

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: <b>99-O-10687 (00-O-11009;</b>
	)	<b>00-O-12825)</b>
<b>PAUL HAROLD OTTOSI,</b>	)	
	)	<b>DECISION AND DISCIPLINE ORDER ;</b>
<b>Member No. 69250,</b>	)	<b>ORDER SEALING CERTAIN</b>
	)	<b>DOCUMENTS</b>
A Member of the State Bar.	)	

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After the filing of a Notice of Disciplinary Charges (NDC) on September 5, 2003, in case no. 99-O-10687; 00-O-11009; 00-O-12825, respondent Paul Harold Ottosi (respondent) sought to participate in the State Bar Court’s Alternative Discipline Program (ADP)<sup>1</sup> and the State Bar of California’s Lawyer Assistance Program (LAP).

On May 11, 2004, Judge Pat E. McElroy of the State Bar Court, Hearing Department, issued an order referring respondent’s matter to the court’s ADP.

On May 25, 2004, respondent contacted the LAP to assist him with his mental health issue, and on October 21, 2004, respondent executed a Participation Agreement with the LAP.

In connection with the court’s evaluation of respondent for the ADP, on October 13, 2004, respondent submitted a declaration to the court which established a nexus between his mental and physical health issues and his misconduct. The parties entered into a Stipulation Re

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<sup>1</sup> The ADP was previously known as the Pilot Program for Respondents with Substance Abuse or Mental Health Issues.

Facts and Conclusions of Law which was received by the court on December 1, 2004.

Respondent and his counsel signed the Contract and Waiver for Participation in the State Bar Court's ADP (Contract). On March 11, 2005, the court lodged its Decision Re Alternative Recommendations for Degree of Discipline, the Contract, and the parties' Stipulation Re Facts and Conclusions of Law,<sup>2</sup> and the court accepted respondent as a participant in the ADP as of that date.

At a status conference held on August 1, 2008, the court found that respondent has successfully completed the ADP,<sup>3</sup> and this matter was submitted for decision.

Accordingly, the court now issues this decision imposing upon respondent the discipline set forth below in this decision.

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

The parties' Stipulation Re Facts and Conclusions of Law, including the court's order approving the stipulation, 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.

Furthermore, at the time respondent engaged in the misconduct for which he has been found culpable, respondent was suffering from mental and physical health issues, and respondent's mental and physical health issues directly caused the misconduct in this proceeding. Supreme Court and Review Department case law establish that extreme emotional difficulties are a mitigating factor where expert testimony establishes that these emotional difficulties were directly responsible for the misconduct, provided that the attorney has also established, through clear and convincing evidence, that he or she no longer suffers from such difficulties. (*Porter v.*

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<sup>2</sup> The court executed the order approving the parties' stipulation on this date.

<sup>3</sup> On August 4, 2008, the court issued an order finding that respondent has successfully completed the ADP.

*State Bar* (1990) 52 Cal.3d 518, 527; *In re Naney* (1990) 51 Cal.3d 186, 197; *In re Lamb* (1989) 49 Cal.3d 239, 246; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 701-702.) However, the Supreme Court has also held that, absent a finding of rehabilitation, emotional problems are not considered a mitigating factor. (*Kaplan v. State Bar* (1991) 52 Cal.3d 1067, 1072-1073; *In re Naney, supra*, 51 Cal.3d at p. 197.)

Respondent has been participating in the LAP since October, 2004. The LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program dated April 22, 2008, which reflects that respondent has complied with the requirements set forth in the LAP Participation Agreement/Plan for at least one year prior to April 22, 2008, and that during this time period, respondent has maintained mental health and stability and has participated successfully in the LAP.

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 Certificate of One Year Participation in the Lawyer Assistance Program from LAP, qualify as clear and convincing evidence that respondent no longer suffers from the mental health issue which led to his misconduct. Accordingly, it is appropriate to consider respondent's successful completion of the ADP as a further mitigating circumstance. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(e)(iv).)

### **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 reviewing the parties' briefs on discipline and considering the standards and case law cited therein, the parties' stipulation setting forth the facts, conclusions of law, and the aggravating and mitigating circumstances with respect to this disciplinary proceeding, and respondent's declaration regarding the nexus between his mental and physical health issues and his misconduct in this matter, the court advised the parties of the discipline which would be imposed if respondent successfully completed the ADP and the discipline which would be recommended to the Supreme Court if respondent was terminated from the ADP. Respondent executed the Contract to participate in the ADP; the Contract was lodged with the court; and respondent was accepted for participation in the ADP.

Thereafter, respondent successfully participated in the ADP and, as set forth in the August 4, 2008, status conference order, the court found that respondent successfully completed the ADP. Accordingly, the court will impose upon respondent the discipline set forth in the court's Decision Re Alternative Recommendations for Degree of Discipline if respondent successfully completed the ADP.

#### **DISCIPLINE ORDER**

Accordingly, it is ordered that respondent **PAUL HAROLD OTTOSI** is hereby privately reprovved. Pursuant to the provisions of rule 270(a) of the Rules of Procedure of the State Bar of California (Rules of Procedure), the private reprovval will be effective when this decision becomes final. Furthermore, pursuant to rule 9.19(a) of the California Rules of Court and rule 271 of the Rules of Procedure, the court finds that the interest of respondent and the protection of the public will be served by the following specified conditions being attached to the private reprovval imposed in this matter. Failure to comply with any condition(s) attached to this private reprovval may constitute cause for a separate proceeding for willful breach of rule 1-110 of the Rules of Professional Conduct of the State Bar of California. Respondent is hereby

ordered to comply with the following conditions attached to his private reproof for a period of one year following the effective date of the private reproof imposed in this matter:

1. Respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
2. Within ten (10) calendar days of any change in the information that is required to be maintained on the State Bar's membership records pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar;
3. Respondent must comply with all provisions and conditions of his Participation Agreement with the Lawyer Assistance Program (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 his compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition;
4. Respondent must submit written quarterly reports to the Office of Probation no later than each January 10, April 10, July 10 and October 10 of the period during which these conditions are in effect. Under penalty of perjury, respondent must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of these conditions during the preceding calendar quarter. If the first report will cover less than thirty (30) days, that report must be submitted no

later than the reporting due date for the next calendar quarter and must cover the extended period. In addition to all quarterly reports, respondent must submit a final report, containing the same information required by the quarterly reports. The final report must be submitted no earlier than twenty (20) days before the last day of the conditions period and no later than the last day of said period;

5. 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 him personally or in writing, relating to whether he is complying or has complied with these conditions;
6. Within one year of the effective date of the private reproof in this proceeding, respondent must provide to the Office of Probation satisfactory proof of his attendance at a session of State Bar Ethics School, and of passage of the test given at the end of that session;
7. The period during which these conditions are in effect will commence upon the date this Decision imposing the private reproof becomes final.

**DIRECTION TO CASE ADMINISTRATOR;**  
**ORDER SEALING CERTAIN DOCUMENTS**

The court directs a court case administrator to file the parties' Stipulation Re Facts and Conclusions of Law lodged on March 11, 2005 and this Decision and Discipline Order; Order Sealing Certain Documents. Thereafter, pursuant to rule 806(c) of the 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: November \_\_\_\_\_, 2008

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RICHARD A. HONN  
Judge of the State Bar Court