

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case Nos.: <b>05-O-02161-PEM</b>
	)	08-O-11442 (Cons.)
<b>JUAN MANUEL FALCON,</b>	)	
	)	<b>DECISION AND ORDER SEALING</b>
<b>Member No. 177400,</b>	)	<b>CERTAIN DOCUMENTS</b>
	)	
<u>A Member of the State Bar.</u>	)	

On September 27, 2007, the State Bar of California, Office of the Chief Trial Counsel (“State Bar”), filed a Notice of Disciplinary Charges (“NDC”) against respondent **Juan Manuel Falcon** (“respondent”) in case no. 05-O-02161. Respondent sought to participate in the State Bar Court’s Alternative Discipline Program (“ADP”), and on June 16, 2008, this matter was referred to the ADP.

On August 18, 2008, the State Bar filed a second NDC against respondent in case no. 08-O-11442. This matter was referred to the ADP and consolidated with case no. 05-O-02161.

On April 14, 2009, respondent submitted a declaration establishing a nexus between his substance abuse issue and his misconduct. The parties subsequently entered into a Stipulation Re Facts and Conclusions of Law in May 2009.

On May 18, 2009, the court lodged the Confidential Statement of Alternative Dispositions and Orders and the Contract and Waiver for Participation in the State Bar Court’s

ADP (“Contract”), and filed the parties’ Stipulation Re Facts and Conclusions of Law. That same day, the court issued an order formally accepting respondent into the ADP.

Upon motion of the State Bar, the court ordered respondent to appear in person on September 22, 2010, for a hearing regarding whether respondent should be terminated from the ADP.

At the September 22, 2010 hearing, at which respondent appeared in person, 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. This matter was submitted for decision that same day.

#### **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. Respondent stipulated to six counts of misconduct in two client matters.

In the first matter, respondent failed to perform, failed to communicate, and held himself out as entitled to practice law while he was suspended. In the second matter, respondent made misrepresentations constituting moral turpitude, failed to maintain client funds in trust, and misappropriated \$5,000 from his client trust account.

In aggravation, respondent’s misconduct involved trust funds, was surrounded by dishonesty and concealment, evidenced multiple acts of wrongdoing, and resulted in significant

harm. In addition, respondent had a prior record of discipline. In mitigation, respondent had participated in the Lawyers Assistance Program.<sup>1</sup>

### **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 considering the State Bar's and respondent's discipline recommendations, 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.

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, 2.2, 2.3, 2.4(b), and 2.6. The court also considered all relevant case law presented by the parties.

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 September 22, 2010 order. Accordingly, the court recommends imposition of the discipline set forth in the

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<sup>1</sup> 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).)

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 **Juan Manuel Falcon** be suspended from the practice of law for four (4) years, that execution of that period of suspension be stayed, and that respondent be placed on probation for four (4) years, subject to the following conditions:

1. Respondent must be actually suspended from the practice of law for the first three (3) years of probation, and he will remain suspended until the following requirements are satisfied:
  - a. Respondent must 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 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

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;
- f. 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 Ethics School, and passage of the test given at the end of that session; and
- g. Unless respondent has been terminated from the Lawyer Assistance Program (“LAP”) prior to respondent’s successful completion of the LAP, respondent must comply with all provisions and conditions of respondent’s Participation Agreement with the LAP and 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 respondent’s compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. However, if respondent has successfully completed the LAP, respondent need not comply with this condition.

Respondent must abstain from use of any alcoholic beverages, and shall not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription.

Respondent must select a licensed medical laboratory approved by the Office of Probation. Respondent must furnish to the laboratory 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 the 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 previously.

At the expiration of the period of probation, if respondent has complied with all conditions of probation, the four (4) year period of stayed suspension 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 during the period of his actual suspension.<sup>2</sup>

The court also recommends that respondent be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.<sup>3</sup>

### **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

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<sup>2</sup> 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).)

<sup>3</sup> Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

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 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: December \_\_\_\_\_, 2010

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PAT McELROY  
Judge of the State Bar Court