



FILED

JAN 16 2008

**STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES**

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)

DAVID J. BARAN,)

Member No. 105376,)

A Member of the State Bar.)

**Case No. 03-O-01034; 03-O-04338;
03-O-05084; 04-O-10266;
04-O-10267; 04-O-14342;
Inv. No. 05-J-00697**

**DECISION AND ORDER FILING AND
SEALING CERTAIN DOCUMENTS**

INTRODUCTION/PERTINENT PROCEDURAL HISTORY

This disciplinary matter involving respondent **David J. Baran** (respondent) arises out of six client matters in which respondent failed to perform legal services with competence¹ and his discipline by the United States Bankruptcy Court for the Central District of California for professional misconduct.

On April 7, 2004, respondent contacted the State Bar of California's Lawyer Assistance Program (LAP) to assist him with his mental health issues, and on October 29, 2004, respondent executed a Participation Agreement with the LAP.

After the filing of formal disciplinary charges in this matter by the Office of the Chief Trial Counsel of the State Bar of California (State Bar) on April 16, 2004, respondent sought to participate in the State Bar Court's Alternative Discipline Program (ADP).²

On September 17, 2004, respondent submitted a declaration to the court which established that at the time of his misconduct, respondent was suffering from mental health issues. The parties

¹In one matter, respondent was also found to have failed to promptly pay, as requested by the client, funds in his possession which the client was entitled to receive.

²Also known as the State Bar Court's Program for Respondent's with Substance Abuse and/or Mental Health Issues. (Rules Proc. of State Bar, rules 800-807.)

also entered into a stipulation regarding facts and conclusions of law in this matter in March 2005³ and entered into an addendum thereto in September 2005. Respondent's declaration and the stipulated facts established a casual connection between respondent's mental health issues and the misconduct found in this disciplinary proceeding. As such, the court found that respondent had adequately established a nexus between his mental health issues and his misconduct in this matter, i.e., that his mental health issues directly caused the misconduct set forth in this matter.

After the parties submitted to the court their respective briefs on the issue of discipline in this matter, the court lodged its Confidential Statement of Alternative Dispositions and Orders on November 8, 2005, setting forth the recommended discipline if respondent successfully completed or was terminated from the court's ADP. On that same day: (1) the parties' Stipulation Re Facts and Conclusions of Law and Addendum Thereto was lodged with the court;⁴ (2) the Contract and Waiver for Participation in the State Bar Court's ADP (Contract) which was executed by respondent and his counsel on November 7, 2005, was lodged with the court; (3) the court issued an order to the Office of Probation ordering the Office of Probation to monitor respondent's compliance with the terms and conditions of specified conditions set forth in the Contract; and (4) respondent was accepted as a participant in the ADP.

By three months after respondent was accepted into the ADP, he had failed to comply with conditions of his ADP Contract. Furthermore, although he was in compliance with his LAP Participation Agreement for a period of time after his acceptance into the ADP, beginning with the LAP report dated May 30, 2006, it was noted that respondent was not in compliance with his LAP Participation Agreement. Most of the LAP reports thereafter noted that respondent was not in compliance with his LAP Participation Agreement.

In April 2007, respondent filed a request to withdraw from the ADP. On April 5, 2007, the State Bar filed a motion for an order to show cause regarding respondent's termination from the

³The Stipulation Re Facts and Conclusions of Law was received by the court on March 10, 2005.

⁴The court executed the order approving the parties' stipulation on November 10, 2005.

ADP. On April 27, 2007, the court issued an order that respondent show cause as to why he should not be terminated from the ADP as a result of: (1) his written request to withdraw from the ADP in April 2007, which included the assertion that he no longer wished to participate in the ADP; (2) his failure to submit an amended Law Office Management Plan to the Office of Probation; (3) his failure to provide to the Office of Probation satisfactory proof of restitution for monthly payments due from December 2005 to, and including, February 2007; (4) his failure to provide to the Office of Probation satisfactory evidence of completion of 18 hours of Continuing Legal Education approved courses as set forth in his ADP Contract; and (5) his failure to comply with conditions of his Participation Agreement with the LAP. Respondent was to respond to the court's order to show cause on or before June 15, 2007; however, he failed to do so.

In a letter dated May 9, 2007, Pam Poley, Clinical Director of the LAP, wrote to respondent informing him that effective May 2, 2007, his participation in the LAP was terminated based on his lack of communication which prevented benefit from LAP participation.

