

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case No.: <b>06-H-13895-PEM</b>
	)	
<b>JAMES MICHAEL KORDELL</b>	)	<b>DECISION</b>
	)	
<b>Member No. 90869,</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

**I. Introduction**

In this default matter, **James Michael Kordell** is charged with failing to comply with conditions attached to a reproof administered by the State Bar pursuant to sections 6077 and 6078 of the Business and Professions Code and former rule 956 of the California Rules of Court.<sup>1</sup>

In view of respondent's misconduct, the aggravating circumstances, and the lack of any mitigating circumstances, the court recommends, among other things, that respondent be suspended from the practice of law in California for one year, execution of that period of suspension be stayed, and that he be suspended for a minimum of 90 days. He is to remain suspended until the State Bar Court grants a motion to terminate his suspension. (Rules Proc. of State Bar, rule 205.)

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<sup>1</sup> All references to rule 956 are to California Rules of Court, rule 9.19 (renumbered effective January 1, 2007). Because the Notice of Disciplinary Charges was filed prior to the change in numbering of this court rule, the original numbering will be used in this decision.

## **II. Pertinent Procedural History**

The Office of Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a notice of disciplinary charges (NDC) against respondent on September 27, 2006. Respondent filed his response to the NDC on April 9, 2007.

Respondent participated intermittently in these proceedings, at times absenting himself due to lengthy hospitalizations and at other times absenting himself from the proceedings without explanation. During these absences, respondent did not provide any address other than his official membership records address to the parties or the court.

On January 27, 2009, a status conference was held in the instant matter and in case No. 07-TT-11645, another matter that had been filed against respondent by the State Bar.<sup>2</sup> The State Bar was represented at the status conference by Deputy Trial Counsel Manuel Jimenez (DTC), who appeared in-person; respondent was represented in case No. 07-TT-11645 by Carol Langford, who appeared telephonically. Respondent made no appearance, either in-person or telephonically at the status conference.

At the January 27, 2009 status conference, the court issued several orders. Among those orders, the court set case No. 06-H-13895 for trial, as to culpability and discipline. The trial was ordered to begin on March 6, 2009, at 10:00 a.m. A copy of the court's January 27, 2009 order was properly served on respondent on that same date, by first-class mail, with postage fully prepaid, addressed to respondent at the address provided in his response to the NDC, which address was also his official membership records address. The copy of the order was returned to the State Bar Court by the United States Postal Service, with a label bearing the words, "NOT DELIVERABLE AS ADDRESSED UNABLE TO FORWARD." A copy of the January 27, 2009 Status Conference order was also sent by first-class mail to attorney Langford.

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<sup>2</sup> The court had appointed attorney Carol Langford to represent respondent in case No. 07-TT-11645.

On March 6, 2009, DTC Jimenez appeared in-person for the State Bar; attorney Langford appeared in-person to represent respondent in the case No. 07-TT-11645. Respondent did not appear.

As respondent failed to appear at trial and as the requirements of rule 201 of the Rules of Procedure of the State Bar of California (Rules of Procedure) were met on March 6, 2009, the court filed an Order of Entry of Default (Rule 201—Failure to Appear) and Order Of Involuntary Inactive Enrollment.<sup>3</sup> A copy of said order was properly served on respondent on May 6, 2009, by certified mail, return receipt requested, addressed to respondent at his official address, which as noted, *ante*, is the address that appears on his response to the NDC. The mailing, however, was returned to the State Bar Court by the United States Postal Service with a label bearing the words, “NOT DELIVERABLE AS ADDRESSED UNABLE TO FORWARD.” A courtesy copy of the order was sent to attorney Langford.

On June 25, 2009, the State Bar filed a brief on the issues of culpability and discipline. The matter was submitted for decision on June 29, 2009.

### **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 California on December 1, 1979, and has since been a member of the State Bar of California.

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<sup>3</sup> Respondent’s involuntary inactive enrollment pursuant to Business and Professions Code section 6007, subdivision (e), was effective three days after the service of this order by mail.

## **B. Violation of Reproval Conditions**

On October 10, 2005,<sup>4</sup> respondent signed a stipulation in State Bar Court case No. 04-O-13819, whereby he agreed to receive a reproval and to comply with conditions attached to the reproval for a period of one year. The conditions attached to the reproval were specified in the stipulation that respondent signed.

