FILED APRIL 27, 2009

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: **06-O-15256-RAP**
	)	**(08-O-10760)**
RIGOBERTO V. OBREGON	)	
	)	**DECISION AND ORDER OF**
Member No. 130589	)	**INVOLUNTARY INACTIVE**
	)	**ENROLLMENT**
A Member of the State Bar.	)	

I. Introduction and Pertinent Procedural History

This default matter was submitted for decision on February 4, 2009. At the time of submission, the State Bar of California ("State Bar") was represented in this matter by Deputy Trial Counsel Nathan A. Reierson. Respondent Rigoberto V. Obregon ("respondent") failed to participate in this matter either in-person or through counsel.

The State Bar filed a Notice of Disciplinary Charges ("NDC") against respondent on July 18, 2008. A copy of the NDC was properly served on respondent that same day, in the manner set forth in rule 60 of the Rules of Procedure of the State Bar of California ("Rules of Procedure").[1]

As respondent did not file a response to the NDC, the State Bar filed and properly served a motion for the entry of respondent's default on September 15, 2008.[2]

[1] Unless otherwise indicated, all documents were properly served pursuant to the Rules of Procedure.

[2] The motion also contained a request that the court take judicial notice of all of respondent's official membership addresses. The court grants this request.

Following respondent's failure to file a written response within ten days after service of the motion for the entry of his default, the court, on October 8, 2008, filed an order of entry of default and involuntary inactive enrollment.[3] A copy of said order was properly served on respondent at his membership records address, and was not subsequently returned by the United States Postal Service as undeliverable or for any other reason.

Thereafter, the State Bar waived the hearing in this matter, and this matter was submitted for decision on October 29, 2008.[4] Exhibits 1-2 attached to the State Bar's September 15, 2008 motion for the entry of default, exhibits 1-3 attached to the State Bar's October 28, 2008 default brief on culpability and discipline, and exhibits 1-4 attached to the State Bar's February 2, 2009 response to the court's order to show cause are admitted into evidence.

The State Bar's and the court's efforts to contact respondent were fruitless. The court concludes that respondent was given sufficient notice of the pendency of this proceeding to satisfy the requirements of due process. (*Jones v. Flowers, et al.* (2006) 547 U.S. 220 [126 S.Ct. 1708, 164 L.Ed.2d 415].)

II. Findings of Fact

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).)

[3] 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.

[4] This date was subsequently vacated upon the court's discovery of a typographical error in the NDC's proof of service. In response to the court's inquiry, the State Bar affirmatively demonstrated that the NDC had in fact been properly served at respondent's official membership records address. Consequently, this matter was re-submitted for decision on February 4, 2009.

A. Jurisdiction

Respondent was admitted to the practice of law in California on December 14, 1987, and has been a member of the State Bar of California at all times since that date.

B. Count One - Case No. 08-O-10760

On or about May 16, 2006, respondent entered into a Stipulation Re Facts, Conclusions of Law and Disposition ("Stipulation") with the State Bar of California in Case No. 04-O-14819.

On or about June 1, 2006, the Hearing Department of the State Bar Court filed its order approving the Stipulation and recommending to the California Supreme Court the disciplinary disposition set forth therein, which included certain specified conditions of probation. The June 1, 2006 order approving the Stipulation was properly served on respondent. On or about June 21, 2006, the Hearing Department issued and filed an order modifying the Stipulation in certain respects. This modification order was properly served on respondent.

On or about September 26, 2006, the California Supreme Court filed an order in Case No. S145168 ("the SCO") ordering that respondent be suspended from the practice of law for a period of nine months, that execution of suspension be stayed, and that he be placed on probation for a period of 18 months subject to the conditions of probation recommended by the Hearing Department of the State Bar Court in its order approving the Stipulation in Case No. 04-O-14819 filed on June 1, 2006, as modified by its order filed June 21, 2006. Respondent was properly served with the SCO by the Clerk of the Supreme Court. The SCO became effective on October 26, 2006, 30 days after it was filed.

Pursuant to the SCO, respondent was ordered to comply with the following terms and conditions of probation, among others:

a. To submit, during the probation period, on January 10, April 10, July 10 and October 10 of each year or part thereof during which the probation is in effect, in writing, to the Office of Probation, quarterly reports certifying under penalty of perjury that he has complied with the State Bar Act, the Rules of Professional Conduct and all conditions of probation during the preceding calendar quarter;

b. To provide to the Office of Probation, within one year of the effective date of the disciplinary order (by October 26, 2007), satisfactory proof of attendance at a session of Ethics School and passage of the test given at the end of that session;

c. To attend and successfully complete four hours of live-instruction continuing legal education ("CLE") courses in legal ethics and provide proof of completion to the Office of Probation within 18 months of the effective date of the disciplinary order (by April 27, 2008); and

d. To contact the Office of Probation within 30 days of the effective date of the disciplinary order (by November 25, 2006) and schedule a meeting with respondent's assigned probation deputy to discuss the terms and conditions of his disciplinary probation.

