

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos.: <b>04-O-10846-DFM</b> (04-O-13941;
	)	04-O-15194); <b>05-O-02095-DFM</b>
<b>DENNIS JOHN SANCHEZ,</b>	)	(06-O-10420; 06-O-10575);
	)	<b>07-H-10085-DFM (Consolidated.)</b>
<b>Member No. 128900,</b>	)	
	)	<b>DECISION AND ORDER SEALING</b>
A Member of the State Bar.	)	<b>CERTAIN DOCUMENTS</b>

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**INTRODUCTION**

In this original disciplinary proceeding, Respondent **Dennis John Sanchez** (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 four years, that execution of that period of suspension be stayed, and that he be placed on probation for five years subject to certain conditions.

**PERTINENT PROCEDURAL HISTORY**

On May 8, 2006, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed the Notice of Disciplinary Charges (NDC) against Respondent in case number 04-O-10846. On June 5, 2006, Respondent requested referral for evaluation of his eligibility for participation in the State Bar Court’s ADP, and, thereafter, case number 04-O-10846 was referred to an ADP program judge for evaluation.

On July 27, 2006 and September 12, 2006, the court received declarations from Respondent regarding the nexus between his mental health issues and the charged misconduct.

On November 17, 2006, Respondent signed a Participation Plan with the State Bar of California's Lawyer Assistance Program (LAP).

On March 21, 2007, the State Bar filed the NDC's against Respondent in case numbers 05-O-02095 and 07-H-10085. Thereafter, in an order filed on March 27, 2007, those cases were consolidated with case number 04-O-10846 and included in the ADP evaluation process.

In August 2007, the parties submitted a Stipulation Regarding Facts and Conclusions of Law (Stipulation) to the court in the consolidated cases. (Rules Proc. of State Bar, rules 132, 802(a), 803(a).) The Stipulation sets forth the factual findings, legal conclusions, and mitigating and aggravating circumstances in this matter.

Following briefing by the parties, on December 18, 2007, the court signed and lodged a Confidential Statement of Alternative Dispositions and Orders (Confidential Statement). In the Confidential Statement, the court found sufficient evidence of a nexus between Respondent's mental health issues and his stipulated misconduct. The court also set forth in the Confidential Statement (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.

On December 18, 2007, Respondent lodged an executed Contract and Waiver for Participation in the State Bar Court's Alternative Discipline Program (Contract), agreeing, *inter alia*, to those alternative possible dispositions. Respondent was accepted into the ADP, effective December 18, 2007, and thereafter participated successfully in both the LAP and the State Bar Court's ADP. During his participation in the ADP, Respondent was involuntarily enrolled as an inactive member of the State Bar of California for six months and five days from

April 1, 2008, through October 6, 2008. (Bus. & Prof. Code, § 6233.)<sup>1</sup> The court recommends that Respondent be given credit for that period of inactive enrollment toward the six-month period of suspension recommended below.

On February 17, 2010, the court received from the LAP, a mental health certificate, certifying that Respondent had maintained mental health stability for the past year. On March 2, 2010, the court filed an order finding that Respondent had successfully completed the ADP as of February 22, 2010. Thereafter, on May 11, 2010, the consolidated proceeding was reassigned to the undersigned judge.

### **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.

#### **Background Facts**

At all relevant times, Respondent and Paul Lee, Respondent's office manager, handled the day-to-day operations of Respondent's law office, including the maintenance of Respondent's client trust account (CTA). When Respondent and Lee received client funds, they would deposit the funds into either Respondent's general bank account (General Account) or Respondent's CTA. Respondent and Lee did not have a consistent practice regarding which account they deposited client funds into. Nor did Respondent and Lee maintain any written ledgers or journals documenting their receipt and disbursement of client funds.

