

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No. 05-H-03308-JMR
ROBERT M. RADESKI,)	DECISION
Member No. 174280,)	
<u>A Member of the State Bar.</u>)	

I. Introduction

In this reproof violation proceeding, respondent Robert M. Radeski is found culpable, by clear and convincing evidence, of violating conditions attached to a public reproof previously imposed on him by the State Bar Court.

The court recommends, among other things, that respondent be suspended from the practice of law for one year, that execution of said suspension be stayed, and that respondent be actually suspended from the practice of law for 60 days and until the State Bar Court grants a motion to terminate respondent's actual suspension. (Rules Proc. of State Bar, rule 205.)

II. Pertinent Procedural History

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) properly filed and served a Notice of Disciplinary Charges (NDC) on respondent at his official membership records address on September 7, 2005. (Rules Proc. of State Bar, rule 60.) On October 18, 2005, the NDC was returned by the U.S. Postal Service bearing the stamp "Return to Sender Unclaimed."

On motion of the State Bar,¹ respondent's default was entered on December 30, 2005.

¹The motion also requested that the court take judicial notice of all of respondent's official membership addresses pursuant to Evidence Code section 452, subdivision (h). The court grants this request.

Respondent was enrolled as an inactive member under Business and Professions Code section 6007(e) on January 2, 2006.²

Respondent did not file a response to the NDC. (Rules Proc. of State Bar, rule 103.)

Respondent did not participate in the disciplinary proceedings.

The court took this matter under submission on January 20, 2006, after the State Bar filed a brief on the issues of culpability and discipline and waived the hearing in this matter.

III. Findings of Fact and Conclusions of Law

All factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

A. Jurisdiction

Respondent was admitted to the practice of law in the State of California on December 13, 1994, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

B. Violation of Repeal Conditions

On or about September 14, 2003, respondent entered into a Stipulation Re: Facts, Conclusions of Law and Disposition (Stipulation) with the State Bar of California in Case No. 02-O-14822. Respondent and Deputy Trial Counsel Erin M. Joyce signed the Stipulation. The parties stipulated that respondent would be required, for a period of one year of the effective date of the public reproof, to (1) file quarterly reports of compliance; and (2) complete six hours of participatory continuing legal education courses (MCLE) in attorney/client relations.

On or about October 28, 2003, the State Bar Court filed an order approving the Stipulation

²The Order of Entry of Default (Rule 200 - Failure to File Timely Response), Order Enrolling Inactive and Further Orders was filed on December 30, 2005, and a copy of said order was properly served upon respondent by certified mail, return receipt requested, on that same date. The return receipt was returned to the State Bar Court by the U.S. Postal Service on January 5, 2006, bearing an illegible signature. However, on April 11, 2006, the copy of said order was returned to the State Bar Court marked "MOVED-LEFT NO ADDRESS." All other documents served upon respondent by the State Bar Court were also returned to the State Bar Court by the U.S. Postal Service marked "MOVED-LEFT NO ADDRESS."

with a modification regarding the payment of disciplinary costs.

Pursuant to the aforementioned order, respondent was ordered to comply with the following conditions of his public reproof, among others:

a. to submit written quarterly reports to the Probation Unit³ on each January 10, April 10, July 10 and October 10 of the condition period attached to the reproof, commencing January 10, 2004;

b. to take six hours of MCLE courses, with a compliance due date of November 18, 2004;⁴

On or about October 28, 2003, the Stipulation was properly served by mail upon respondent.

The public reproof became effective on November 18, 2003.

On or about November 18, 2003, Probation Deputy Yolanda Acosta (Acosta) of the Probation Unit of the State Bar of California (Probation Unit) wrote a letter to respondent reminding respondent of the conditions of his public reproof which required respondent to submit quarterly reports commencing January 10, 2004, and proof of attendance of six hours of MCLE courses to be completed by November 18, 2004.⁵ This letter was sent to respondent's official membership records address at 7201 Archibald Avenue, #4-267, Rancho Cucamonga, CA 91701. The letter was not returned to the Probation Unit as undeliverable or for any other reason. Respondent failed to respond to Acosta's November 18, 2003, letter.

