

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES

In the Matter of )  
 ) Case No.: **07-O-13599-RAP (08-O-11153);**  
 ) **08-O-12852 (08-O-12955);**  
**RUBEN DANIEL SANCHEZ ,** ) **09-O-11251 (Cons.)**  
 )  
**Member No. 164298,** ) **DECISION AND ORDER SEALING**  
 ) **CERTAIN DOCUMENTS**  
A Member of the State Bar. )  
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**Introduction**<sup>1</sup>

In this original, consolidated disciplinary proceeding, respondent Ruben Daniel Sanchez was accepted for participation in the State Bar Court’s Alternative Discipline Program (ADP). Because 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 six month period of suspension (with credit given for the period of inactive enrollment under section 6233.)

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<sup>1</sup> Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

### **Significant Procedural History**

#### **Case Nos. 07-O-13599 (08-O-11153)**

Following the filing of a Notice of Disciplinary Charges (NDC) against respondent by the State Bar of California, Office of the Chief Trial Counsel (State Bar) on December 2, 2008, the matter was assigned to the Honorable Donald F. Miles.

Shortly thereafter, on January 30, 2009, respondent contacted the State Bar's Lawyer Assistance Program (LAP) to assist him with his mental health and substance abuse issues.

Judge Miles referred case Nos. 07-O-13599 (08-O-11153), for evaluation to the State Bar Court's ADP before the undersigned judge on February 5, 2009, for evaluation of respondent's eligibility for participation in the State Bar Court's ADP. On that same date, respondent signed a long-term Participation Plan with the LAP. The undersigned filed an order on March 2, 2009, reassigning this case to the undersigned for all further proceedings.

The parties entered into a Stipulation Re Facts and Conclusions of Law on April 30, 2009, in case Nos. 07-O-13599 (08-O-11153) (Stipulation 1), which was received by the court on that same day. Additionally, on that same day, respondent submitted a nexus statement to the court in case Nos. 07-O-13599 (08-O-11153), which established a nexus between respondent's mental health and substance abuse issues and his misconduct in these matters.

#### **Case Nos. 08-O-12852 (08-O-12955)**

The State Bar filed a second NDC against respondent on July 22, 2009, in cases Nos. 08-O-12852 (08-O-12955).

On August 27, 2009, the court filed an order consolidating case Nos. 08-O-12852 (08-O-12955) with case Nos. 07-O-13599 (08-O-11153).

The parties entered into a Stipulation Re Facts and Conclusions of Law on October 8, 2009, in case Nos. 08-O-12852 (08-O-12955), which was received by the court on that same day. The Stipulation Re Facts and Conclusions of Law in case Nos. 08-O-12852 (08-O-12955) (Stipulation 2), stated that it was an “addendum” to Stipulation 1, which it incorporated, as if set forth fully therein.

On February 12, 2010, respondent submitted a nexus statement to the court in case Nos. 08-O-12852 (08-O-12955), which established a nexus between respondent’s mental health and substance abuse issues and his misconduct in these matters.

On February 17, 2010, the court executed the Confidential Statement of Alternative Dispositions and Orders (Statement) in case Nos. 07-O-13599 (08-O-11153); 08-O-12852 (08-O-12955 (Cons.)), formally advising 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. Also, on February 17, 2010, respondent executed the Contract and Waiver for Participation in the State Bar Court’s ADP (Contract) in case Nos. 07-O-13599 (08-O-11153); 08-O-12852 (08-O-12955) (Cons.); and, respondent was accepted into the ADP.<sup>2</sup> The court accepted respondent for participation in the ADP; and, respondent’s period of participation in the ADP began on February 17, 2010. The Confidential Statement of Alternative Dispositions and Orders, and the Contract were lodged on February 19, 2010.

Additionally, on February 19, 2010, Stipulations 1 and 2 were filed with the court.<sup>3</sup>

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<sup>2</sup> The court filed an order on February 19, 2010, accepting respondent into the ADP. The commencement date of respondent’s participation in the ADP was February 17, 2010.

<sup>3</sup> The court executed an order approving Stipulation 1 on February 17, 2010, and a separate order approving Stipulation 2 on February 17, 2010.

