

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of ) Case Nos.: **05-O-01211**; 06-O-14748 (Cons.)  
 )  
**DANIEL MARTORELLA,** ) **DECISION AND ORDER SEALING**  
 ) **CERTAIN DOCUMENTS**  
 )  
**Member No. 128700,** )  
 )  
 )  
A Member of the State Bar. )

**INTRODUCTION**

In this original disciplinary proceeding, respondent Daniel Martorella (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 (3) years, that execution of that period of suspension be stayed, and that he be placed on probation for five (5) years subject to certain conditions, including a five (5) month period of suspension.

**PERTINENT PROCEDURAL HISTORY**

On December 13, 2006, the State Bar of California’s Office of the Chief Trial Counsel (State Bar) filed a Notice of Disciplinary Charges (NDC) against respondent in case no. 05-O-01211. This matter was assigned to the undersigned hearing department judge who referred this

matter to the ADP with the undersigned for evaluation of respondent's eligibility for participation in the program.

Thereafter, on December 26, 2006, respondent contacted the State Bar's Lawyer Assistance Program (LAP) to assist him with his mental health issues.

In furtherance of his participation in the ADP, respondent submitted a declaration to the court which established a nexus between respondent's mental health issues and his misconduct in that matter.

In July 2007, respondent entered into a long-term Participation Plan with the LAP.

In September 2007, the parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) which set forth the factual findings, legal conclusions, and mitigating and aggravating circumstances with respect to case no. 05-O-01211. The stipulation was received by the court on September 11, 2007.

Following briefing by the parties, 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 the alternative possible dispositions, the court memorialized in writing these alternative dispositions in a Confidential Statement of Alternative Dispositions and Orders (Confidential Statement); respondent and his counsel executed the Contract and Waiver for Participation in the State Bar Court's ADP; the court signed an order approving the parties' Stipulation; the court accepted respondent for participation in the ADP; and respondent's period of participation in the ADP began on December 6, 2007.

The State Bar filed a NDC against respondent in case no. 06-O-14748 on July 11, 2008.

The court filed an order on September 11, 2008, consolidating case nos. 05-O-01211 and 06-O-14748.

Respondent submitted another declaration to the court on October 30, 2008, regarding the nexus between his mental health issues and his misconduct in these matters. The declaration incorporated respondent's earlier nexus statement.

Respondent and the State Bar entered into a Stipulation in mid-December in case no. 06-O-14748 which was received by the court on December 18, 2008.

In light of the incorporation of case no. 06-O-14748 into the ADP, the court lodged an Order Amending Confidential Statement of Alternative Dispositions and Orders on August 12, 2010. However, the court did not recommend any additional discipline in light of the additional misconduct set forth in case no. 06-O-14748. Also on August 12, 2010, the court lodged an Agreement and Order Amending Contract and Waiver for Participation in the State Bar Court's ADP<sup>1</sup> which amended the original ADP contract executed by respondent in this matter.

After respondent was accepted for participation in the ADP in December 2006, respondent successfully participated in both the LAP and the State Bar Court's ADP. On September 15, 2010, after receiving a satisfactory recommendation from a mental health professional, the court filed an order finding that respondent has successfully completed the ADP, and both Stipulations were filed. This matter was submitted for decision on September 15, 2010.

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

The parties' Stipulations, including the court's orders approving the Stipulations, are attached hereto and hereby incorporated by reference, as if fully set forth herein. In case no.

///

///

///

---

<sup>1</sup> Respondent and his counsel agreed to the amendments to the contract in early August 2010.

05-O-01211, respondent stipulated that he: (1) failed to promptly pay client funds as requested by his client in willful violation of rule 4-100(B)(4) of the Rules of Professional Conduct;<sup>2</sup> (2) failed to maintain client funds in a trust account in willful violation of rule 4-100(A); (3) committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code section 6106<sup>3</sup> by misappropriating at least \$6,666.66 in settlement funds belonging to his clients; (4) committed acts involving dishonesty, moral turpitude or corruption in willful violation of section 6106 by repeatedly issuing checks drawn against his client trust account when respondent knew or was grossly negligent in not knowing that there were insufficient funds to pay those checks.

In case no. 06-O-14748, respondent stipulated that he: (1) willfully failed to deposit client funds in a trust account in violation of rule 4-100(A); and (2) willfully failed to maintain records of client funds in violation of rule 4-100(B)(3).

In aggravation, respondent's misconduct significantly harmed his clients in the Morse matter (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i)),<sup>4</sup> and trust funds or property were involved and respondent refused or was unable to account to the clients who were the object of the misconduct for improper conduct toward such funds or property (std. 1.2(b)(iii)).

In mitigation, respondent has no prior record of discipline since to his admission to the practice of law in this state on June 17, 1987. (Std. 1.2(e)(i).) In addition, it is appropriate to consider respondent's successful completion of the ADP as a further mitigating circumstance in this matter. (Std. 1.2(e)(iv).)

---

<sup>2</sup> Unless otherwise indicated, all further references to rule(s) refer to the Rules of Professional Conduct of the State Bar of California.

<sup>3</sup> Unless otherwise indicated, all further references to section(s) refer to provision of the California Business and Professions Code.

<sup>4</sup> All further references to standard(s) or std. are to this source.

## 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, 2.2, and 2.3 and *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511; *McKnight v. State Bar* (1991) 53 Cal.3d 1025; *Boehme v. State Bar* (1988) 47 Cal.3d 448; and *Edwards v. State Bar* (1990) 52 Cal.3d 28.

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.

## DISCIPLINE

### Recommended Discipline

It is hereby recommended that respondent Daniel Martorella, State Bar Number 128700, be suspended from the practice of law in California for three (3) years, that execution of that period of suspension be stayed, and that he be placed on probation<sup>5</sup> for a period of five (5) years subject to the following conditions:

1. Respondent Daniel Martorella is suspended from the practice of law for the first five (5) months of probation.

---

<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.)

2. Respondent Daniel Martorella must also comply with the following additional conditions of probation:
  - A. 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;
  - B. 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 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;
  - C. 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;
  - D. 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;

- E. 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 personally or in writing relating to whether respondent is complying or has complied with the probation conditions;
- F. Within one (1) 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

- G. 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 conditions(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.
3. At the expiration of the period of probation, if Daniel Martorella has complied with all conditions of probation, the three (3) year period of stayed suspension will be satisfied and that suspension will be terminated.

### **Multistate Professional Responsibility Examination**

It is also recommended that Daniel Martorella be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court's disciplinary order 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. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

### **Rule 9.20, California Rules of Court**

It is further recommended that respondent Daniel Martorella 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.

### **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 806(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 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 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: November 22, 2010.

---

RICHARD A. PLATEL  
Judge of the State Bar Court