

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case Nos. 02-O-12537-PEM
	)	(02-O-15567; 03-O-01204;
	)	03-O-03171; 03-O-03219;
	)	03-O-03378; 03-O-05123;
JORGE EDUARDO PORTUGAL L.,	)	04-O-10910¹);
	)	02-O-14286 (02-O-14762);
Member No. 117055,	)	04-O-14285; and 06-O-10060
	)	(06-O-10394; 06-O-12054)
)	
A Member of the State Bar.)	
	)	DECISION AND ORDER SEALING
	)	DOCUMENTS

I. Introduction

In this disciplinary proceeding, respondent **Jorge Eduardo Portugal L.** stipulated to multiple acts of misconduct in 13 matters, including failing to perform services, failing to communicate with clients and failing to return unearned fees.

In October 2006, this court accepted respondent as a participant in the State Bar Court’s Alternative Discipline Program (ADP).² (Rules Proc. of State Bar, rules 800-807.)³

However, respondent has recently been terminated from the State Bar Court’s ADP because of his failure to comply with its requirements and of allegations of additional misconduct which

¹References to case No. 04-O-10911 are hereby corrected to read 04-O-10910.

²This program is also known as the State Bar Court’s Program for Respondents with Substance Abuse and Mental Health Issues and formerly known as the Pilot Program. For purposes of determining the length of time that respondent was in the Program, respondent agreed that the court would use October 23, 2006, even though he first entered the ADP on May 17, 2004.

³References to rule are to the Rules of Procedure of the State Bar, unless otherwise stated.

occurred after he was accepted into the ADP.

Accordingly, pursuant to rule 803 and in light of his admitted misconduct, the court hereby recommends that respondent be suspended from the practice of law for two years, that execution of the suspension be stayed, and that respondent be placed on probation for three years on conditions that include his actual suspension for two years and until he makes restitution and until he has shown proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct. At the same time, because respondent has been placed on inactive status since January 1, 2007, the court has approved the parties' stipulation that he would receive credit for the period of inactive enrollment beginning September 4, 2007, towards any period of actual suspension to be imposed by the Supreme Court.

II. Significant Procedural History

A. Respondent's Acceptance into the Alternative Discipline Program

On December 24, 2002, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed a Notice of Disciplinary Charges against respondent. Respondent filed a response.

On May 17, 2004, the court approved a second amended stipulation as to facts and conclusions of law (Rules Proc. of State Bar, rule 802(a)) and accepted respondent into the ADP. Thereafter, the parties submitted two additional addenda to the stipulation lodged with the court in January 2005 and October 2006, respectively. The three stipulations are collectively referred to as "Stipulations."

As a result, on October 23, 2006, respondent executed a Second Amended Contract and Waiver for Participation in the State Bar Court's Program for Respondents with Substance Abuse or Mental Health Issues (Contract). On the same day, this court issued its Confidential Statement of Alternative Dispositions (October 2006 Statement).

Respondent's eligibility and acceptance into the ADP was based on, among other things: 1) his participation in the LAP; 2) the stipulation as to facts and conclusions of law he entered with the State Bar; 3) the nexus evidence he provided; and 4) his agreement to accept the court's low and high levels of recommended discipline set forth in the October 2006 Statement. (Rules Proc. of State Bar,

rule 802.) The terms and conditions of participation were set forth in the Contract.

Specifically, paragraph 14 of the Contract provides as follows:

Respondent acknowledges and agrees that his participation in the Program may be terminated by the Court for non-compliance with Program requirements including but not limited to the following: (a) positive urinalysis tests on multiple occasions; (b) missed treatment or group meetings; (c) allegations of additional misconduct which occurred after Respondent was accepted into the Program; or (d) failure to comply with the terms of this Contract.

Respondent agreed to fulfill all of the requirements set forth by the ADP Judge as conditions for respondent's ongoing participation in the ADP, including being placed on involuntary inactive enrollment for 180 days effective January 1, 2007. By order of the court filed October 23, 2006, he was then placed on inactive status beginning January 1, 2007, and he would not receive credit for the period of his inactive enrollment if he failed to complete the ADP. (Bus. & Prof. Code, § 6233.)