On September 27, 2010, a third NDC was filed against respondent in case No. 09-O-11251.

On November 4, 2010, the court issued an order referring case No. 09-0-11251 to the State Bar Court's ADP.

On January 24, 2011, respondent filed a statement regarding the nexus between his misconduct in this matter and his mental health and substance abuse issues.

The State Bar and respondent entered into a Stipulation Re Facts and Conclusions of Law in case No. 09-O-11251 (Stipulation 3), in January 2011, which was received by the court on January 26, 2011. Stipulation 3 stated that it was an "addendum" to Stipulations 1 and 2 (the prior stipulations), and incorporated the prior stipulations, as if set forth fully therein.

In March 2011, the State Bar and respondent filed separate briefs on the level of discipline.

On June 2, 2011, the court executed an order approving Stipulation 3, which was filed on that same day.

The court also filed an order consolidating case No. 09-O-11251 with case Nos. 07-O-13599 (08-O-11153); 08-O-12852 (08-O-12955) (Cons.), which order was filed on June 2, 2011. On that same day, the court lodged an Agreement and Order Amending Contract and Waiver for Participation in the State Bar Court's Alternative Discipline Program<sup>4</sup> and an Order Amending the Confidential Statement of Alternative Dispositions (Amended Statement), previously lodged on February 19, 2010.

The court also filed an order on June 2, 2011, placing respondent on inactive enrollment effective, August 15, 2011.

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<sup>4</sup> The Agreement was executed by respondent on June 2, 2011.

The State Bar and respondent had entered into three separate Stipulations Re Facts and Conclusions of Law (Stipulations), setting forth the factual findings, legal conclusions, and mitigating and aggravating circumstances in these consolidated matters.

Respondent participated successfully in both the LAP and the State Bar Court's ADP. On April 23, 2012, a LAP Participation Report was received by the court, wherein it was stated that on March 20, 2012, respondent, who had met with the LAP's Evaluation Committee, was granted Successful Completion from the Program and that his case was closed as of that date. On April 25, 2012, the court filed an order finding that respondent has successfully completed the ADP.

In its April 25, 2012 order, the court also ruled that that respondent's inactive enrollment entered on June 2, 2011, pursuant to section 6233, was terminated and respondent was returned to active status, effective April 25, 2012. The matter was submitted for decision on that same date.

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

#### **Culpability Findings**

The parties' three Stipulations, including the court's orders approving those Stipulations, are attached hereto and hereby incorporated by reference, as if fully set forth herein. The three stipulations set forth the factual findings, legal conclusions, and mitigating and aggravating circumstances in these matters.

In this consolidated matter, involving five cases, respondent stipulated that he violated: (1) rule 1-300(A) by willfully aiding a person or entity in the unauthorized practice of law; (2) rule 3-110(A) by intentionally, recklessly or repeatedly failing to perform legal services with competence; (3) section 6068, subdivision (m), by failing to communicate with client(s); (4) rule 3-700(D)(2) by failing to return unearned fees; (5) rule 3-700(A)(2) by improperly withdrawing

from employment; (6) section 6068, subdivision (j), by failing to update on the official membership records of the State Bar his current address and telephone number or an address to be used for State Bar purposes; and (7) sections 6068, subdivision (a), 6125 and 6126, by engaging in the unauthorized practice of law.

### **Aggravation<sup>5</sup>**

#### **Prior Record of Discipline (Std. 1.2(b)(i).)**

In aggravation, respondent has a prior record of discipline. Effective April 3, 2009, the Supreme Court ordered, among other things, that respondent be suspended for from the practice of law for two years and remain suspended until he complied with standard 1.4(c)(ii), made specified restitution, and paid court ordered sanctions as specified, that execution of the suspension be stayed, and, and that he be placed on probation for three years on condition that he be actually suspended for the first 90 days of probation and remain suspended until he provided proof to the State Bar's Office of Probation that he paid specified sanctions and made specified restitution. (Supreme Court case No. S169574 (State Bar Court case Nos. 05-O-04533 (07-O-11476).)