On or about September 2, 2004, Acosta sent respondent a letter advising respondent that the Office of Probation had not received his July 10, 2004, quarterly report. The letter was not returned

³The Probation Unit is now known as the Office of Probation.

⁴Although the NDC alleges that the compliance due date was November 18, 2003, this appears to be a typographical error, as the public reproof was effective on that date. Accordingly, the court finds the correct date to be November 18, 2004. Nevertheless, the court finds that respondent had adequate notice of the charges in this matter.

⁵Once again, the NDC contains a typographical error. The NDC alleges that the courses were to be completed by November 18, 2003. The court finds the correct date to be November 18, 2004. Nevertheless, the court finds that respondent had adequate notice of the charges in this matter.

to the Probation Unit as undeliverable or for any other reason. Respondent failed to respond to Acosta's September 2, 2004, letter.

On or about July 26, 2005, Deputy Trial Counsel Monique T. Miller (Miller) sent a letter to respondent advising respondent of his violations of the terms of the public reproof as of that date and requesting him to contact Miller. The July 26, 2005, letter was not returned to the State Bar as undeliverable or for any other reason. Respondent failed to respond to Miller's July 26, 2005, letter.

To date, respondent has failed to submit the quarterly reports due July 10, October 10, and November 18, 2004.⁶

To date, respondent has also failed to provide proof of attendance of six hours of MCLE courses which was due on November 18, 2004.

Respondent has failed to comply with certain conditions of the public reproof imposed by order of the State Bar Court.

Counts One and Two: Business and Professions Code Section 6103 and Rule 1-110 of the Rules of Professional Conduct of the State Bar of California⁷

The State Bar alleges that respondent violated section 6103 and rule 1-110.

Section 6103 provides that "[a] wilful disobedience or violation of an order of the court requiring [respondent] to do or forbear an act connected with or in the course of his profession . . . constitute causes for disbarment or suspension."

Rule 1-110 requires State Bar members to comply with conditions attached to reproofs.

The State Bar has proven by clear and convincing evidence that respondent wilfully violated rule 1-110 by failing to submit the quarterly reports due July 10, October 10, and November 18, 2004, and by failing to provide proof of completion of six hours of MCLE courses in attorney/client relations which was due on November 18, 2004. However, as the section 6103 charge was based

⁶In addition to the quarterly reports, a final report was due no later than the last day of the condition period, to wit, November 18, 2004.

⁷Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code, and all further references to rules refer to the Rules of Professional Conduct of the State Bar of California.

on the identical facts relied on in finding a violation of rule 1-110, the section 6103 charge is dismissed with prejudice. (*In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103, 108.)

IV. Mitigating and Aggravating Circumstances

A. Mitigation

No evidence in mitigation was offered in this proceeding, and none can be gleaned from the record. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)⁸

B. Aggravation

In aggravation, respondent has a record of one prior imposition of discipline. (Std. 1.2(b)(1).) Respondent was publicly reprovved with a one year condition period for advising a client to violate a ruling of a tribunal in wilful violation of rule 3-210 of the Rules of Professional Conduct. (State Bar Court Case No. 02-O-14822, effective November 18, 2003.)

Respondent also engaged in multiple violations of the conditions attached to his reproval. (Std. 1.2(b)(ii).)

V. Discussion

The purpose of disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession and to 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; std. 1.3.)

In addition, standard 1.6(b) provides that the specific discipline for the particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions.

Respondent's misconduct involved failing to submit three quarterly reports and failing to provide proof of completion of six hours of certain MCLE courses. Standard 2.9 recommends suspension for a violation of rule 1-110. Furthermore, standard 1.7(a) requires that the court recommend a greater discipline in this matter than that imposed in the underlying disciplinary

⁸All further references to standards are to this source.

proceeding.