Respondent knew that he was not adequately maintaining and monitoring his CTA. On November 20, 2003, Respondent's bank notified Respondent and the State Bar that it had paid Respondent's CTA check number 3463 in the amount of \$2,500 even though there were insufficient funds in Respondent's CTA to pay the check. Nonetheless, Respondent failed to

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<sup>1</sup> All further statutory references are to the Business and Professions Code.

take any steps to improve the maintenance or supervision of his CTA. Instead, from November 2003 through November 2004, Respondent repeatedly and deliberately issued checks drawn on his CTA when he knew that there were insufficient funds in the account to pay the checks.<sup>2</sup> Each time Respondent's bank notified him that the balance in his client trust account dropped below zero, Respondent deposited cash or a check drawn on his General Account to cover any balances owed.

## **Misconduct**

### **Case Number 04-O-10846**

#### ***Count One***

By issuing CTA check number 3463 in the amount of \$2,500 payable to his former client Han Na Son when Respondent knew that none of the funds on deposit in his CTA belonged to Son, Respondent engaged in improper use of an account maintained for client trust account purposes in willful violation of State Bar Rules of Professional Conduct, rule 4-100(A).<sup>3</sup>

#### ***Count Two***

By issuing CTA check number 3463 when he knew there were insufficient funds to pay that check and by misappropriating other clients' funds to pay Son, Respondent committed acts involving moral turpitude, dishonesty, or corruption in willful violation of section 6106.

#### ***Count Three***

By issuing CTA check number 3488 in the amount of \$5,000 to his former client Young Sook Ma when Respondent knew that none of the funds on deposit in his CTA belonged to Ma,

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<sup>2</sup> According to the State Bar's brief on discipline, Respondent admitted culpability of writing at least 31 insufficiently funded checks and misappropriating at least \$3,500 in client funds.

<sup>3</sup> Unless otherwise noted, all further references to rules are to the State Bar Rules of Professional Conduct.

Respondent engaged in the improper use of an account maintained for client trust account purposes in willful violation of rule 4-100(A).

***Count Four***

By issuing CTA check number 3488 when he knew that there were insufficient funds to pay that check and by misappropriating other clients' funds to pay Ma, Respondent committed acts involving moral turpitude, dishonesty, or corruption in willful violation of section 6106.

***Count Five***

By not maintaining at least \$500 in funds belonging to his client Hyung Gun Woo in his CTA, Respondent failed to maintain client funds in a trust account and engaged in the improper use of an account maintained for client trust account purposes in willful violation of rule 4-100(A).

***Count Six***

By knowingly issuing CTA checks numbers 3505, 2506, and 3507 (which totaled \$360) for the Woos without any funds belonging to the Woos in his CTA, by knowingly issuing those three CTA checks for the Woos against insufficient funds, and by misappropriating at least \$500 from Hyung Woo, Respondent committed acts involving moral turpitude, dishonesty, or corruption in willful violation of section 6106.

**Case Number 04-0-13941**

***Count Seven***

By withdrawing \$800 in cash and knowingly leaving insufficient funds to pay his CTA check numbers 3632, 3633, 3634, 3637, and 3638, Respondent engaged in the improper use of an account maintained for client trust account purposes in willful violation of rule 4-100(A).

***Count Eight***

By withdrawing \$800 in cash, by issuing CTA checks when he knew or was grossly negligent in not knowing there were insufficient funds to pay those checks, and by knowingly leaving insufficient funds in his CTA to cover outstanding checks, Respondent committed acts involving moral turpitude, dishonesty, or corruption in willful violation of section 6106.

**Case Number 04-0-15194**

***Count Nine***

By permitting his CTA balance to fall to a *negative* \$524.06 on September 20, 2004, when he should have had at least \$2,000 in his CTA for his client Jong Myung Eun, Respondent failed to maintain client funds in a trust account in willful violation of rule 4-100(A).

***Count Ten***

By misappropriating at least \$2,000 in client funds belonging to Eun, Respondent willfully committed an act involving moral turpitude in willful violation of section 6106.

