

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 04-O-10521-RAH
)	05-O-00018; 04-O-15214;
MATTHEW P. TODD,)	05-O-02211; 06-O-13149
)	(Cons.)
Member No. 133023,)	
)	DECISION AND ORDER SEALING
A Member of the State Bar.)	CERTAIN DOCUMENTS
_____)	

INTRODUCTION

In this consolidated disciplinary proceeding, respondent Matthew P. Todd (“respondent”) was accepted for participation in the State Bar Court’s Alternative Discipline Program (“ADP”). As the court has now found that respondent has successfully completed the ADP, the court will recommend to the Supreme Court that respondent be suspended from the practice of law in California for three years, that execution of that period of suspension be stayed, and that he be placed on probation for three years subject to certain conditions, including an eighteen-month period of suspension.

PERTINENT PROCEDURAL HISTORY

On October 13, 2004, the State Bar of California’s Office of the Chief Trial Counsel (“Office of the Chief Trial Counsel”) filed a Notice of Disciplinary Charges (“NDC”) against respondent in case no. 04-O-10521. On or about December 2004, respondent contacted the State Bar’s Lawyer Assistance Program (“LAP”) to assist him with his mental health issue. On March

30, 2005, the State Bar filed a second NDC against respondent in case no. 05-O-00018. These matters were subsequently consolidated along with an investigation matter, case no. 04-O-15214.

Respondent sought to participate in the State Bar Court's ADP. On April 7, 2005, respondent's matters were referred to the ADP.

On May 10, 2005, respondent signed a LAP Participation Plan. Between May and December 2005, respondent submitted three declarations to the court, establishing a nexus between respondent's mental health issue and the charges in case nos. 04-O-10521, 05-O-00018, and 04-O-15214.

The parties entered into a Stipulation Re Facts and Conclusions of Law ("Stipulation") in May 2006. The Stipulation set forth the factual findings, legal conclusions, and mitigating and aggravating circumstances involved in case nos. 04-O-10521, 05-O-00018, and 04-O-15214.

Following briefing by the parties, the court issued a Confidential Statement of Alternative Dispositions and Orders dated September 19, 2006, formally advising 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 dispositions, respondent and his counsel executed the Contract and Waiver for Participation in the State Bar Court's ADP, the court accepted respondent for participation in the ADP, and respondent's period of participation in the ADP began on October 4, 2006.

On October 10, 2006, the court issued an order enrolling respondent as an inactive member of the State Bar pursuant to Business and Professions Code section 6233.¹ This order was effective that same day.

¹ All further references to section(s) are to the Business and Professions Code, unless otherwise stated.

On November 3, 2006, however, the Office of the Chief Trial Counsel filed a third NDC against respondent, in case no. 05-O-02211. And on September 19, 2007, the Office of the Chief Trial Counsel filed a fourth NDC against respondent, in case no. 06-O-13149. Case nos. 05-O-02211 and 06-O-13149 were subsequently referred to the ADP.

In February 2008, the parties entered into an addendum to the Stipulation. In this addendum, the parties incorporated case nos. 05-O-02211 and 06-O-13149. Following supplemental briefing by the parties, the court, on June 30, 2008, issued an order amending the Confidential Statement of Alternative Dispositions and Orders. That same day, the court issued an order consolidating case nos. 05-O-02211 and 06-O-13149 with case nos. 04-O-10521, 05-O-00018, and 04-O-15214.

After agreeing to the alternative dispositions, respondent executed an agreement and order amending the contract and waiver for participation in the State Bar Court's ADP. On June 30, 2008, the court lodged: (1) the order amending the Confidential Statement of Alternative Dispositions and Orders; (2) the addendum to the Stipulation and its accompanying order; and (3) the agreement and order amending the Contract and Waiver for Participation in the State Bar Court's ADP.

On November 7, 2008, respondent filed motions to terminate his inactive enrollment and establish his rehabilitation, fitness to practice, and learning and ability in the general law. On December 19, 2008, the Office of the Chief Trial Counsel filled its opposition. On May 20, 2009, the court found that respondent presented proof satisfactory to the court of his rehabilitation, present fitness to practice, and present learning and ability in the general law. Accordingly, the court ordered that respondent's inactive enrollment under Business and Professions Code section 6233 be terminated that same day.

Respondent participated successfully in the State Bar Court's ADP. On October 18, 2010, after receiving a satisfactory evaluation from a mental health professional, the court issued an order finding that respondent has successfully completed the ADP.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties' Stipulation and addendum, including the court's orders approving the Stipulation and addendum, are attached hereto and hereby incorporated by reference, as if fully set forth herein. Respondent stipulated, in these five disciplinary matters, to the following violations:

- Rule 3-110(A) of the Rules of Professional Conduct of the State Bar of California² in two matters [failure to perform legal services with competence];
- Section 6068, subdivision (i) in one matter [failure to cooperate in a disciplinary investigation];
- Section 6068, subdivision (k) in one matter [failure to comply with all conditions of disciplinary probation];
- Rule 4-100(A) in one matter [failure to maintain client funds in trust];
- Section 6106 in one matter [moral turpitude—misappropriation];
- Two counts of section 6068, subdivision (m) in one matter [failure to respond to client inquires and keep clients reasonably informed of significant developments];
- Rule 3-700(A)(2) in one matter [improper withdrawal];
- Two counts of section 6106 in one matter [moral turpitude—misrepresentation];
- Sections 6125, 6126, and 6068, subdivision (a), in one matter [unauthorized practice of law]; and
- Section 6002.1 in one matter [failure to maintain State Bar address].

