

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos.: <b>06-O-11589-DFM</b>
	)	06-O-12282 (06-O-13762;
<b>RICHARD LYNN BARRETT,</b>	)	06-O-13832; 06-O-13995);
	)	07-H-10653 (Cons.)
<b>Member No. 140747,</b>	)	
	)	<b>DECISION AND ORDER SEALING</b>
<u>A Member of the State Bar.</u>	)	<b>CERTAIN DOCUMENTS</b>

**INTRODUCTION**

In this original disciplinary proceeding, respondent Richard Lynn Barrett (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 a six-month actual suspension.

**PERTINENT PROCEDURAL HISTORY**

On December 12, 2006, the State Bar of California’s Office of the Chief Trial Counsel (State Bar) filed a Notice of Disciplinary Charges (NDC) against Respondent in case no. 06-O-11589. Respondent sought to participate in the State Bar Court’s ADP.

On March 20, 2007, the State Bar filed a second NDC against Respondent, in case no. 07-H-10653. This matter was subsequently consolidated with case no. 06-O-11589.

On March 26, 2007, Respondent was referred to the ADP. That next day, Respondent contacted the State Bar's Lawyer Assistance Program (LAP) to assist him with his mental health issue.

The parties submitted a Stipulation Re Facts and Conclusions of Law on July 3, 2007. This stipulation set forth the factual findings, legal conclusions, and mitigating and aggravating circumstances involved in case nos. 06-O-11589 and 07-H-10653.

On August 6, 2007, Respondent submitted a declaration to the court, which established a nexus between Respondent's mental health issue and the charges in case nos. 06-O-11589 and 07-H-10653.

On August 30, 2007, the State Bar filed a third NDC against Respondent, in case nos. 06-O-12282, 06-O-13762, 06-O-13832, and 06-O-13995. These matters were subsequently consolidated with case nos. 06-O-11589 and 07-H-10653.

The parties submitted a second Stipulation Re Facts and Conclusions of Law on November 27, 2007. This stipulation set forth the factual findings, legal conclusions and mitigating and aggravating circumstances involved in case nos. 06-O-12282, 06-O-13762, 06-O-13832, and 06-O-13995.

On February 4, 2008, Respondent submitted an amended declaration to the court, establishing the nexus between Respondent's mental health issue and the charges in this matter.

On May 16, 2008, Respondent signed a LAP Participation Plan.

Following briefing by the parties, the court issued a Confidential Statement of Alternative Dispositions and Orders (Confidential Statement), dated June 5, 2008, 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 June 5, 2008.

As noted, Respondent thereafter participated successfully in both the LAP and the State Bar Court's ADP.<sup>1</sup> On September 28, 2010, after receiving a Certificate of One Year of Participation in the LAP - Mental Health, the court filed an order finding that Respondent has successfully completed the ADP.

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

The parties' July 3, 2007 and November 27, 2007 stipulations, including the court's orders approving the stipulations, are attached hereto and incorporated by reference, as if fully set forth herein.

In the July 3, 2007 stipulation, Respondent stipulated to willfully violating: (1) rule 3-110(A) of the Rules of Professional Conduct of the State Bar of California<sup>2</sup> by failing to perform legal services with competence; (2) Business and Professions Code section 6068, subdivision (m),<sup>3</sup> by failing to promptly respond to reasonable status inquiries; (3) rule 3-700(D)(2), by

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<sup>1</sup> Although the court considered the possibility of requiring Respondent to undergo a period of inactivity pursuant to section 6233, because of (a) the court's requirement that Respondent make immediate and substantial restitution payments during the program to various clients, (b) Respondent's financial inability to make such payments if he were unable to work, and (c) the presence of strong indicators that Respondent's continued eligibility to practice would not further endanger the public or the profession, the court deferred the commencement of any section 6233 ineligibility until the restitution payments had been completed. Ultimately, Respondent was able to graduate from the program successfully before the planned period of ineligibility was to commence.