B. Respondent's Termination from the Alternative Discipline Program

On May 31, 2007, respondent petitioned the court to terminate his inactive enrollment. The State Bar opposed respondent's request, alleging that respondent had repeatedly violated his probation conditions and restitution requirements under the Contract. More importantly, the State Bar also alleged that it received another complaint against respondent.

On August 21, 2007, the court held an in-person hearing on whether respondent should be terminated from ADP. At the hearing, the State Bar was represented by Deputy Trial Counsel Maria J. Oropeza. Respondent represented himself. Three complaining witnesses also testified.

By order filed August 21, 2007, the court terminated respondent from the ADP based upon his noncompliance with the conditions of the ADP in that there are allegations of additional misconduct which occurred after he was accepted into the ADP. Specifically, complaining witness Wilfredo Amaya testified that she hired respondent to represent her in an immigration matter and paid him \$4,000 but that respondent failed to competently perform the services on her behalf. Based on Amaya's credible testimony, the court found that this was at least the fifth time respondent had been found to be in noncompliance with the ADP.

At a September 4, 2007, status conference, respondent agreed to remain on inactive status pending the Supreme Court's disciplinary order in this matter. The court would also recommend to

the Supreme Court that respondent receive credit for the period of inactive enrollment beginning September 4, 2007, towards any period of his actual suspension to be imposed by the Supreme Court.

III. Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 3, 1984, and has been a member of the State Bar of California at all times relevant to this proceeding.

The Stipulations, approved by the court and filed on August 21, 2007, are attached and incorporated by reference, as if set forth fully herein. (Second amended stipulation as to facts and conclusions of law lodged May 17 2004; Addendum lodged January 3, 2005; and Addendum lodged October 23, 2006.)

In summary, respondent stipulated to 21 violations of professional misconduct in 13 client matters, including failing to perform services, failing to communicate with clients and failing to return unearned fees.⁴ The misconduct occurred from 1997 to 2006.

IV. Aggravation and Mitigation

The parties also stipulated to certain aggravating and mitigating factors. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2.)⁵

A. Aggravation

In aggravation, respondent stipulated that his misconduct evidenced multiple acts of wrongdoing, causing significant harm to his clients. (Stds. 1.2(b)(ii), and (iv).) Ayala and Bartres lost their causes of action, and Zavala was deported.

B. Mitigation

In mitigation, the parties stipulated that respondent has no prior record of discipline in more than 13 years of practice before the commencement of his misconduct in 1997. (Std. 1.2(e)(i).)

⁴Specific violations were: rules 3-110(A) and 3-700(D)(2) of the Rules of Professional Conduct and Business and Professions Code sections 6068, subdivision (m). Case No. 02-O-15567 (Ronald Martinez) was dismissed without prejudice pursuant to the Stipulations.

⁵All further references to standards are to this source.

Under standard 1.2(e)(iv), extreme emotional difficulties or physical disabilities suffered by the attorney at the time of the professional misconduct may be considered mitigating. The Supreme Court has held that extreme emotional difficulties are a mitigating factor where expert testimony establishes that those 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. 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.) However, the Supreme Court also has held that, absent a finding of rehabilitation, emotional problems are not considered to be a mitigating factor. (*Kaplan v. State Bar* (1991) 52 Cal.3d 1067, 1072-1073; *In re Naney, supra*, 51 Cal.3d at p. 197.)

Here, in accepting respondent into the ADP, the court found that respondent had suffered from depression for many years and that there was a sufficient connection between respondent's depression and his stipulated misconduct. (Rules Proc. of State Bar, rule 802(c).) Respondent was enrolled in the State Bar's Lawyer Assistance Program (LAP) in May 2003 in a five-year commitment to his recovery program. However, respondent's conduct before this court while participating in the ADP prevent the court from making a finding that respondent has established his sustained rehabilitation by clear and convincing evidence. Therefore, the court will not give respondent any mitigation credit for his participation in the LAP or the ADP.

Furthermore, although the parties stipulated that respondent was candid and cooperative with the State Bar during its resolution of these matters, the mitigating force of this factor is dramatically reduced based on respondent's termination from the ADP. (Std. 1.2(e)(v).)

V. Degree of Discipline

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession and maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; standard 1.3.) Standard 1.6(b) provides that the specific discipline for a particular violation found must be balanced with any mitigating or aggravating

circumstances, with due regard for the purposes of imposing disciplinary sanctions.