On or about October 10, 2006, a probation deputy with the Office of Probation of the State Bar ("Office of Probation") wrote a letter to respondent reminding respondent of the terms and conditions of his suspension and probation imposed pursuant to the SCO. In the October 10, 2006 letter, the probation deputy specifically advised respondent regarding his obligation to file quarterly reports commencing January 10, 2007, attend State Bar Ethics School by October 26, 2007, attend four hours of live-

instruction CLE in legal ethics by April 27, 2008, and schedule a meeting with the probation deputy within 30 days from the effective date of the disciplinary order. Moreover, the letter warned respondent that failure to timely comply with the terms and conditions of probation would result in a non-compliance referral to the State Bar Court or the Supervising Attorney of the Office of Probation. Enclosed with the October 10, 2006 letter to respondent were, among other things, copies of the SCO, the relevant portions of the Stipulation setting forth the conditions of respondent's probation, a quarterly report form with instructions, and scheduling and enrollment information for State Bar Ethics School.

The October 10, 2006 letter to respondent and its enclosures were mailed by first-class mail via the United States Postal Service in a sealed envelope addressed to respondent at his then official State Bar membership records address of 30141 Antelope Road, #D-784, Menifee Lakes, CA 92584. The letter was not returned by the United States Postal Service as undeliverable or for any other reason.

On or about February 5, 2008, a probation deputy with the Office of Probation wrote a letter to respondent in which she reminded respondent that pursuant to the SCO, respondent was required to comply with certain terms and conditions of probation, including submitting quarterly reports to the Office of Probation on or before January 10th, April 10th, July 10th, and October 10th of every year during the period of probation; attending State Bar Ethics School; and attending four hours of CLE courses in legal ethics by April 27, 2008. The letter informed respondent that the Office of Probation had not received any quarterly reports as required under the terms and conditions of probation, nor proof that respondent had attended State Bar Ethics School. A copy of the October 10, 2006 letter was enclosed with the February 5, 2008 letter.

Respondent was specifically advised that the Office of Probation had not received the quarterly reports due on or before January 10, 2007, April 10, 2007, July 10, 2007, October 10, 2007, and January 10, 2008. The February 5, 2008 letter and its enclosure was mailed by first-class mail via the United States Postal Service in a sealed envelope addressed to respondent at his official membership records address, which was, and currently is, 30141 Antelope Road, #D-784, Menifee Lakes, CA 92584. The letter was not returned by the United States Postal Service as undeliverable or for any other reason.

On or about February 5, 2008, a probation deputy telephoned respondent at his official membership records telephone number and left a message on the voice mail advising respondent that he should call the deputy immediately and that it was very important. Thereafter, respondent did not return the phone call or otherwise respond to the message.

As of July 18, 2008, respondent had failed to submit to the Office of Probation any of the quarterly reports due under the terms and conditions of his probation including specifically the reports due on or before January 10, 2007, April 10, 2007, July 10, 2007, October 10, 2007, January 10, 2008, and April 10, 2008.[5]

As of July 18, 2008, respondent had failed to provide the Office of Probation with satisfactory proof of attendance at a session of State Bar Ethics School and proof of passage of the test, which was required under the terms and conditions of his probation.

As of July 18, 2008, respondent had failed to provide the Office of Probation with proof of his attending four hours of CLE courses in legal ethics as required under the terms and conditions of his probation.

[5] There is no indication in the record that respondent has since made any effort to comply with this or any other condition of probation.

As of July 18, 2008, respondent had failed to contact the Office of Probation to schedule a meeting with his probation deputy to discuss the terms and conditions of his probation.

C. Count Two - Case No. 06-O-15256

In 2002 and 2003, respondent maintained an attorney client trust account at California Bank and Trust ("CTA"). Between May 29, 2002 and November 6, 2003, respondent wrote 31 checks drawn on his CTA to directly pay personal and/or business expenses.

During this same time period, respondent used his CTA to deposit funds he had received and was holding on behalf of clients, thereby subjecting these funds to the potential claims of respondent's creditors.

III. Conclusions of Law

A. Count One: Business and Professions Code Section 6068, Subdivision (k)[6] [Failure to Comply with Conditions of Probation]

Section 6068, subdivision (k), provides that it is the duty of an attorney to comply with all conditions attached to any disciplinary probation, including a probation imposed with the concurrence of the attorney.

