

FILED AUGUST 6, 2014

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

In the Matter of)	Case Nos.: 10-O-06099-RAP (10-O-06985;
)	10-O-10253); 11-O-11711
)	(11-O-13215); 11-O-14908
MARK EDWARD HALLORAN,)	(11-O-15852) (Cons.)
)	
)	DECISION AND ORDER SEALING
Member No. 82284,)	CERTAIN DOCUMENTS
)	
)	
<u>A Member of the State Bar.</u>)	

Introduction

In this consolidated original disciplinary proceeding, respondent Mark Edward Halloran (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 two 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 one-year period of suspension (with credit given for the period of inactive enrollment commencing on August 10, 2012, and terminating on August 10, 2013).

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Significant Procedural History

The State Bar of California, Office of the Chief Trial Counsel (State Bar), filed a Notice of Disciplinary Charges (NDC) against respondent on July 27, 2011, in case Nos. 10-O-06099 (10-O-06985; 10-O-10253). The matter was initially assigned to the Honorable Richard A. Honn. Respondent filed his response to the NDC on September 6, 2011.

On September 8, 2011, Judge Honn issued an order referring this matter to the ADP at respondent's request. That same date, respondent contacted the State Bar's Lawyer Assistance Program (LAP) to assist him with his mental health and substance abuse issues.

Pursuant to an order filed on September 23, 2011, the matter was reassigned to the undersigned judge for all further proceedings.

On September 23, 2011, the State Bar filed an NDC in case Nos. 11-O-11711 (11-O-13215). This matter was assigned to the undersigned judge.

On October 26, 2011, Respondent submitted to the court his nexus statement which established a nexus between his mental health and substance abuse issues and his misconduct in these matters.

Pursuant to orders filed on November 1, 2011, case Nos. 11-O-11711 (11-O-13215) and case Nos. 10-O-06099 (10-O-06985; 10-O-10253) were consolidated.

The State Bar filed a NDC against respondent in case Nos. 11-O-14908 (11-O-15852) on December 28, 2011. The matter was assigned to the undersigned judge.

Pursuant to an order filed on January 27, 2012, case Nos. 11-O-14908 (11-O-15852) were consolidated with case Nos. 10-O-06099 (10-O-06985; 10-O-10253); 11-O-11711 (11-O-13215).

In March 2012, respondent entered into a long-term Participation Plan with the LAP.

Following briefing by the parties, the court executed a Confidential Statement of Alternative Dispositions and Orders (Confidential Statement) on July 11, 2012, setting forth the

discipline the court would recommend if respondent successfully completed the ADP and the discipline the court would recommend if respondent was terminated from, or failed to successfully complete, the ADP. On that same date, respondent and his attorney executed the Contract and Waiver for Participation in the State Bar Court's ADP (Contract). Thereafter, respondent was accepted into the ADP.¹

On July 17, 2012, the parties' Stipulation Re Facts and Conclusions of Law (Stipulation) was filed.

Pursuant to an order filed on July 17, 2012, respondent was enrolled inactive under Business and Professions Code section 6233 effective August 10, 2012. Respondent was returned to active status effective August 10, 2013.

After receiving certificates from the LAP dated March 4, 2014, reflecting that (1) the LAP is not aware of the use of any unauthorized substances by respondent for at least one year prior to March 4, 2014, and (2) that from March 4, 2013 to March 4, 2014, respondent has maintained mental health stability and has participated successfully in the LAP, the court filed an order on April 8, 2014, finding that respondent has successfully completed the ADP.

This matter was submitted for decision on May 16, 2014.

Findings of Fact and Conclusions of Law

Culpability Findings

The parties' Stipulation filed on July 17, 2012, including the court's order approving the Stipulation as modified, is attached hereto and hereby incorporated by reference, as if fully set forth herein. The Stipulation sets forth the factual findings, legal conclusions, and mitigating and aggravating circumstances in this consolidated matter.

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¹ The Confidential Statement and Contract were lodged on July 17, 2012.