The standards applicable to this proceeding are standards 2.4(b) and 2.10, which provide for reproof or suspension, depending upon the gravity of the offenses and the harm to the clients. While the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

Citing to the standards, *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389 and *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73, the State Bar recommended a two-year actual suspension and until he complies with standard 1.4(c)(ii) if respondent fails to complete the ADP. Respondent concurred with the State Bar's recommendation.

The court finds *Young v. State Bar* (1990) 50 Cal.3d 1204 to be instructive.

In *Young*, the Supreme Court ordered the attorney be suspended from the practice of law for three years, the execution of said suspension stayed, and the attorney be placed on probation for three years on conditions including a two-year actual suspension. Just six years after being admitted to practice law, the attorney abandoned his law practice and moved to Florida without communicating with his clients. He was found culpable of misconduct in seven counts involving nine clients. In all seven counts, he was found to have withdrawn from employment without taking reasonable steps to avoid foreseeable prejudice to his client's rights, willfully disobeyed a court order or violated his oath or duties as an attorney, and violated his duty to support the Constitutions and laws of the United States and California. In six of the counts, he was also found to have failed to perform legal services competently, and in two counts, he failed to promptly refund unearned fees. In mitigation, the Supreme Court noted the pressures of the attorney's practice and that he suffered from hepatitis at the time he abandoned his law practice, had no prior record of discipline, was cooperative and candid with the State Bar, and demonstrated remorse. In aggravation, the Supreme Court noted that his misconduct in one count significantly harmed the administration of justice, and that he had used drugs about the time he abandoned his legal practice. While the Supreme Court found that his abandonment of his law practice was caused by a combination of the stress of a heavy trial schedule, financial problems and hepatitis, and that he used drugs at the time he abandoned his law practice,

the Supreme Court rejected the Review Department's disbarment recommendation as he later resumed the practice of law and worked capably and diligently on his clients' behalf. Thus, the Supreme Court found that protection of the public did not require his disbarment.

Here, respondent cites to depression as a major contributing factor to his misconduct. Respondent was seeking and obtaining professional treatment and support to address his difficulties. However, since respondent has been terminated from the court's ADP, he is not entitled to any mitigating credit for his efforts since he has failed to establish his rehabilitation by clear and convincing evidence.

Moreover, it has long been held that "[r]estitution is fundamental to the goal of rehabilitation." (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1094.) Restitution is a method of protecting the public and rehabilitating errant attorneys because it forces an attorney to confront the harm caused by his misconduct in real, concrete terms. (*Id.* at p. 1093.)

Therefore, after considering the scope of respondent's acts of misconduct, all of the mitigating and aggravating circumstances and the relevant case law, the court concludes that the imposition of a lengthy period of actual suspension with appropriate conditions is warranted. In particular, as conditions of probation, the court is recommending that respondent be required to continue with his counseling and to make restitution to his former clients.

VI. Recommendation

IT IS HEREBY RECOMMENDED that respondent **Jorge Eduardo Portugal L.** be suspended from the practice of law in the State of California for two years, that execution of such suspension be stayed and that respondent be placed on probation for three years on the following conditions:

1. Respondent must be actually suspended from the practice of law for the first two years of the period of probation, with credit toward the period of actual suspension given for the period of inactive enrollment which commenced on September 4, 2007, and until he makes restitution to:
 - a. **Juan Gonzalez** in the amount of \$500, plus 10 percent interest per annum from January 1, 1999 (or to the Client Security Fund to the extent of any payment from the

- fund to Juan Gonzalez, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
- b. **Benedicto Mazariegos** in the amount of \$4,000, plus 10 percent interest per annum from September 17, 2001 (or to the Client Security Fund to the extent of any payment from the fund to Benedicto Mazariegos, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
 - c. **Vitelio Vasquez** in the amount of \$3,000, plus 10 percent interest per annum from June 1, 2002 (or to the Client Security Fund to the extent of any payment from the fund to Vitelio Vasquez, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
 - d. **Jose Hernandez Espinoza** in the amount of \$3,000, plus 10 percent interest per annum from June 1, 2001 (or to the Client Security Fund to the extent of any payment from the fund to Jose Hernandez Espinoza, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
 - e. **Jose Jilberto Zavala** in the amount of \$3,500, plus 10 percent interest per annum from October 1, 2002 (or to the Client Security Fund to the extent of any payment from the fund to Jose Jilberto Zavala, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
 - f. **William H. Rivas** in the amount of \$1,000, plus 10 percent interest per annum from February 24, 2004 (or to the Client Security Fund to the extent of any payment from the fund to William H. Rivas, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
 - g. **Rafael Mendez** in the amount of \$2,000, plus 10 percent interest per annum from December 27, 2005 (or to the Client Security Fund to the extent of any payment from the fund to Rafael Mendez, plus interest and costs, in accordance with Business and Professions Code section 6140.5); and
 - h. **Lidia Romero** in the amount of \$1,000, plus 10 percent interest per annum from April 24, 2006 (or to the Client Security Fund to the extent of any payment from the