The standards, however, are only guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) “[E]ach case must be resolved on its own particular facts and not by application of rigid standards.” (*Id.* at p. 251.)

The State Bar urges a one year stayed suspension and 90 days actual suspension. In support of its recommended discipline, the State Bar cited *Conroy v. State Bar* (1990) 51 Cal.3d 799 and *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697.

In *Conroy*, the Supreme Court suspended an attorney for one year, stayed execution of that suspension, and placed the attorney on probation for one year upon conditions including a 60-day period of actual suspension for failing to comply with a condition attached to an earlier private reproof, namely failing to timely take and pass the Professional Responsibility Examination (PRE). Although there was no evidence affirmatively establishing mitigating circumstances, the court did note that the attorney satisfactorily fulfilled the PRE requirement at the next available opportunity after his prescribed time had lapsed. In aggravation, Conroy had a prior record of discipline. The court was also troubled by Conroy’s failure to participate in the disciplinary proceeding. The court also noted that Conroy “evinces a lack of understanding of the gravity of his earlier misdeeds and the import of the State Bar’s regulatory functions.” (*Conroy v. State Bar, supra*, 51 Cal.3d at p. 806.)

In *Meyer*, the attorney was suspended for two years, the execution of said suspension was stayed, and he was placed on three years of probation on conditions including an actual suspension of 90 days for failing to file two quarterly reports and complete six hours of MCLE courses. In aggravation, Meyer had two prior records of discipline (private reprovals), engaged in multiple acts of wrongdoing, was indifferent toward rectification, and failed to cooperate. No mitigating circumstances were found.

In determining the appropriate discipline to recommend in this matter, the court notes that respondent entered into a stipulation regarding culpability and discipline in his prior disciplinary matter. He was therefore well aware of the conditions attached to his public reproof. Accordingly,

the court is quite concerned about respondent's failure to fully comply with the conditions attached to his public reproof.

In addition, the court is concerned about respondent's failure to participate in this disciplinary proceeding. Such failure to participate leaves the court without any information about the underlying cause of respondent's misconduct or from learning of any mitigating circumstances surrounding his misconduct.

In reviewing the case law cited by the OCTC in this matter, the court finds the instant matter more similar to *Conroy* than *Meyer*. The court notes that the attorney in *Meyer* had two prior records of discipline, and there were more aggravating circumstances than in the present proceeding. Thus, the court finds that an actual suspension of 60 days is appropriate to protect the public and to preserve public confidence in the profession.

VI. Recommended Discipline

Accordingly, the court hereby recommends that respondent **Robert M. Radeski** be suspended from the practice of law for one year, that said suspension be stayed, and that respondent be actually suspended from the practice of law for 60 days and until he files and the State Bar Court grants a motion to terminate his actual suspension. (Rules Proc. of State Bar, rule 205.)

It is also recommended that respondent be ordered to comply with any probation conditions hereinafter imposed by the State Bar Court as a condition for terminating his actual suspension. (Rules Proc. of State Bar, rule 205(g).)

If respondent remains actually suspended for 90 days or more, it is further recommended that respondent be ordered to comply with rule 955, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule, within 120 and 130 days, respectively, after the effective date of the Supreme Court order herein. **Wilful failure to comply with the provisions of rule 955 may result in revocation of probation; suspension; disbarment; denial of reinstatement; conviction of contempt; or criminal conviction.**

If respondent remains actually suspended for two years or more, it is further recommended that respondent remain suspended until he shows proof satisfactory to the State Bar Court of his rehabilitation, 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.

It is further recommended that respondent take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners, Multistate Professional Responsibility Exam Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) and provide proof of passage to the Office of Probation, within one year after the effective date of this order or during the period of his actual suspension, whichever is longer. Failure to pass the MPRE within the specified time may result in actual suspension by the Review Department, without further hearing, until passage. But see California Rules of Court, rule 951(b), and rule 321(a)(1) and (3) of the Rules of Procedure of the State Bar.

VII. 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.

Dated: April 21, 2006

JOANN M. REMKE
Judge of the State Bar Court