

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 04-C-12303-RAP
)	
PIERCE HENRY O'DONNELL,)	
)	DECISION AND ORDER SEALING
Member No. 81298,)	CERTAIN DOCUMENTS
)	
<u>A Member of the State Bar.</u>)	

In February 2006, respondent **Pierce Henry O'Donnell** ("respondent") was convicted on five misdemeanor counts of using a false name in making political contributions. This matter was referred to this court for a hearing and decision as to whether the facts and circumstances surrounding these convictions involved moral turpitude or other misconduct warranting discipline and, if so found, a recommendation as to the discipline to be imposed.

Respondent sought to participate in the State Bar Court's Alternative Discipline Program ("ADP"), and on May 23, 2006, this matter was referred to the ADP.¹ On July 10, 2006, respondent submitted a declaration establishing a nexus between his mental health issue and his misconduct. The parties subsequently entered into a Stipulation Re Facts and Conclusions of Law.

On July 18, 2007, the court lodged the Confidential Statement of Alternative Dispositions and Orders, the Contract and Waiver for Participation in the State Bar Court's ADP ("Contract"),

¹ This program was earlier referred to by other names.

and the parties' Stipulation Re Facts and Conclusions of Law. That same day, the court signed an order formally accepting respondent into the ADP.

Upon motion of the State Bar, the court ordered respondent to appear in person on August 2, 2010, for a hearing regarding whether respondent should be terminated from the ADP.

At the August 2, 2010 hearing, at which respondent appeared with counsel, the court found that respondent was not in compliance with the conditions of the court's ADP, and respondent was terminated from the ADP. The parties' Stipulation Re Facts and Conclusions of Law and addendum thereto was filed, and this matter was submitted for decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

The Stipulation Re Facts and Conclusions of Law sets forth the factual findings, legal conclusions, and aggravating and mitigating circumstances in this matter. Below is an abbreviated summary of the stipulated facts and conclusions of law.

In 2000, respondent pledged to raise \$50,000 in political contributions for then Los Angeles Mayor James Hahn. Unable to raise the money, respondent, through his assistant, advised his staff members that respondent would reimburse them for their political contributions to Hahn's campaign. As a result, respondent and his assistant caused 26 individuals to contribute to Hahn's campaign with the understanding that respondent would reimburse each donor for his or her contribution.

In May 2004, the Los Angeles City Attorney's Office filed 26 misdemeanor violations of Government Code section 84301 (using a false name in making political contributions) against

respondent. On February 2, 2006, as part of a plea agreement, respondent was convicted of five misdemeanor counts of Government Code section 84301, with the remaining counts dismissed.

The facts and circumstances surrounding respondent's convictions involved moral turpitude and other misconduct warranting discipline pursuant to Business and Professions Code sections 6101 and 6102.

In aggravation, respondent's misconduct evidenced multiple acts of wrongdoing. In mitigation, respondent had no prior record of discipline in 29 years of practice, he displayed spontaneous candor and cooperation with the State Bar, he demonstrated remorse and recognition of his wrongdoing, and he was suffering from extreme emotional difficulties at the time of the misconduct. In addition, respondent's good character was attested to by a wide range of references, he demonstrated a history of charitable work and contributions, and his misconduct did not result in harm.²

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.)

The parties submitted briefs on the issue of discipline. After considering the parties' briefs, including the case law and standards cited therein, the court advised the parties of the discipline that would be recommended to the Supreme Court if respondent successfully completed the ADP and the discipline that would be recommended to the Supreme Court if respondent was terminated from or failed to successfully complete the ADP.

² Due to respondent's termination from the ADP, his participation in the ADP does not warrant consideration as a mitigating circumstance. (See Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(e)(iv).)

In determining the appropriate discipline to recommend in this matter if respondent was terminated from the ADP, the court considered the discipline recommended by the parties, as well as standards 1.3, 1.4, 1.6, and 3.2. The court also considered and distinguished *In re Kristovich* (1976) 18 Cal.3d 468; *In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245; *In re Fahey* (1973) 8 Cal.3d 842; *In re Morales* (1983) 35 Cal.3d 1; *In re Chira* (1986) 42 Cal.3d 904; *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737; and *In re Brown* (1995) 12 Cal.4th 205.

After agreeing to the court's proposed high and low levels of discipline, respondent executed the Contract to participate in the ADP, and respondent's period of participation in the ADP commenced.

Thereafter, respondent was terminated from the ADP as set forth in the court's August 4, 2010 order. Accordingly, the court recommends imposition of the discipline set forth in the Confidential Statement of Alternative Dispositions and Orders relating to a termination from or failure to successfully complete the ADP.

RECOMMENDED DISCIPLINE

It is recommended that respondent **Pierce Henry O'Donnell** be suspended from the practice of law for two (2) years, that execution of that period of suspension be stayed, and that respondent be placed on probation for two (2) years, subject to the following conditions:

1. Respondent must be actually suspended from the practice of law for the first sixty (60) days of probation;
2. During the probation period, respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct;
3. 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;

4. 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;

5. 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;

6. Subject to 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 respondent is complying or has complied with the probation conditions;

7. 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;

8. Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation;

9. If respondent has not been terminated from the Lawyer Assistance Program (“LAP”), respondent must comply with all provisions and conditions of his Participation Agreement/Plan with the LAP and must provide the Office of Probation with certification of completion of the LAP. Respondent must immediately report any non-compliance with any provision(s) or condition(s) of his Participation Agreement/Plan 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. Respondent will be relieved of this condition upon providing to the Office of Probation satisfactory certification of completion of the LAP.

If respondent has been terminated from the LAP prior to his successful completion of the LAP, respondent must obtain an examination of his mental and physical condition with respect to his mental health issue pursuant to rule 184 of the Rules of Procedure from a qualified practitioner approved by the Office of Probation and must comply with any treatment/monitoring plan recommended following such examination. The examination and any further help/treatment/monitoring recommended by the examining practitioner will be at respondent’s own expense. The examination must be conducted no later than thirty (30) days after the

effective date of the Supreme Court's final disciplinary order in this matter.

Help/treatment/monitoring should commence immediately after said examination and, in any event, no later than thirty (30) days after said examination. With each quarterly report, respondent must furnish to the Office of Probation sufficient evidence, as specified by the Office of Probation, that he is so complying with this condition of probation. Treatment/monitoring must continue for the period of probation or until a motion to modify this condition is granted and that ruling becomes final.

If the examining or treating practitioner determines that there has been a substantial change in respondent's condition, respondent or the State Bar's Office of Probation 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 550 of the Rules of Procedure. The motion must be supported by a written statement from the examining or treating practitioner, 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 and confidentiality waivers and access to all of respondent's medical records necessary to monitor this probation condition. Revocation of any medical/confidentiality 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 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 this condition;

10. These probation conditions and the period of probation will commence upon the effective date of the Supreme Court's final disciplinary order in this proceeding (Cal Rules of Court, rule 9.18.); and

11. 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 (2) years will be satisfied and that suspension will be terminated.

It is further recommended that respondent take and pass the Multistate Professional Responsibility Examination (“MPRE”) administered by the National Conference of Bar Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243 (telephone 319-337-1287), and provide proof of passage to the Office of Probation within one (1) year after the effective date of the discipline herein.³

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 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 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

³ Failure to pass the MPRE within the specified time results in actual suspension by the Review Department, without further hearing, until passage. (But see Cal. Rules of Court, rule 9.10(b), and Rules Proc. of State Bar, rule 321(a)(1) and (3).)

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 30, 2010.

RICHARD A. PLATEL
Judge of the State Bar Court