On November 17, 2005, acting under the authority of Business and Professions Code section 6077, the State Bar Court issued an order imposing a private reproval<sup>5</sup> upon respondent in case No. 04-O-13819 (Order). Pursuant to rule 9.56 of the California Rules of Court, the Order issued by the State Bar Court required respondent to comply with the stipulated conditions attached to the reproval. The Order became final on December 8, 2005, and at all times thereafter has remained in full force and effect.

On November 17, 2005, the State Bar Court clerk served the reproval order upon respondent by mail. Respondent received the reproval order shortly thereafter and at all times pertinent hereto was aware of the reproval order and conditions.

The Office of Probation sent respondent three reminder letters, dated November 21, 2005, February 8, 2006, and April 14, 2006, setting forth the conditions of the reproval. Respondent received each of the letters shortly after they were dated. The April 14, 2006 letter warned respondent that the Office of Probation had not received the quarterly report that was due on April 10, 2006. As set forth, *post*, respondent did not submit the April 10, 2006 report until April 25, 2006. In his untimely filed report, respondent promised to submit his law office

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<sup>4</sup> The date on which respondent signed the stipulation in case No. 04-O-13819 was not specified in the NDC. However, for clarity's sake the court has included the date, which is indicated on the certified copy of the stipulation, attached as exhibit 3 to the State Bar's brief on culpability and discipline.

<sup>5</sup> In paragraphs 2 and 12 of the NDC, it is alleged that respondent failed to comply with conditions attached to a "public" reproval. However, pursuant to the stipulation and November 17, 2005 State Bar Court Order approving the stipulation, the discipline imposed in case No. 04-O-13819 is clearly a "private" reproval, not a public reproval.

management plan to the Office of Probation no later than April 28, 2006. But, as of the date of the filing of the NDC in this matter, respondent had not submitted the plan to the Office of Probation.

Respondent was required to comply with the conditions of the reprobation for a period of one year from the effective date (December 8, 2005) of the Order, which conditions included, among other things, the following:

1. Respondent was required to: submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period during which the reprobation<sup>6</sup> is in effect and file a final report no earlier than 20 days prior to the expiration of the reprobation period and no later than the last day of the period. Respondent was, therefore required to submit quarterly reports no later than January 10, 2006,<sup>7</sup> April 10, 2006, and July 10, 2006.
2. Within 90 days of the effective date of discipline, respondent was required to develop a law office management/organization plan and have it approved by the Office of Probation. The plan was required to 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 [r]espondent’s misconduct. . . .”

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<sup>6</sup> Although both the NDC and the actual language of the condition itself refer to the conditions of respondent’s “probation,” these are actually conditions of respondent’s reprobation.

<sup>7</sup> Respondent also failed to file his January 10, 2006 quarterly report. However, the Office of Probation incorrectly advised respondent that his first quarterly report was due on April 10, 2006. Therefore, the State Bar is not requesting that respondent be discipline based on his failure to file a January 10, 2006 quarterly report.

Respondent, however, did not comply with the following conditions attached to his private reproof:

1. Respondent submitted his quarterly reports late or not at all. Respondent did not submit the April 10, 2006 report until April 25, 2006, and respondent had not submitted the July 10, 2006 quarterly report as of the NDC file date, i.e., September 27, 2006.
2. Respondent failed to develop a law office management plan and have it approved by the Office of Probation within 90 days of the effective date of the State Bar Court Order. As of the file date of the NDC, respondent had failed to provide any plan to the Office of Probation.

***Rule 1-110 of the Rules of Professional Conduct of the State Bar of California<sup>8</sup>***

By failing to (1) timely submit the April 10, 2006 quarterly report; (2) submit the July 10, 2006 quarterly report; and (3) develop a law office management plan and have it approved by the Office of Probation, respondent failed to comply with conditions attached to a private reproof administered by the State Bar pursuant to Business and Professions Code sections 6077 and 6078 and rule 956 (now rule 9.19) of the California Rules of Court in willful violation of rule 1-110 of the Rules of Professional Conduct of the State Bar of California (Rules of Professional Conduct).

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<sup>8</sup> References to rule(s) are to the Rules of Professional Conduct, unless otherwise stated.

Although the NDC charged respondent with a violation of rule 1-110(A), the court notes that no subdivision (A) exists. The court, however, finds that respondent had sufficient notice that he was charged with a violation of rule 1-110 for failing to comply with conditions attached to an earlier reproof.