On September 27, 2007, the court issued an order finding respondent not in compliance with the conditions of the State Bar Court's ADP and terminating respondent from the ADP. Thereafter, the parties' Stipulation Re Facts and Conclusions of Law and Addendum Thereto was filed in this matter.

Accordingly, the court now issues this decision recommending that the Supreme Court impose 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 and Addendum Thereto, including the court's order approving the stipulation, are attached hereto and hereby incorporated by reference, as if fully set forth herein. The Stipulation Re Facts and Conclusions of Law and Addendum Thereto set forth the factual findings, legal conclusions and aggravating and mitigating circumstances in this matter.

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.)

Prior to being accepted for participation in the ADP, the parties submitted briefs to the court on the appropriate discipline in this matter. After reviewing the parties' briefs and considering the standards and case law cited therein, the parties' stipulation and addendum thereto 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 health issues and his misconduct in this matter, the parties were advised of the discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP and the discipline which would be recommended if respondent was terminated from the ADP. Thereafter, the Contract to participate in the ADP, which was executed by respondent and his counsel on November 7, 2005, was lodged with the court, and respondent was accepted for participation in the ADP.

Three months later, respondent was not in compliance with conditions of his ADP Contract and another three months later it was noted that he was not in compliance with his LAP Participation Agreement. Furthermore, less than 18 months after his acceptance into the ADP, respondent filed a request to withdraw from the ADP. After respondent failed to respond to the court's April 27, 2007, order that respondent show cause as to why he should not be terminated from the ADP, and after respondent was terminated from the LAP effective May 2, 2007, on September 27, 2007, the court issued an order finding respondent not in compliance with the conditions of the State Bar Court's ADP and terminating respondent from the ADP. As such, respondent cannot be found to have undergone a meaningful and sustained period of rehabilitation from his mental health problems.

Accordingly, the court will recommend to the Supreme Court the imposition of the discipline set forth in the court's Confidential Statement of Alternative Dispositions and Orders in the event respondent was terminated from the ADP.

RECOMMENDED DISCIPLINE

IT IS HEREBY RECOMMENDED that respondent **DAVID J. BARAN** be suspended from the practice of law for three years and until he pays restitution and complies with the requirements of standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional

Misconduct as set forth more fully below, that execution of the suspension be stayed, and that respondent be placed on probation for a period of five years on the following conditions:

1. Respondent must be actually suspended from the practice of law in the State of California for the first two years of the period of probation and until he: (1) shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct; and (2) pays restitution to the following individuals of the amount set forth below, plus ten percent (10%) interest per annum, accruing from the date specified below (or to the Client Security Fund [CSF], to the extent of any payment from the fund to the individuals set forth below, plus interest and costs, in accordance with Business and Professions Code section 6140.5) and provides satisfactory proof thereof to the State Bar of California's Office of Probation. To the extent the CSF has paid only principal amounts, respondent will still be liable for interest payments to said individual(s), if applicable, as set forth above. To the extent that respondent has paid any restitution prior to the effective date of the Supreme Court's final disciplinary order in this proceeding, respondent will be given credit for such payments provided satisfactory proof of such is or has been shown to the Office of Probation.

| <u>Party Owed Restitution</u> | <u>Principal Amount</u> | <u>Interest Accrual Date</u> |
|-------------------------------|-------------------------|------------------------------|
| Pedro Ibanez | \$1,230.00 | May 1, 2003 |
| Victor Valle | \$ 500.00 | January 1, 2004 |
| Gary Horgan | \$2,900.00 | September 1, 2003 |
| James Wilson | \$1,750.00 | January 1, 2004 |
| Olivia Nims | \$ 194.00 | June 1, 2004 |

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 ten (10) days of any change, respondent must report to the Membership

Records Office of the State Bar and to the 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 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.
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 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.

6. Subject to assertion of applicable privileges, respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to respondent personally or in writing relating to whether respondent is comply or has complied with the probation conditions.

7. Within one (1) 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. If respondent has already provided proof to the Office of Probation of attendance at, and passage of the test given at the end of, Ethics School during his period of participation in the ADP, respondent need not again comply with this condition. Otherwise, respondent must comply with this condition as set forth above.
8. Respondent must provide to the Office of Probation a copy of the court order referred to in the parties' Stipulation Re Facts and Conclusions of Law, Case No. 03-O-04338, regarding sanctions to the United States Trustee's Office and must comply with said order and provide satisfactory proof of such compliance to the Office of Probation.

Respondent must provide to the Office of Probation a copy of all disgorgement orders of the U.S. Bankruptcy Court, referred to in the parties' stipulation and more specifically in the Memorandum of Decision in Case No. LA MI 04-00011, requiring respondent to disgorge fees to his former clients and must comply with all such orders and provide satisfactory proof of such compliance to the Office of Probation.

