

# PUBLIC MATTER

**FILED**  
AUG 06 2015  
STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES



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

In the Matter of	)	Case No.: 12-O-13212-YDR
	)	
<b>RANDALL CURTIS STERLING,</b>	)	<b>DECISION AND ORDER SEALING</b>
	)	<b>CERTAIN DOCUMENTS</b>
<b>Member No. 138674,</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

### Introduction

In this original disciplinary proceeding, Respondent Randall Curtis Sterling (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 one year, that execution of that period of suspension be stayed, and that he be placed on probation for one year subject to certain conditions, including a 30-day period of suspension.

### 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 November 6, 2012, in case No. 12-O-13212. Respondent filed a response to the NDC on November 29, 2012.

This matter was originally assigned to the Honorable Richard A. Platel. Effective November 6, 2014, this matter was reassigned to the undersigned judge.

On or about November 27, 2012, Respondent contacted the State Bar's Lawyer Assistance Program (LAP) to assist him with his mental health issues.

On January 15, 2013, Respondent submitted a statement to the court, under penalty of perjury, which established a nexus between Respondent's mental health issues and his misconduct in this matter.<sup>1</sup>

In February 2013, the parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) in this matter. The parties filed a joint brief regarding discipline on March 26, 2013 and on April 18, 2103, Respondent executed a long-term Participation Plan with the LAP.

On May 15, 2013, the court executed and lodged its Confidential Statement of Alternative Dispositions and Orders (Confidential Statement) setting forth (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 to the Supreme Court if Respondent was terminated from, or failed to successfully complete, the ADP. Also on May 15, 2013, Respondent and his then counsel executed a Contract and Waiver for Participation in the State Bar Court's ADP (Contract);<sup>2</sup> the court signed an order approving the parties' Stipulation, and the Stipulation was filed and the court accepted Respondent for participation in the ADP commencing on that date. Respondent executed an amendment to his LAP Participation Plan on May 13, 2014 and Respondent successfully participated in the LAP and the ADP.

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<sup>1</sup> Although the document is stamped with a date of January 15, 2012, this appears to be in error, as it was signed by Respondent in January 2013, and the NDC in this matter was not filed until November 6, 2012.

<sup>2</sup> The Contract was lodged on May 15, 2013.

In support of his successful completion of the ADP, Respondent submitted a report from a mental health professional which was received by the court on April 8, 2015. In addition, Respondent provided a Certificate of One Year Participation in the Lawyer Assistance Program – Mental Health, dated April 13, 2015. The certificate reflects that for one year prior to April 13, 2015, Respondent has maintained mental health stability and has successfully participated in the LAP.

Thereafter, in light of Respondent's successful participation in LAP and in the ADP, and the report of the mental health professional and the certificate from the LAP, the court found that Respondent has successfully completed the ADP.<sup>3</sup>

On April 28, 2015, LAP closed Respondent's case as Respondent "[c]hose to follow support system currently in place."

### **Findings of Fact and Conclusions of Law**

#### **Culpability Findings**

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

#### **Case No. 12-O-13212 – (State Bar Investigation Matter)**

In case No. 12-O-13212, Respondent stipulated that he violated Business and Professions Code section 6106 [moral turpitude, dishonesty, corruption] by reporting to the State Bar that he was in full compliance with his Minimum Continuing Legal Education (MCLE) requirements when he knew that he was not in compliance and by telling the State Bar that his MCLE records were destroyed in a fire when he never had such records.

#### **Aggravation**

There are no aggravating circumstances in this matter.

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<sup>3</sup> The court filed an order on May 1, 2015, finding that Respondent had successfully completed the ADP.

## **Mitigation**

### **No Prior Record of Discipline (Standard 1.2(e)(1).)<sup>4</sup>**

The parties stipulated that although his misconduct in this matter is serious, Respondent has no prior record of discipline in 24 years of practice.

### **Cooperation (Standard 1.2(e)(v).)**

The parties stipulated that Respondent cooperated in this matter by entering into a Stipulation to resolve this matter prior to the filing of disciplinary charges.

### **Other**

Respondent has successfully participated in the LAP and has successfully completed the ADP. It is therefore also appropriate to consider Respondent's successful completion of the ADP as a further mitigating circumstance.

## **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 standard 2.3 and *Drociak v. State Bar* (1991) 52 Cal.3d 1085.

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<sup>4</sup> All further references to standard(s) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct which were in effect from January 1, 1986 to December 31, 2013, as these were the operative standards at the time Respondent entered into the ADP.

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.

### **Recommendations**

It is hereby recommended that Respondent Randall Curtis Sterling, State Bar Number 138674, be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that he be placed on probation for a period of one year subject to the following conditions:

1. Respondent is suspended from the practice of law in the State of California for the first 30 days of his probation;<sup>5</sup>
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, 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.

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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.)

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; and
7. 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 State Bar Ethics School, and passage of the test given at the end of that session.<sup>6</sup>

### **Multistate Professional Responsibility Examination**

It is further recommended that Randall Curtis Sterling 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.

### **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 5.388(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 5.12 of the Rules of Procedure.


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<sup>6</sup> Although the Confidential Statement also set forth a probation condition requiring Respondent to comply with all provisions and conditions of his LAP Participation Plan/Agreement and to provide the Office of Probation with certification of completion of the LAP, the parties agreed, and the court concurs, that such a probation condition is not necessary in this matter. Accordingly, the court will not recommend the imposition of such a probation condition

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, 2015



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YVETTE D. ROLAND  
Judge of the State Bar Court