***Count Eleven***

By permitting his CTA balance to fall to \$102.29 when he should have had at least \$1,000 in his CTA for the Kims, Respondent failed to maintain client funds in a trust account in willful violation of rule 4-100(A).

***Count Twelve***

By knowingly issuing CTA check numbers 3721, 3722, and 3723 (which totaled \$525) for the Kims without any funds belonging to the Kims in the CTA and by thereafter misappropriating at least \$1,000 in later-deposited funds belonging to the Kims, Respondent committed acts involving moral turpitude, dishonesty, or corruption in willful violation of section 6106.

***Count Thirteen***

By issuing CTA checks against insufficient funds and by withdrawing cash from his CTA, thereby leaving insufficient funds to pay checks drawn on his CTA, Respondent engaged in the improper use of an account maintained for client trust account purposes in willful violation of rule 4-100(A).

***Count Fourteen***

By knowingly issuing CTA checks when he knew or was grossly negligent in not knowing there were insufficient funds to pay those checks, Respondent committed acts involving moral turpitude, dishonesty, or corruption in willful violation of section 6106.

**Case Number 05-0-02095**

***Count One***

By failing to maintain costs of \$140 for clients Kyoung Lee Hwang and Soon Kyu Hwang in his CTA, Respondent failed to maintain client funds in a trust account in willful violation of rule 4-100(A).

***Count Two***

By knowingly withdrawing client funds from his CTA and leaving insufficient funds to cover the Hwangs' costs, Respondent committed acts of involving moral turpitude, dishonesty, or corruption in willful violation of section 6106.

***Count Three***

By not maintaining written ledgers or journals documenting his receipt and disbursement of client funds, Respondent failed to maintain and to preserve, for five years from final appropriate disposition, complete records of all client funds coming into Respondent's possession in willful violation of rule 4-100(B)(3).

***Count Four***

By not overseeing Lee regarding the maintenance of Respondent's CTA and by not personally monitoring the CTA or otherwise supervising Lee, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

***Count Five***

By delegating his nondelegable CTA responsibilities to Lee and engaging in the repeated misuse of his CTA, Respondent dishonestly or with gross negligence committed acts involving moral turpitude, dishonesty, or corruption in willful violation of section 6106.

**Case Number 06-0-10420**

***Count Six***

By not providing his former client Louie Galvez with the requested accounting of the \$4,000 in advanced legal fees that Galvez paid Respondent, Respondent failed to render appropriate accounts to a client regarding all funds of the client coming into Respondent's possession in willful violation of rule 4-100(B)(3).

**Case Number 06-0-10575**

***Count Seven***

By not providing his former client Sergio Leyva with the requested accounting of the \$5,000 in advanced legal fees that Leyva paid Respondent, Respondent failed to render appropriate accounts to a client regarding all funds of the client coming into Respondent's possession in willful violation of rule 4-100(B)(3).

***Count Eight***

By taking about eight months to refund any portion of the \$5,000 in advanced fees that Leyva paid Respondent, after failing to perform legal services of any value to Leyva, Respondent



failed to promptly refund the part of a fee paid in advance that had not been earned in willful violation of rule 3-700(D)(2).

**Case Number 07-H-I0085**

Respondent willfully violated his duty, under rule 1-110, to comply with the conditions attached to the public reproof (effective October 11, 2005) imposed on him in State Bar Court case number 04-O-12571 (*Sanchez I*) as follows: Respondent submitted his first quarterly report that was due January 10, 2006, seven days late on January 17, 2006; Respondent submitted his third quarterly report that was due July 10, 2006, more than four months late on November 17, 2006; Respondent filed his fourth (and last) quarterly report that was due on October 10, 2006, more than a month late on November 17, 2006; Respondent filed his final report that was due October 11, 2006, more than a month late on November 17, 2006; and Respondent failed to take and pass the Multistate Professional Responsibility Examination by October 11, 2006.<sup>4</sup>

**Aggravation**

Respondent has one prior record of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i).)<sup>5</sup> Respondent's prior record of discipline is the public reproof that was imposed on him in *Sanchez I* because he failed to competently perform legal services.