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

<sup>3</sup> Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

failing to promptly refund an unearned fee; (4) section 6106, by making a misrepresentation to his client; (5) section 6068, subdivision (i), by failing to cooperate in a disciplinary investigation; and (6) rule 1-110, by failing to comply with the conditions of his public reproof in State Bar Court case no. 04-O-14906.

The November 27, 2007 stipulation involves four separate client matters. Respondent stipulated to four counts of failing to perform legal services with competence, in willful violation of rule 3-110(A); four counts of failing to cooperate in a disciplinary investigation, in willful violation of section 6068, subdivision (i); three counts of failing to promptly respond to reasonable status inquiries, in willful violation of section 6068, subdivision (m); three counts of improperly withdrawing from representation, in willful violation of rule 3-700(A)(2); one count of failing to promptly release client papers and property, in willful violation of rule 3-700(D)(1); and one count of failing to refund an unearned fee, in willful violation of rule 3-700(D)(2).

In aggravation, Respondent committed multiple acts of wrongdoing (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(ii)<sup>4</sup>), caused significant harm to his clients (Std. 1.2(b)(iv), and had a prior record of discipline (Std. 1.2(b)(i)). In addition, Respondent's misconduct in case no. 06-O-11589 was surrounded by dishonesty. (Std. 1.2(b)(iii).)

In mitigation, Respondent cooperated with the State Bar during the disciplinary proceedings. (Std. 1.2(e)(v).) The extreme emotional difficulties Respondent was suffering from at the time of the misconduct, and his successful completion of the ADP also warrant additional consideration in mitigation. (Std. 1.2(e)(iv).)

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<sup>4</sup> All further references to standard(s) or std. are to this source.

## 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 standards and case law. In particular, the court considered standards 1.2, 1.3, 1.6, 1.7(a), 2.3, 2.4(b), 2.6, 2.9, and *Pineda v. State Bar* (1989) 49 Cal.3d 753, *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, *Hawes v. State Bar* (1990) 51 Cal.3d 587, *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, and *In the Matter of Dale* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798.

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 contained in the Confidential Statement, as set forth more fully below.

## DISCIPLINE

### Recommended Discipline

It is hereby recommended that respondent **Richard Lynn Barrett**, State Bar Number 140747, be suspended from the practice of law in California for three year(s), that execution of that period of suspension be stayed, and that he be placed on probation<sup>5</sup> for a period of three (3) years subject to the following conditions:

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<sup>5</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.)

1. Respondent Richard Lynn Barrett is suspended from the practice of law for the first six months of probation.
2. Respondent Richard Lynn Barrett 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;<sup>6</sup> and
- g. 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 Richard Lynn Barrett has complied with all conditions of probation, the three (3) year period of stayed suspension will be satisfied and that suspension will be terminated.

### **Multistate Professional Responsibility Examination**

It is further recommended that Richard Lynn Barrett be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court's disciplinary order in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.<sup>7</sup> Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

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<sup>6</sup> If Respondent provides proof to the Office of Probation that he completed this condition during his period of participation in the ADP, Respondent need not again comply with this condition.

<sup>7</sup> The Confidential Statement permitted Respondent to complete this condition during his period of participation in the ADP. The court's records do not indicate that Respondent completed this condition during his period of participation in the ADP. If this is inaccurate, Respondent should promptly file a motion for reconsideration.

## **California Rules of Court, Rule 9.20**

The court 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>8</sup>

### **Restitution**

During his period of participation in the ADP, Respondent provided satisfactory proof of full compliance with the restitution conditions reflected in the Confidential Statement.

Consequently, the court does not recommend payment of restitution.

### **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

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<sup>8</sup> Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341. Willful failure to comply with the provisions of rule 9.20 may result in revocation of probation, suspension, disbarment, denial of reinstatement, conviction of contempt, or criminal conviction.)

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

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DONALD F. MILES  
Judge of the State Bar Court