In aggravation, respondent has been previously disciplined on three separate occasions.
(Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional

² Unless otherwise indicated, all further references to rule(s) refer to the Rules of Professional Conduct of the State Bar of California.

Misconduct, std. 1.2(b)(i).)³ Effective June 4, 1995, in State Bar Court case nos. 93-O-12247 and 94-O-13613, respondent was privately reprovved for violating rules 3-700(D)(1) and 5-200. Effective September 12, 1998, in Supreme Court case no. S070818, respondent was suspended from the practice of law for one year, stayed, with two years' probation, for violating rules 1-110 and 3-110(A). And effective December 25, 2003, in Supreme Court case no. S118760, respondent was suspended from the practice of law for one year, stayed, with one year's probation and 30 days actual suspension, for violating rule 4-100(A).

Additional aggravation included respondent's multiple acts of wrongdoing (std. 1.2(b)(ii)), the significant harm he caused his clients (std. 1.2(b)(iv)), and the fact that his misconduct involved trust funds and was surrounded by dishonesty (std. 1.2(b)(iii)).

In mitigation, respondent demonstrated remorse for and recognition of his misconduct (std. 1.2(e)(vii). In addition, respondent was suffering from severe financial stress and extreme personal difficulties. The court also considers the extreme emotional difficulties respondent was suffering from at the time of the misconduct, and his successful completion of the ADP. (Std. 1.2(e)(iv).)

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 the discipline recommended by the parties, as well as certain

³ All further references to standard(s) or std. are to this source.

standards and case law. In particular, the court considered standards 1.3, 1.4, 1.5, 1.6, 1.7(b), 2.2, 2.3, 2.4(b), 2.6, and 2.10, and *In re Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229; *In re Silverton* (2005) 36 Cal.4th 81; *Waysman v. State Bar* (1986) 41 Cal.3d 452; and *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280.

Because respondent has now successfully completed the ADP, this court, in turn, now recommends to the Supreme Court the imposition of the lower level of discipline, set forth more fully below, contained in the Confidential Statement of Alternative Dispositions and Orders and the order amending the Confidential Statement of Alternative Dispositions and Orders.

RECOMMENDED DISCIPLINE

It is hereby recommended that respondent **Matthew P. Todd**, State Bar Number 133023, be suspended from the practice of law in California for three years, that execution of that period of suspension be stayed, and that he be placed on probation⁴ for a period of three years subject to the following conditions:

1. Respondent Matthew P. Todd is suspended from the practice of law for 18 months (with credit given for the period of inactive enrollment pursuant to Business and Professions Code section 6233 which commenced on October 10, 2006, and ended on May 22, 2009), and he will remain suspended until the following requirements are satisfied:⁵
 - i. He makes restitution to David Crockett in the amount of \$3,000 plus 10% interest per annum from January 1, 2003 (or to the Client Security Fund to the extent of any payment from the fund to David Crockett, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnishes satisfactory proof thereof to the State Bar's Office of Probation;⁶
 - ii. He makes restitution to Christopher Zaferis in the amount of \$5,832.15 plus 10% interest per annum from July 1, 2003 (or to the Client Security Fund to the extent

⁴ 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.)

⁵ Upon granting relief from this period of involuntary inactive enrollment, the court found respondent provided satisfactory proof of his rehabilitation, present fitness to practice, and present learning and ability in the general law.

⁶ Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

of any payment from the fund to Christopher Zaferis, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnishes satisfactory proof thereof to the State Bar's Office of Probation;⁷

- iii. If he remains suspended for 90 days or more, he must also comply with rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of this order. Failure to do so may result in disbarment or suspension; and
 - iv. If he remains suspended for two years or more as a result of not satisfying the preceding conditions, he must also provide proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)
2. Respondent Matthew P. Todd 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 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;
 - c. 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;
 - d. 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

⁷ Respondent, upon presentation of satisfactory proof to the Office of Probation of the State Bar, will receive credit for any restitution payments made prior to the effective date of the present matter.

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;

- e. 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 respondent is complying or has complied with the probation conditions; and
- f. Respondent must comply with all provisions and conditions of his Participation Agreement with the Lawyer Assistance Program (“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 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.

At the expiration of the period of probation, if Matthew P. Todd has complied with all conditions of probation, the three-year period of stayed suspension will be satisfied and that suspension will be terminated.

Multistate Professional Responsibility Examination

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (“MPRE”) as he provided to the court proof of passage of the MPRE during his period of participation in the ADP.

Ethics and Client Trust Accounting Schools

It is also not recommended that respondent be ordered to complete Ethics School or Client Trust Accounting School as he provided to the court proof of completion of both during his period of participation in the ADP.

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 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 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 disclosures. 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: April _____, 2011

RICHARD A. HONN
Judge of the State Bar Court

