

**STATE BAR COURT OF CALIFORNIA**  
**HEARING DEPARTMENT – LOS ANGELES**

In the Matter of )  
 ) Case Nos.: **04-O-14460-DFM** (05-O-00338;  
 ) 05-O-04032); **05-O-02930-DFM**;  
**DALE ROBERT McBRIDE,** ) **06-O-12321-DFM (Consolidated.)**  
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 )  
**Member No. 113913,** ) **DECISION AND ORDER SEALING**  
 ) **CERTAIN DOCUMENTS**  
 )  
A Member of the State Bar. )

**INTRODUCTION**

In this original disciplinary proceeding, Respondent Dale Robert McBride (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 four years subject to certain conditions, including that he be suspended from the practice of law for six months (but with credit being given toward that suspension for the six-month period of Respondent’s involuntary inactive enrollment pursuant to Business and professions Code section 6233).

**PERTINENT PROCEDURAL HISTORY**

The State Bar of California’s Office of the Chief Trial Counsel (State Bar) filed the Notice of Disciplinary Charges (NDC) against Respondent in case number 04-O-14460 on April

17, 2006. And the State Bar filed the NDC against Respondent in case number 05-O-02930 on September 1, 2006.<sup>1</sup> Thereafter, on September 18, 2006, case number 05-O-02930 was consolidated with case number 04-O-14460 for all purposes. And, at a February 8, 2007 settlement conference, consolidated case numbers 04-O-14460 and 05-O-02930 were referred to the ADP for evaluation.

Effective May 21, 2007, case numbers 04-O-14460, 05-O-02930, and 06-O-12321<sup>2</sup> were reassigned to the undersigned judge for all purposes.

In furtherance of his participation in the ADP, Respondent contacted the State Bar's Lawyer Assistance Program (LAP) on March 5, 2007, to assist him with his mental health issue. Respondent signed a LAP Participation Plan on September 10, 2007. On April 17, 2007, Respondent submitted a Nexus Statement to the court. Then, on November 28, 2007, Respondent submitted a Revised Nexus Statement that established a nexus between Respondent's mental health issue and his misconduct in this matter.

In September 2007, the court rejected a stipulation of facts and conclusions of law from the parties. In November 2007, the parties submitted a second Stipulation Re Facts and Conclusions of Law (Stipulation), which the court approved in an order dated January 18, 2008. The Stipulation sets forth the factual findings, legal conclusions, and mitigating and aggravating circumstances in this matter.

In lieu of briefs regarding the appropriate level of discipline, the parties submitted a Stipulation Re Discipline Level Recommendation on November 26, 2007. Thereafter, the court issued a Confidential Statement of Alternative Dispositions and Orders dated January 18, 2008, formally advising the parties of (1) the discipline which would be recommended to the Supreme

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<sup>1</sup> The State Bar filed an amended NDC in case number 05-O-02930 on January 23, 2007.

<sup>2</sup> The State Bar filed the NDC in case number 06-O-12321 on December 21, 2006.

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 possible dispositions, Respondent executed a Contract and Waiver for Participation in the State Bar Court's Alternative Discipline Program; the court accepted Respondent for participation in the ADP; and Respondent's period of participation in the ADP began on January 18, 2008. Respondent thereafter participated successfully in both the LAP and the State Bar Court's ADP.

On September 24, 2008, case number 06-O-12321 was consolidated with case numbers 04-O-14460 and 05-O-02930 for all purposes. Then, on May 7, 2010, after receiving a satisfactory recommendation from a mental health professional, the court filed an order finding that Respondent has successfully completed the ADP.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

In the Stipulation, Respondent stipulated to twenty-one ethical violations in five separate personal-injury client matters. In each of the five matters, Respondent stipulated that he failed to perform legal services competently in willful violation of rule 3-110(A) of the State Bar Rules of Professional Conduct.<sup>3</sup> In addition, Respondent stipulated that he also failed to cooperate in the State Bar's disciplinary investigations in four of the matters in willful violation of Business and Professions Code section 6068, subdivision (i).<sup>4</sup> And, in three of the matters, Respondent further stipulated that he failed to communicate with his clients in willful violation of section 6068, subdivision (m).

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<sup>3</sup> Unless otherwise indicated, all further references to rule(s) are to the State Bar Rules of Professional Conduct.

<sup>4</sup> All further statutory references are to the Business and Professions Code.

In two matters, Respondent further stipulated that he deliberately made material misrepresentations to the clients in willful violation of section 6106's proscription of acts involving moral turpitude and dishonesty. And, in one matter, he stipulated that he also misappropriated almost \$5,000 in willful violation of section 6106. And, in another matter, he further stipulated that he failed to report the entry of a malpractice judgment against him for almost \$30,000 in willful violation of his reporting duties under section 6068, subdivision (o)(2).

Respondent stipulated to one count of violating each of the following rules as follows: rule 3-500 by not responding to a client's request for information; rule 3-700(A)(2) by improperly withdrawing from employment; rule 3-700(D)(1) by failing to release the client's file; rule 4-100(B)(3) by failing to account for client funds; and rule 4-100(B)(4) by failing to payout client funds upon request.

Furthermore, Respondent stipulated to aggravation based on harm (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(iv)),<sup>5</sup> lack of cooperation (std. 1.2(b)(vi)), and multiple/pattern of misconduct (std. 1.2(b)(ii)). The parties stipulated to mitigation based on no prior record of discipline. (Std. 1.2(e)(i).)

It is also appropriate to consider Respondent's successful completion of the ADP as a mitigating circumstance in this matter. (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, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve confidence in the legal profession. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

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<sup>5</sup> All further references to standard(s) or std. are to this source.

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 to which the parties stipulated, as well as certain standards and case law. In particular, the court considered standards 1.2, 1.3, 1.4, 1.5, 1.6, 2.2, 2.3, 2.4, 2.6, and 2.10 and *Howard v. State Bar* (1990) 51 Cal.3d 215; *Bates v. State Bar* (1990) 51 Cal.3d 1056; *Greenbaum v. State Bar* (1987) 43 Cal.3d 543; *In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403.

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**

### **Recommended Discipline**

It is hereby recommended that Respondent **Dale Robert McBride**, State Bar Number 113913, 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<sup>6</sup> for four years subject to the following conditions:

- a. Respondent is suspended from the practice of law in California for the first six months of his probation (with credit given for the six-month period of his involuntary inactive enrollment under Business and Professions Code section 6233, which began on April 1, 2008, and continued through September 30, 2008);
- b. Respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
- c. Within 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;

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<sup>6</sup> 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.)

- d. Within 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. Respondent must promptly meet with the probation deputy as directed and upon request;
- e. 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 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;

- f. 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;
- g. Within one year after the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School and of passage of the test given at the end of that session; and
- h. 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 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 Dale Robert McBride has complied with all conditions of probation, the three-year stayed suspension will be satisfied and that suspension will be terminated.

## **Multistate Professional Responsibility Examination**

It is further recommended that Dale Robert McBride be ordered to take and pass the Multistate Professional Responsibility Examination within one year after the effective date of the Supreme Court's disciplinary order in this matter and to provide satisfactory proof of his passage to the State Bar's Office of Probation in Los Angeles within the same time period. Failure to do so may result in Respondent's automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

## **Costs**

It is recommended 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. Respondent must also reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and such payment is enforceable as provided under Business and Professions Code section 6140.5. (Rules Proc. of State Bar, rule 291.)

## **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 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: July \_\_\_\_\_, 2010

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DONALD F. MILES