With each written quarterly report required herein, respondent must provide to the Office of Probation satisfactory proof of all payments with regard to this probation condition made by him during that quarter or applicable reporting period. In addition, respondent must keep records of payments made and must make proof of payments available for inspection and copying upon the request of the Office of Probation, the Office of the Chief Trial Counsel or the State Bar Court.

To the extent that respondent has made any payments with regard to this probation condition prior to the effective date of the Supreme Court's final disciplinary order in this proceeding, respondent will be given credit for such payments provided

satisfactory proof of such is or has been shown to the Office of Probation.

Failure to strictly comply with the requirements set forth above in this probation condition may be considered a violation of probation which could result in further discipline. Any modification of this probation condition may be made upon motion to, and approval by, the State Bar Court, or by stipulation of the parties and approval by the State Bar Court.

9. Respondent must obtain an examination of his mental and physical condition with respect to his mental health issues pursuant to rule 184 of the Rules of Procedure from a qualified practitioner approved by the Office of Probation and must comply with any treatment plan recommended following such examination. The examination and any further help/treatment recommended by the examining practitioner will be at respondent's own expense. The examination must be conducted no later than thirty (30) days after the effective date of the Supreme Court's final disciplinary order in this matter. Help/treatment should commence immediately after said examination and, in any event, no later than thirty (30) days after said examination. With each quarterly report, respondent must furnish to the Office of Probation sufficient evidence, as specified by the Office of Probation, that he is so complying with this condition of probation. Treatment must continue for the period of probation or until a motion to modify this condition is granted and that ruling becomes final.

If the examining or treating practitioner determines that there has been a substantial change in respondent's condition, respondent or the State Bar's Office of Probation or the Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 550 of the Rules of Procedure. The motion must be supported by a written statement from the examining or treating practitioner, by affidavit or under penalty of perjury, in support of the proposed modification.

Upon the request of the Office of Probation, respondent must provide the Office of Probation with medical and confidentiality waivers and access to all of respondent's medical records necessary to monitor this probation condition. Revocation of any medical/confidentiality waiver is a violation of this condition. Any medical records obtained by the Office of Probation will be confidential and no information concerning them or their contents will be given to anyone except members of the Office of the Chief Trial Counsel, the Office of Probation, and the State Bar Court, who are directly involved with maintaining, enforcing or adjudicating this condition.

10. If respondent has not already done so as part of his participation in the ADP, within one year after the effective date of the Supreme Court's final disciplinary order in this matter, respondent must provide the Office of Probation with satisfactory proof of his attendance at a session of State Bar Ethics School Client Trust Accounting School, given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015, and passage of the test given at the conclusion of that session. Arrangements to attend Trust Accounting School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Trust Accounting School (Rules Proc. of State Bar, rule 3201).
11. If respondent has not already done so as part of his participation in the ADP, within one year after the effective date of the Supreme Court's final disciplinary order in this matter, respondent must submit to the Office of Probation satisfactory evidence of completion of no less than nine (9) hours of MCLE approved courses in law office management or attorney-client relations and nine (9) hours of MCLE approved courses in legal ethics. This requirement is separate from any MCLE requirement, and respondent will not receive MCLE credit for attending these courses.
12. If respondent has not already done so as part of his participation in the ADP, within sixty (60) days after the effective date of the discipline herein, respondent must

develop a law office management/organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to respondent's misconduct in the current proceeding.

In addition, respondent must provide proof of passage of the Multistate Professional Responsibility Examination (MPRE), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of his actual suspension. **Failure to pass the MPRE results in actual suspension without further hearing until passage. (But see Cal. Rules of Court, rule 9.10(b); Rules Proc. of State Bar, rule 321(a) & (c)).** If respondent has already provided proof to the Office of Probation of taking and passing the MPRE during his period of participation in the ADP, respondent need not again comply with this requirement. Otherwise, respondent must comply with this requirement as set forth above.

Furthermore, respondent must comply with the requirements of rule 9.20 (formerly rule 955) 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.

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.


ORDER FILING AND SEALING CERTAIN DOCUMENTS

The court orders the clerk to file this Decision and Order Filing and Sealing Certain Documents. Thereafter, pursuant to rule 806© of the Rules of Procedure of the State Bar of California (Rules of Procedure), all other documents not previously filed in this matter will be 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: January 16, 2008



RICHARD A. HONN
Judge of the State Bar Court

