariann Meseke, plus interest and costs, in accordance with Business and Professions Code section 6140.5); and
- c. Respondent must pay restitution to Anthony Cordero in the amount of \$1,500 plus interest at the rate of 10% per annum from January 1, 2003 (or to the Client Security Fund to the extent of any payment from the fund to Anthony Cordero, plus interest and costs, in accordance with Business and Professions Code section 6140.5).

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d).

Furthermore, to the extent that respondent has paid any restitution prior to the effective date of the Supreme Court's final disciplinary order in this proceeding, respondent will be given credit for such payment(s) provided satisfactory proof of such is or has been shown to the Office of Probation.

2. If respondent is actually suspended for two years or more, he must remain actually suspended until he proves to the State Bar Court his rehabilitation, present fitness to practice, and present learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.

3. 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.

4. 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.

5. 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.

6. 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.

7. Subject to assertion of applicable privileges, respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under

these conditions which are directed to respondent personally or in writing relating to whether respondent is complying or has complied with the probation conditions.

8. 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 State Bar Ethics School, and passage of the test given at the end of that session unless he has taken and passed the class within two years prior to the effective date of the Supreme Court order.

9. Respondent must abstain from the use of alcohol and all psychotropic drugs except those prescribed for him by a physician. Respondent must provide copies of all prescriptions written for him to the Office of Probation.

10. 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 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 earlier.

11. Respondent must return any call from the Office of Probation concerning testing of respondent's blood or urine within twelve (12) hours. For good cause, the Office of Probation may require respondent to deliver respondent's blood and/or urine sample(s) for additional reports to the laboratory no later than six (6) hours after actual notice to respondent that the Office of Probation requires an additional screening report.

It is also recommended that respondent provide proof of passage of the Multistate

Professional Responsibility Examination (MPRE), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension. **Failure to pass the MPRE results in actual suspension without further hearing until passage. (But see Cal. Rules of Court, rule 9.10(b); Rules Proc. of State Bar, rule 321(a) & (c).)**

It is further recommended that respondent comply with the requirements of rule 9.20 (formerly rule 955) of the California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within thirty (30) and forty (40) calendar days, respectively, after the effective date of the Supreme Court's 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.

ORDER FILING AND SEALING CERTAIN DOCUMENTS

The court orders the clerk to file this Decision and Order Filing and Sealing Certain Documents. Thereafter, pursuant to 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 will be sealed pursuant to 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 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: September _____, 2008

PAT E. McELROY
Judge of the State Bar Court