**Case Nos. 10-O-06099 (10-O-06985; 10-O-10253); 11-O-11711 (11-O-13215);
11-O-14908 (11-O-15852) (Cons.)**

Respondent stipulated that he (1) willfully violated rule 4-100(A) of the State Bar Rules of Professional Conduct by paying his business and personal expenses from his client trust account and by depositing his own funds or funds on his own behalf into his client trust account to cover those expenses; (2) intentionally committed an act or acts of dishonesty, moral turpitude or corruption in willful violation of Business and Professions Code section 6106 by using his client trust account to shield his funds from valid state and federal tax liens and denying the state and federal governments and their citizens of those funds; (3) committed an act or acts of dishonesty, moral turpitude or corruption in willful violation of Business and Professions Code section 6106 by issuing insufficient funds checks from his client trust account when he knew or was grossly negligent in not knowing that there were insufficient funds in the client trust account; and (4) failed to participate and cooperate in a disciplinary investigation pending against him in willful violation of Business and Professions Code section 6068, subdivision (i), by not responding in writing to State Bar letters as requested.

Aggravation

Harm to Public (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Std. 1.2(b)(iv).)²

Respondent's intentional avoidance of paying his almost \$400,000 tax debt by transferring his business and personal funds into his client trust account to avoid attachment from a tax lien was an intentional scheme to defraud the state and federal governments from the collection of his tax debt which significantly harmed the public.

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² All further references to standard(s) or std.(s) are to this source. The standards were revised effective January 1, 2014. However, as the former standards were in effect at the time the parties' entered into the Stipulation and at the time Respondent entered the ADP, the court will apply the former standards in this matter.

Indifference (Std. 1.2(b)(v).)

Respondent demonstrated indifference toward atonement for or rectification of the consequences of his misconduct by continuing to abuse and misuse his client trust account for business and personal purposes, and by writing insufficient funds checks for several months after being notified by letter by the State Bar in August 2010 that this misconduct was the subject of a State Bar disciplinary investigation and after he was again reminded in a February 2011 telephone conversation with an investigator that his client trust account was only for client funds.

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

Respondent's continuous and repeated abuse of his client trust account involving hundreds of transactions, including 13 insufficient funds checks over a 15-month period, evidences multiple acts of wrongdoing and demonstrates a pattern of misconduct.

Other

Respondent has two prior criminal convictions. One conviction was in 1998 for reckless driving involving the consumption of alcohol and/or drugs (wet reckless) and another conviction in 1999 for driving under the influence of alcohol and/or drugs.

Mitigation**Remorse (Std. 1.(e)(vii).)**

Respondent promptly took objective steps spontaneously demonstrating recognition of wrongdoing and remorse, which were designed to timely atone for the consequences of his misconduct.

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Good Character (Std. 1.2(e)(vi).)

The parties' stipulated that respondent's good character is attested to by a wide range of references in the general and legal communities who are aware of the full extent of his misconduct.

Other

Respondent was admitted to the State Bar of California on November 29, 1978, and has no prior record of discipline.

At the time of his misconduct, respondent suffered extreme difficulties in his personal life which were other than physical or emotional in nature. Respondent learned in late 2010 that his father was terminally ill with prostate cancer. Respondent handled issues regarding his father's illness for him and their family and began regularly visiting his father at his father home which was several hours from respondent's home. Respondent also learned in early 2011 that his oldest sister had terminal cancer and he began assisting her through regular and frequent contact. Respondent's father died on August 3, 2011.

Respondent received an award for Outstanding Service from the Beverly Hills Bar Association in 1986, and in 2005, he received an award for Distinguished and Exemplary Service. At the time he entered into the Stipulation in this matter, respondent had been active in the USC/Beverly Hills Bar Association Institute on Entertainment Law and Business for 24 years and had served as co-chair of a significant annual educational program it produces for the past 17 years.