Respondent's misconduct in the present consolidated proceeding evidences multiple acts of wrongdoing. (Std. 1.2(b)(ii).)

Respondent's misconduct involved trust funds, and Respondent refused or was unable to account to the client or clients for his improper conduct toward said trust funds. (Std. 1.2(b)(iii).)

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<sup>4</sup> As of August 1, 2007, the date on which Respondent signed the Stipulation, Respondent had still not taken and passed the Multistate Professional Responsibility Examination.

<sup>5</sup> All further references to standards are to this source.

Respondent's misconduct significantly harmed a client, the public, or the administration of justice. (Std. 1.2(b)(iv).)

Respondent demonstrated indifference towards rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).)

### **Mitigation**

Respondent has been candid and cooperative with the State Bar during the pendency of this State Bar Court proceeding. (Std. 1.2(e)(v).)

At the time of the misconduct, Respondent suffered from extreme difficulties in his personal life which were other than emotional or physical in nature.

Finally, it is appropriate to consider Respondent's successful completion of the ADP as a further mitigating circumstance in this matter. (Std. 1.2(e)(iv).)

### **DECISION**

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. (Std. 1.3; *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 standards and case law. In particular, the court considered standards 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 2.2, 2.3, and 2.9; the case of *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576; and the caselaw cited in the parties' briefs on discipline, including *Rhodes v. State Bar* (1989) 49 Cal.3d 50, *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113, and *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615.

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.

### **DISCIPLINE RECOMMENDATION**

#### **Recommended Discipline**

The court recommends that Respondent **Dennis John Sanchez**, State Bar number 128900, be suspended from the practice of law in California for four years, that execution of the four-year suspension be stayed, and that Respondent be placed on probation for five years subject to the following conditions:

1. Respondent is suspended from the practice of law in California for the first six months of his probation (with credit given for the period of his involuntary inactive enrollment under Business and Professions Code section 6233, which began on April 1, 2008, and ended on October 6, 2008).
2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct of the State Bar of California, and the conditions of this probation.
3. Within 10 days of any change, Respondent must report to the Membership Records Office of the State Bar of California 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 30 days after the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss these terms and conditions of probation. At the direction of the Office of Probation, Respondent must meet with the probation deputy either in person or by telephone. Respondent must promptly meet with the probation deputy as directed and requested.
5. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10. Under penalty of perjury, Respondent must state whether he 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 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 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 the assertion of applicable privileges, Respondent must answer fully, promptly and truthfully, any inquiries of the Office of Probation which are directed to him personally or in writing relating to whether he is complying or has complied with the probation conditions.
7. Within one year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of his attendance at a session of the State Bar's Ethics School and of his passage of the test given at the end of that session.
8. Respondent must comply with all provisions and conditions of his Participation Agreement/Plan 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/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 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. Respondent will be relieved of this condition after he provides to the Office of Probation satisfactory certification of completion of the LAP.
9. The five-year probation period will begin on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.) And, at the expiration of the period of probation, if Respondent has complied with all the terms of probation, the order of the Supreme Court suspending him from the practice of law for four years will be satisfied and that suspension will be terminated.

### **Multistate Professional Responsibility Examination**

The court further recommends that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order in this matter and to provide satisfactory proof of his passage to the State Bar's Office of Probation within the same year. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

## **Costs**

The court also recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that those costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

## **Client Security Fund**

The court also recommends that Dennis John Sanchez be ordered to reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and that such payment be enforceable as provided for under Business and Professions Code section 6140.5.

## **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 be disclosed to only: (1) parties to the proceeding and their 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 must be given a copy of this order sealing the documents by the person making the disclosure.

**IT IS SO ORDERED.**

Dated: May \_\_\_, 2010.

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**DONALD F. MILES**