## **IV. Mitigating and Aggravating Circumstances**

### **A. Mitigation**

As respondent's default was entered in this matter, no evidence in mitigation was presented and none is apparent from the record. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)<sup>9</sup>

### **B. Aggravation**

There are several aggravating factors. (Std. 1.2(b).)

Respondent has a prior record of discipline.<sup>10</sup> (Std. 1.2(b)(i).) Effective on or about December 8, 2005, respondent was privately reprovved with conditions for one year in State Bar Court case No. 04-O-13819. In the underlying matter, respondent stipulated to a violation of rule 3-110(A) of the Rules of Professional Conduct. In mitigation, respondent had no prior record of discipline and showed remorse for his misconduct. No aggravating circumstances were involved.

Respondent also engaged in multiple acts of misconduct by violating several conditions of his reprovval. (Standard 1.2(b)(ii).)

Respondent's failure to participate in this disciplinary proceeding prior to the entry of his default is a further aggravating circumstance. (Standard 1.2(b)(vi).)

## **V. Discussion**

In determining the appropriate discipline to recommend in this matter, the court looks at the purposes of disciplinary proceedings and sanctions. The purpose of disciplinary proceedings

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<sup>9</sup> All further references to standards are to this source.

<sup>10</sup> Attached as Exhibit 2 and Exhibit 3 to the State Bar's brief on culpability and discipline are what are alleged to be certified copies of "respondent's prior disciplinary matters." However, Exhibit 2 is not a certified copy of respondent's prior discipline, but rather a certified copy of a stipulation and order for a reprovval as to a member of the State Bar other than respondent. Respondent has one prior record of discipline.

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.)

For guidance in determining the appropriate discipline recommendation, the court first looks to the standards. (*In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Applicable in the instant matter, standard 2.9 provides that a willful violation of rule 1-110 of the Rules of Professional Conduct must result in suspension.

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.

Additionally, standard 1.7(a) provides that if a member is found culpable of misconduct in any proceeding and the member has a record of one prior imposition of discipline, the degree of discipline imposed in the current proceeding must be greater than that imposed in the prior proceeding unless the prior discipline was remote in time and the offense was minimal in severity.

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.) Nevertheless, while the standards are not binding, they are entitled to significant weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.) The Supreme Court will reject a recommendation consistent with the standards only when the court entertains “grave doubts as to its propriety.” (*In re Naney* (1990) 51 Cal.3d 186, 190.) Even though the standards are merely



guidelines for the imposition of discipline, there is “no reason to depart from them in the absence of a compelling reason to do so. ([Citation].)” (*Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

In the instant matter, respondent has been found culpable of failing to comply with several of the conditions attached to his earlier private reproof. In addition, there are several aggravating circumstances in this matter and no mitigating circumstances. Of particular concern to this court is respondent’s failure to participate in this disciplinary proceeding. Respondent’s failure to participate in this proceeding leaves the court without any understanding as to the underlying cause or causes for respondent’s misconduct or from learning of any mitigating circumstances which would justify this court’s departure from the discipline recommended by the standards.

In its brief on culpability and discipline the State Bar recommends that respondent be disbarred. However, the State Bar cites no cases in support of its recommendation, nor does it provide an explanation for its recommendation. Such a recommendation is of little, if any, assistance in determining the appropriate level of discipline to be imposed.

The court finds guidance in case law relating to violation of reproof conditions, which cases include *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. After reviewing and considering the case law, as well as the standards set forth above, the court concludes that the appropriate discipline in this matter should include a 90-day minimum suspension of respondent from the practice of law.

## **VI. Recommended Discipline**

The court hereby recommends that respondent **James Michael Kordell** be suspended from the practice of law in California for one year, execution of that period of suspension be stayed, and that respondent be suspended from the practice of law for a minimum of 90 days. He

is to remain suspended until he files and the State Bar Court grants a motion to terminate his suspension. (Rules Proc. of State Bar, rule 205.)

If respondent remains suspended for two years or more, it is further recommended that respondent must provide proof 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), before his suspension will be terminated. (Rules Proc. of State Bar, rule 205(b).)

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

It is further recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination given by the National Conference of Bar Examiners within one year after the effective date of the discipline imposed herein or during the period of his suspension, whichever is longer, 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).)

The court also recommends that respondent be ordered to comply with rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter. Failure to do so may result in disbarment or suspension.<sup>11</sup>

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<sup>11</sup> 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.

Dated: September \_\_\_\_\_, 2009

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PAT McELROY  
Judge of the State Bar Court