Respondent is a frequent panelist and lecturer on entertainment law and is a recognized expert in the field. He has co-authored three books on the subject and has donated the proceeds of two of the books. He has written or co-written approximately 13 articles on entertainment law and has served on numerous institutes for over 20 years. He is a regular panelist and presenter in

industry program that provide MCLE credits. He has also been a frequent lecturer and panelist at a university extension program.

Respondent was regarded “as a person of honesty and integrity”³ by a co-author of one of respondent’s books who had worked for respondent as a paralegal since 2007 and had known respondent for 23 years at the time the parties entered into the Stipulation.⁴

Respondent has also successfully completed the ADP. Respondent’s successful completion of the ADP, which required his successful participation in the LAP, as well as the certificates from the LAP, qualify as clear and convincing evidence that respondent no longer suffers from the mental health and substance abuse issues which led to his misconduct. Accordingly, it is appropriate to consider respondent’s successful completion of the ADP as a mitigating circumstance in this matter.

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(b), 1.2(e), 1.3, 1.6, 2.2, 2.3 and 2.6 and *In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871; *In*

³ Stipulation, page 5, paragraph 13.

⁴ However, this individual does not acknowledge respondent’s use of his client trust account as a scheme to avoid state and federal tax liens. Rather, this individual only acknowledges respondent’s misconduct as using his client trust account for personal purposes and believes the misconduct was inadvertent.

the Matter of Bleecker (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113; *In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47; and *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138.

Because Respondent has now successfully completed the ADP, this court, in turn, now recommends the imposition of the lower level of discipline, set forth more fully below.

Recommendations

It is hereby recommended that respondent Mark Edward Halloran, State Bar Number 82284, be suspended from the practice of law in California for two years, that execution of the period of suspension be stayed, and that he be placed on probation for three years subject to the following conditions:

1. Respondent is suspended from the practice of law in California for the first one-year of his probation (with credit given for inactive enrollment, which was effective August 10, 2012, through August 9, 2013 (Bus. & Prof. Code, § 6233));⁵
2. 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;
3. 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;
4. 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,

⁵ 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.)

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;

5. 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;

6. Subject to 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;

7. Within 30 days after the effective date of the discipline herein, respondent must submit to the Office of Probation satisfactory evidence that respondent has entered into a payment agreement with the Internal Revenue Service and the Franchise Tax Board and that he is in compliance with the payment agreement. Respondent must continue to comply with the payment agreement and provide to the Office of Probation satisfactory proof of compliance in his quarterly report;

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

9. 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.⁶

Multistate Professional Responsibility Examination

It is not recommended that respondent provide proof of passage of the Multistate Professional Responsibility Examination (MPRE), as respondent passed the MPRE administered in November 2012, during his period of participation in the ADP.

Costs

It is recommended that costs be paid in equal amounts prior to February 1 for the following membership years: 2016 and 2017. If respondent fails to pay any installment of disciplinary costs within the time provided herein or as may be modified by the State Bar Court pursuant to Business and Professions Code section 6086.10, subdivision (c), the remaining

⁶ The court will not recommend that respondent provide proof of attendance at State Bar Ethics School or completion of the State Bar's Client Trust Accounting School and passage of the test given at the end of each of those sessions, as Respondent successfully completed Ethics School and Client Trust Accounting School during his period of participation in the ADP.

balance of the costs is due and payable immediately unless relief has been granted under the Rules of Procedure of the State Bar of California (Rules Proc. of State Bar, rule 5.134). The payment of costs is enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.⁷

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) of the Rules of Procedure of the State Bar (Rules of Procedure), all other documents not previously filed in this matter are ordered sealed pursuant to rule 5.12 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 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: August 4, 2014

RICHARD A. PLATEL
Judge of the State Bar Court

⁷ It is not recommended that respondent be ordered to comply with California Rules of Court, rule 9.20, as he was ordered to comply with rule 9.20, as modified by the court, in connection with his inactive enrollment under Business and Professions Code section 6233, and respondent filed his rule 9.20 declaration of compliance on August 28, 2012.