fund to Lidia Romero, plus interest and costs, in accordance with Business and Professions Code section 6140.5).

Respondent must provide satisfactory proof of such restitution to the Office of Probation within the period of probation. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d);

2. Respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;
3. Within 10 calendar days of any change in the information 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 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;
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 of probation. Under penalty of perjury, respondent must state whether he has complied with the State Bar Act, the Rules of Professional Conduct and the conditions of probation during the preceding calendar quarter. If the first report will cover less than 30 days, that report must be submitted on 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 20 days before the last day of the probation period and no later than the last day of such period;
5. Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be

submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor;

6. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully, any inquiries of the Office of Probation that are directed to him personally or in writing, relating to whether he is complying or has complied with these probation conditions;
7. Within one year of the effective date of the Supreme Court's final disciplinary order 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;
8. Respondent must obtain psychiatric or psychological treatment from a duly licensed psychiatrist, psychologist or clinical social worker at respondent's own expense at a minimum of two times per month, and must furnish evidence to the Office of Probation that he is so complying with each quarterly report. Treatment should commence no later than 30 days after the effective date of the discipline in this matter. Treatment should continue for the period of probation or until a motion to modify this condition is granted and the ruling becomes final;
9. The period of probation will commence on the effective date of the final disciplinary order of the Supreme Court imposing discipline in this proceeding; and
10. At the expiration of the period of this probation, if respondent has complied with all of the terms and conditions of probation, the Order of the Supreme Court suspending respondent from the practice of law for two years will be satisfied and that suspension will be terminated.

It is further recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE), administered by the National Conference of Bar Examiners, and to provide proof of passage of the MPRE to the Office of Probation, during the period of actual suspension. Failure to pass the MPRE, and to provide proof of such passage, within the specified time will result in actual suspension by the State Bar Court Review Department, without further hearing, until respondent provides the required proof of passage of the MPRE.

It is also recommended that respondent be ordered to comply with the requirements of the California Rules of Court, rule 9.20, and that he be ordered to perform the acts specified in rule 9.20(a) and (c) within 30 and 40 calendar days, respectively, from the effective date of the Supreme Court's final disciplinary order in this proceeding. Failure to comply with rule 9.20 could result in disbarment. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

VII. Costs

It is further 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.

VIII. Order Sealing Documents

In the course of determining respondent's eligibility for participation in the State Bar Court's Alternative Discipline Program, and while respondent was participating in the Program, various documents were submitted to the court for review under confidential cover, including reports and evaluations regarding respondent's recommended treatment for participation in the Lawyer Assistance Program. Pursuant to Business and Professions Code section 6234(a) and rule 806 of the Rules of Procedure of the State Bar of California, all information concerning the nature and extent of a respondent's treatment is absolutely confidential and is not to be disclosed to the public absent an express written waiver by the respondent.

In light of the foregoing,

IT IS HEREBY ORDERED that, pursuant to rules 23 and 806 of the Rules of Procedure of the State Bar of California, the following documents are to remain confidential and sealed:

1. All reports and evaluations by mental health professionals that were submitted to the court as part of respondent's participation in the Alternative Discipline Program;
2. All information concerning the nature and extent of respondent's treatment provided by the LAP, including, but not limited to, participation reports, application agreements and participation agreements; and

3. Contract and Waiver for Participation in the State Bar Court's Program for Respondents with Substance Abuse or Mental Health Issues, including all amended contracts.

IT IS FURTHER ORDERED that the foregoing 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.

Dated: October ____, 2007

PAT McELROY
Judge of the State Bar Court