By failing to: (1) contact the Office of Probation within 30 days from the effective date of discipline; (2) submit quarterly reports to the Office of Probation on or before January 10, April 10, July 10, and October 10, 2007, and January 10 and April 10, 2008; (3) provide to the Office of Probation proof of having attended four hours of CLE courses in legal ethics by April 27, 2008; and (4) provide to the Office of Probation satisfactory proof of attendance at a session of Ethics School and passage of the test given at the end

[6] All further references to section(s) are to the Business and Professions Code, unless otherwise stated.

of that session; respondent willfully failed to comply with all conditions attached to a disciplinary probation, in violation of section 6068, subdivision (k).

B. Count Two: Rules of Professional Conduct of the State Bar of California, Rule 4-100(A)[7] [Using Client Trust Account as a Personal Account]

Rule 4-100(A) provides that all funds received or held for the benefit of clients must be deposited in an identifiable bank account which is properly labeled as a client trust account and no funds belonging to an attorney or law firm shall be deposited in such an account or otherwise commingled with such funds. By using his CTA to directly pay 31 personal and/or business expenses between May 29, 2002 and November 6, 2003, respondent used his CTA for personal and business purposes in willful violation of rule 4-100(A).

IV. Mitigating and Aggravating Circumstances

The parties bear the burden of proving mitigating and aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2.)[8]

A. Mitigation

No mitigating factors were submitted into evidence and none can be gleaned from the record. (Std. 1.2(e).)

B. Aggravation

The court finds two factors in aggravation. (Std. 1.2(b).)

1. Prior Record of Discipline

Respondent has a prior record of discipline consisting of two prior disciplines. (Std. 1.2(b)(i).)

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[7] All further references to rule(s) are to the current Rules of Professional Conduct of the State Bar of California, unless otherwise stated.

[8] All further references to standard(s) are to this source.

On February 21, 1996, the California Supreme Court issued an order (S050474) suspending respondent from the practice of law for 90 days, stayed, with a one-year period of probation. This discipline stemmed from respondent's misconduct in five matters, involving four different clients. Said misconduct included failing to perform legal services competently, failing to timely refund unearned fees, failing to communicate, failing to account, failing to maintain sufficient client trust account records, and commingling personal funds in his client trust account. In mitigation, respondent fully cooperated with the State Bar investigation. No aggravating circumstances were articulated.

On September 26, 2006, the California Supreme Court, in the underlying matter, issued an order (S145168) suspending respondent from the practice of law for nine months, stayed, with an 18-month period of probation. This discipline involved a single count of failing to cooperate in a disciplinary investigation. In aggravation, respondent had a prior record of discipline. In mitigation, his misconduct did not cause harm.

2. Multiple Acts of Wrongdoing

Respondent committed multiple acts of wrongdoing, including failing to submit quarterly reports; failing to timely contact the Office of Probation; failing to provide proof of completion of four hours of MCLE; failing to provide proof of completion of the State Bar Ethics School; and commingling personal funds in his CTA. (1.2(b)(ii).)

V. Discussion

The purpose of State Bar 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.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline.

In this case, the standards call for the imposition of a minimum sanction ranging from suspension to disbarment. (Standards 2.6, 2.2(b), and 1.7(b).) Standard 2.6 states that culpability of a member of a violation of section 6068 "shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3." Standard 2.2(b) calls for, at a minimum, a three-month period of actual suspension for the commingling of entrusted funds or the commission of another violation of rule 4-100 not resulting in the willful misappropriation of entrusted funds.

Due to respondent's prior record of discipline, the court also looks to standard 1.7(b) for guidance. Standard 1.7(b) provides that when an attorney has two prior records of discipline, "the degree of discipline imposed in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate."

The standards, however, "do not mandate a specific discipline." (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has long been held that the court is "not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender." (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

Relying on standard 1.7(b), the State Bar urges that respondent be disbarred. The court agrees. Considering the facts and circumstances involved in the present matter, there is little

reason to deviate from the standards. Although respondent's prior disciplines are low level, he has demonstrated an unwillingness or inability to comply with the requirements of disciplinary probation. He has further shown an inability to learn from his previous disciplines;[9] and his failure to participate in these proceedings gives the court little assurance that he no longer poses a threat to the protection of the public, the preservation of confidence in the legal profession, and the maintenance of the highest possible professional standards for attorneys.

The evidence before the court indicates that respondent has turned a blind eye to his professional and ethical obligations. Consequently, the court recommends that he be disbarred.

VI. Recommended Discipline

The court recommends that respondent Rigoberto V. Obregon be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

The court further recommends that respondent be ordered to comply with California Rules of Court, rule 9.20 and to 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.[10]

VII. Order of Inactive Enrollment

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that respondent be involuntarily enrolled as an inactive member of the State Bar of California effective three days after service of this decision and order by mail. (Rules Proc. of State Bar, rule 220(c).)

[9] Respondent's first discipline, like the present case, included findings that he commingled money in his client trust account and used it as a personal account.

[10] Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

VIII. 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, 2009

RICHARD A. PLATEL
Judge of the State Bar Court