

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 06-O-12774; 07-O-12234 (Cons.)
)	
RICHARD FRANK PINTAL,)	DECISION AND ORDER SEALING
)	CERTAIN DOCUMENTS
Member No. 152727,)	
)	
<u>A Member of the State Bar.</u>)	

I. Introduction

In this consolidated original disciplinary proceeding, respondent Richard Frank Pintal (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 five years subject to certain conditions, including a five-month period of suspension.

II. Significant Procedural History

On or before February 1, 2006, respondent contacted the State Bar’s Lawyer Assistance Program (LAP) to assist him with his mental health issue(s), and on April 25, 2006, respondent signed a long-term participation plan with the LAP.

A Notice of Disciplinary Charges (NDC) was filed against respondent in case no. 06-O-12774 on August 30, 2006. The matter was assigned to the Honorable Richard A. Honn.

At a status conference on October 11, 2006, respondent made an oral motion for referral to the court's ADP. The motion was not opposed by the State Bar. Judge Honn granted respondent's motion, and the matter was referred to the undersigned judge for evaluation of respondent's eligibility for participation in the program. This matter was reassigned to the undersigned judge for all further proceedings pursuant to an order filed on October 24, 2006.

On February 26, 2007, respondent submitted a declaration to the court which established a nexus between respondent's mental health issue(s) and his misconduct in this matter.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) on September 5, 2007, in case no. 06-O-12774, which was received by the court on that same date. The Stipulation sets forth the factual findings, legal conclusion, and aggravating and mitigating circumstances in this matter.

Following submission of the parties' discipline recommendations, the court advised 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 possible dispositions, respondent and his counsel executed a Contract and Waiver for Participation in the State Bar Court's ADP (Contract) on January 14, 2008. On that same date: (1) the court executed a Confidential Statement of Alternative Dispositions and Orders (Confidential Statement), formally advising the parties of the recommended alternative discipline levels; (2) the court signed an order approving the parties' Stipulation in case no. 06-O-12774; (3) the Stipulation, Contract, and Confidential Statement were lodged; (4) respondent

was accepted for participation in the ADP; and respondent's period of participation in the ADP began on January 14, 2008.¹

On October 9, 2008, the State Bar filed a NDC against respondent in case no. 07-O-12234. The matter was assigned to the undersigned judge.

On January 16, 2009, the terms of respondent's LAP Participation Plan were amended.

In early December 2009, the parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) in case no. 07-O-12234, which was received by the court on December 9, 2009.

On January 4, 2010, respondent submitted a declaration to the court which established a nexus between respondent's mental health issue(s) and his misconduct in case no. 07-O-12234.²

The parties' Stipulation in case no. 07-O-12234 was lodged with the court on June 17, 2010.

In order to include case no. 07-O-12234 in the ADP, respondent executed an Agreement and Order Amending Contract and Waiver for Participation in the State Bar Court's ADP (Order Amending Contract).³ The court also executed an Order Amending Confidential Statement of Alternative Dispositions and Orders (Order Amending Confidential Statement) on June 17, 2010, to include case no. 07-O-12234 in the ADP.⁴ The Order Amending Confidential Statement and the Agreement and Order Amending Contract were lodged on June 17, 2010, and the court executed an order approving the parties' Stipulation in case no. 07-O-12234 on that same date.

¹ The court filed an order on January 18, 2008, finding that respondent is accepted into the ADP, and the start date of his participation is January 14, 2008.

² The court had received the declaration by facsimile transmission on December 22, 2009.

³ The Agreement and Order Amending Contract was executed by respondent's counsel on May 27, 2010, and by respondent on June 7, 2010.

⁴ Case nos. 06-O-12774 and 07-O-12234 were consolidated.

After being accepted into the ADP, respondent participated in both the LAP and the ADP. In a letter dated April 14, 2011, a mental health professional certified that respondent has maintained mental health stability since March 2010. The court found this letter satisfactory to support respondent's successful completion of the ADP, and the court therefore found that respondent has successfully completed the ADP.⁵ The parties' Stipulations in case nos. 06-O-12774 and 07-O-12234 were filed on May 11, 2011, and this matter was submitted for decision on that date.

III. Findings of Fact and Conclusions of Law

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

In case no. 06-O-12774, respondent stipulated to a willful violation of section 6068(k) of the Business and Professions Code⁶ for failing to comply with probation conditions.