### **Mitigation**

#### **Candor/Cooperation to Victims/State Bar (Std. 1.2(e)(v).)**

Respondent displayed spontaneous cooperation and candor with the State Bar in its investigation and in these proceedings.

#### **Other**

In addition, it is appropriate to now consider respondent's successful completion of the ADP as a mitigating circumstance in this matter.

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<sup>5</sup> All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

### **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, 1.7(a), 2.4(b), 2.6, and 2.10 and *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563; *Chasteen v. State Bar* (1985) 40 Cal.3d 586, and *Farnham v. State Bar* (1976) 17 Cal.3d 605.

Because respondent has 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, contained in the Amended Statement.<sup>6</sup>

### **Recommendations**

It is hereby recommended that respondent Ruben Daniel Sanchez, State Bar Number 164298, be suspended from the practice of law in California for two years, that execution of that

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<sup>6</sup> As set forth, *ante*, the Confidential Statement of Alternative Dispositions and Orders, which was lodged on February 19, 2010, was amended by the Order Amending the Confidential Statement of Alternative Dispositions (Amended Statement), which was lodged on June 2, 2011. Among other things amended by the June 2, 2011 Amended Statement was the discipline which would be recommended to the Supreme Court, if respondent successfully completed the ADP.

period of suspension be stayed, and that he be placed on probation<sup>7</sup> for a period of three years subject to the following conditions:

1. Respondent Ruben Daniel Sanchez is suspended from the practice of law for the first six months of probation with credit given for inactive enrollment, which was effective August 15, 2011, through April 25, 2012 (Bus. & Prof. Code, § 6233);
2. Respondent Ruben Daniel Sanchez 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 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 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 30 days, that report must be submitted on the next quarter date and cover the extended period;

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<sup>7</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;

- e. Subject to the 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 complying or has complied with the probation conditions;
- f. Within one 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;
- 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; and
- h. During the period of probation, respondent must pay restitution to the following individuals<sup>8</sup> in the amounts set forth below, plus 10% interest per annum from the date specified below (or to the Client Security Fund (CSF)) to the extent of any payment from the fund to any such individuals, plus interest and costs, in accordance with Business and Professions Code section 6140.5) and provide satisfactory proof thereof to the Office of Probation. Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d). To the extent the CSF has paid only principal amounts, respondent will still be liable for interest payments to said individuals, as set forth above.

<u>Payee</u>	<u>Principal Amount</u>	<u>Interest Accrues From</u>
Rodolfo Barranco	\$1,000	July 26, 2007

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<sup>8</sup> The Order Amending the Confidential Statement of Alternative Dispositions (Amended Statement), which was lodged on June 2, 2011, amended the Confidential Statement of Alternative Dispositions and Orders, as to the payees to whom respondent must pay restitution.

Pilar P. Southard	\$10,000	February 1, 2003
Alejandra Bernal	\$13,000	July 1, 2008

With each written quarterly report respondent is required to file as a condition of his probation, he must provide to the Office of Probation satisfactory proof of all restitution payments made by him during that quarter or applicable reporting period.

To the extent that respondent has paid any restitution prior to the effective date of the Supreme Court's order imposing discipline in this proceeding, respondent will be given credit for such payment(s) provided satisfactory proof of such is, or has been, shown to the Office of Probation.

3. At the expiration of the period of probation, if Ruben Daniel Sanchez has complied with all conditions of probation, the two-year period of stayed suspension will be satisfied and that suspension will be terminated.

### **Multistate Professional Responsibility Examination**

It is recommended that respondent 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.

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

The court does not recommend that respondent be ordered to comply with California Rules of Court, rule 9.20, because he previously complied with the requirements of rule 9.20 in connection with his inactive enrollment under Business and Professions Code section 6233 and because he will receive credit for the period of his inactive enrollment.

### **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. It is further recommended that such

costs be paid with respondent's membership fees for the year 2013. If respondent fails to pay costs as described above, or as may be modified by the State Bar Court, costs are due and payable immediately.

**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.

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: July 11, 2012.

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RICHARD A. PLATEL  
Judge of the State Bar Court