In case no. 07-O-12234, respondent stipulated that he failed to cooperate and participate in a disciplinary investigation pending against him in willful violation of section 6068, subdivision (i).

IV. Aggravation and Mitigation

A. Aggravation⁷

Prior Record (Std. 1.2(b)(i).)

Respondent has three prior records of discipline. Effective February 10, 1996, in Supreme Court matter S049766 (State Bar Court case no. 93-O-19021), respondent was suspended for two years; the execution of that suspension was stayed; respondent was placed on

⁵ The court filed an order on May 12, 2011, finding that respondent has successfully completed the ADP.

⁶ Unless otherwise indicated, all further statutory references are to the Business and Professions Code.

⁷ All further references to standards (std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

probation for two years; and respondent was actually suspended for 120 days for violations of rules 3-110(A) of the State Bar Rules of Professional Conduct⁸ (four counts), 3-700(A), and 3-700(B) and sections 6068, subdivisions (m) (two counts), (i) (four counts) and (o)(3), and 6103.

Effective May 6, 2001, in Supreme Court matter S094859⁹ (State Bar Court case no. 98-O-01388), respondent was suspended for six months; the execution of the suspension was stayed; and respondent was placed on probation for two years for violating rule 3-700(A)(2) and section 6103.

Effective September 1, 2002, in Supreme Court matter S107073 (State Bar Court case nos. 01-O-00603, etc.), respondent was suspended for one year; the execution of that suspension was stayed; respondent was placed on probation for three years; and respondent was actually suspended for 60 days for violating rule 3-310(A) and section 6068, subdivision (m).

Multiple Acts/Pattern of Misconduct (Std. 1.2(b)(ii).)

Respondent's misconduct involves multiple acts of wrongdoing or demonstrates a pattern of misconduct.

B. Mitigation

Lack of Harm (Std. 1.2(e)(iii).)

Respondent's misconduct did not harm a client in case no. 06-O-12774, and did not harm the client or person who was the object of the misconduct in case no. 07-O-12234.

Candor/Cooperation to State Bar

Respondent displayed spontaneous cooperation and candor with the State Bar during disciplinary investigation and proceedings in case no. 06-O-12774.

⁸ Unless otherwise indicated, all further references to rules refer to the State Bar Rules of Professional Conduct.

⁹ The Stipulation in case no. 06-O-12774 refers to S049859; however, this appears to be a typographical error. Pursuant to Evidence Code section 452, subdivision (h), the court takes judicial notice of respondent's official membership records maintained by the State Bar which reflect that the matter is actually S094859.

Other Mitigating Circumstance in Case No. 06-O-12774

Although respondent did not comply with his probation condition regarding obtaining weekly psychiatric or psychological help/treatment from a duly licensed psychologist, psychiatrist or clinical social worker as recommended and provide evidence of compliance to the Office of Probation with certain quarterly reports, respondent did undergo treatment during this time and complied with the recommendations of other treatment professionals.

Extreme Emotional Difficulties (Std. 1.2(e)(iv).)

It is now appropriate to consider respondent's successful completion of the ADP as a further mitigating circumstance in this matter.

V. 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, 1.4, 1.5, 1.6, 1.7(b), and 2.6 and *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138; *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192; and *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63.

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.

V. Recommendations

It is hereby recommended that respondent Richard Frank Pintal, State Bar Number 152727, 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 probation¹⁰ for a period of five years subject to the following conditions:

Respondent Richard Frank Pintal is suspended from the practice of law for the first five months of probation;

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;

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;

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. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request;

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;

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

¹⁰ 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.)

personally or in writing relating to whether respondent is complying or has complied with the probation conditions;

Within one 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

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 Frank Pinal has complied with all conditions of probation, the three year period of stayed suspension will be satisfied.

A. Multistate Professional Responsibility Examination

It is further recommended that Richard Frank Pinal be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order imposing discipline 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.

B. Rule 9.20, California Rules of Court

It is further recommended that respondent Richard Frank Pinal be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within thirty (30) and forty (40) calendar days, respectively, after the effective date of the Supreme Court's final disciplinary order in this matter.

C. 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.

VI. 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(c) (former rule 806(c)) of the Rules of Procedure of the State Bar of California (Rules of Procedure),¹¹ all other documents not previously filed in this matter are ordered sealed pursuant to 5.12 (former 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 official 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: June 3, 2011.

RICHARD A. PLATEL
Judge of the State Bar Court

¹¹ Effective January 1, 2011, new Rules of Procedure of the State Bar of California became effective.