

**STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of	)	<b>Case No. 07-H-11902-RAH</b>
<b>SEAN LYMUS ANDREWS,</b>	)	<b>DECISION</b>
<b>Member No. 171711,</b>	)	
<u>A Member of the State Bar.</u>	)	

**I. Introduction**

The above-entitled matter was submitted for decision on January 23, 2008, after the State Bar of California, Office of the Chief Trial Counsel (State Bar) waived the hearing in this matter and submitted a brief on the issues of culpability and discipline. Since the date of the filing of the Notice of Disciplinary Charges, the State Bar has been represented by Deputy Trial Counsel Michael J. Glass (DTC Glass). Respondent Sean Lymus Andrews (respondent) failed to appear or participate in this matter either in person or through counsel and allowed his default to be entered.

In this proceeding, respondent 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.

In light of respondent's culpability, and after considering all aggravating and mitigating circumstances surrounding respondent's misconduct, the court recommends, among other things, that respondent be suspended from the practice of law for two years, that execution of said suspension be stayed, and that respondent be actually suspended from the practice of law for 90 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**

On August 9, 2007, a 20-day letter was mailed to respondent at his official membership records address (official address)<sup>1</sup> maintained by respondent pursuant to Business and Professions Code section 6002.1, subdivision (a).<sup>2</sup> On August 29, 2007, respondent contacted the State Bar, spoke with Supervising Trial Counsel Kristen L. Ritsema (STC Ritsema) regarding settlement, and agreed to accept a stipulated discipline in this matter.

On August 30, 2007, STC Ritsema sent a letter to respondent at his official address. Attached to the letter was a Stipulation Re Facts, Conclusions of Law and Disposition and Order Approving Actual Suspension (proposed stipulation). The letter advised respondent that if he did not sign and return the proposed stipulation within ten days to the State Bar, the settlement offer could be withdrawn. Respondent never returned the proposed stipulation to the State Bar.

On October 4, 2007, the State Bar filed a Notice of Disciplinary Charges (NDC) against respondent with the State Bar Court. A copy of the NDC was properly served upon respondent on the same date, by certified mail, return receipt requested, addressed to respondent at his official address. On October 20, 2007, the copy of the NDC served upon respondent by certified mail was returned by the United States Postal Service (USPS) bearing the stamp, "Return to Sender, Unclaimed." On October 30, 2007, DTC Glass sent an additional copy of the NDC to

---

<sup>1</sup>Attached to the State Bar's December 7, 2007, motion for entry of respondent's default as exhibit 1 is a certified copy of respondent's address history on file in the State Bar's Membership Records Department as of November 26, 2007. This exhibit is admitted into evidence. The court also notes that DTC Glass "checked the respondent's address and telephone number as noted in the case file and confirmed its accuracy against the official membership records address for the respondent on the AS/400 computer records maintained by the State Bar." (Para. 3 of Decl. of DTC Glass attached to Notice of Motion and Motion for Entry of Default.) In view of the evidence presented by the State Bar of respondent's official membership records addresses, the court grants the request to take judicial notice of all respondent's official membership addresses to the date of the filing of this decision. The court notes that respondent's current official address was effective as of July 24, 2007, prior to the date the State Bar sent its 20-day letter to respondent.

<sup>2</sup>All further statutory references are to the Business and Professions Code unless otherwise indicated.

respondent at his official address by first-class mail. This additional copy of the NDC was not returned by the USPS.

On October 12, 2007, a Notice of Assignment and Notice of Initial Status Conference was filed in this matter, setting an in-person status conference for November 14, 2007. A copy of said notice was properly served upon respondent by first-class mail, postage fully prepaid, on the same date, addressed to respondent at his official address. The copy mailed to respondent was not returned to the State Bar Court.

A status conference was held on November 14, 2007. Respondent did not appear in person or through counsel. An Order Pursuant to In Person Status Conference was filed and served on November 19, 2007. A copy of the order was served on respondent via first-class mail, postage prepaid, at his official address. The copy sent to respondent was not returned to the State Bar Court.

On November 26, 2007, DTC Glass attempted to reach respondent by telephone. Although respondent had no official membership records telephone number, DTC Glass attempted to telephone respondent at another number contained in the case file, but DTC Glass was informed that respondent was no longer at this telephone number. DTC Glass also called directory assistance for the area which includes respondent's official address and asked for all telephone listings for respondent, but directory assistance had no such listing.

The State Bar filed and served a motion to enter respondent's default on December 5, 2007. This motion was served on respondent by certified mail, return receipt requested, at respondent's official address. On December 6, 2007, the State Bar Court filed and served an order that the State Bar refile its motion to enter respondent's default and submit with the refiled motion a certified copy of respondent's address history as maintained by the State Bar's Membership Records Department. This order was served on respondent at his official address by first-class mail, postage fully prepaid. On December 7, 2007, the State Bar filed and served a new motion for entry of respondent's default with the attachment specified by the State Bar Court. The new motion was served on respondent at his official address by certified mail, return

receipt requested. The record does not reflect whether or not the State Bar's two motions for entry of respondent's default were returned by the USPS; however, the State Bar Court's order that the State Bar refile a new motion for entry of default was not returned to the State Bar Court.

Because respondent failed to file a response to the motion, on January 3, 2008, the court filed and properly served an Order of Entry of Default (Rule 200 - Failure to File Timely Response), Order Enrolling Inactive and Further Orders.<sup>3</sup> This order was served on respondent by certified mail, return receipt requested, at his official address. The order served on respondent was returned to the State Bar Court by the USPS, marked "Return to Sender Unclaimed Unable to Forward."

On January 23, 2008, the State Bar filed a brief on the issues of culpability and discipline, requesting the waiver of the hearing in this matter.<sup>4</sup> The matter was submitted for decision on that date.

### **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).) These findings of fact are based on these deemed admissions and the exhibits.

#### **A. Jurisdiction**

Respondent was admitted to the practice of law in the State of California on October 3, 1994, and has been a member of the bar since that time.

#### **B. Violation of Repeal Conditions**

In March 2006, respondent and the State Bar signed a stipulation regarding facts,

---

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

<sup>4</sup>Exhibits 1 (a certified copy of respondent's State Bar registration card) and 2 (a certified copy of documents from respondent's prior public reprobation case) attached to the State Bar's brief on the issues of culpability and discipline are admitted into evidence.

conclusions of law, and disposition (stipulation) in State Bar Case number 05-O-02322. The stipulation provided for a public reproof with conditions (public reproof).

On April 12, 2006, the State Bar Court filed and served an order approving the stipulation imposing the public reproof, which was effective on May 3, 2006. The reproof was served on respondent by first-class mail, postage fully prepaid, at the address that was his official address at the time.

The conditions attached to respondent's public reproof in State Bar Case number 05-O-02322 required respondent, among other things, to: (1) comply with the State Bar Act and Rules of Professional Conduct; (2) report within ten days to the State Bar's Membership Records Office and Office of Probation all changes of information, including current office address and telephone number, or other address for State Bar purposes; (3) contact the Office of Probation within 30 days after the reproof's effective date and schedule a meeting with respondent's assigned probation deputy; (4) submit written quarterly reports to the Office of Probation each January 10, April 10, July 10 and October 10 of the condition period attached to the reproof, certifying under penalty of perjury (a) that respondent complied during the preceding quarter with the State Bar Act, the Rules of Professional Conduct, and all reproof conditions; and (b) whether or not there are any proceedings pending against him in the State Bar Court, and if so, the case number and status of the proceeding; (5) submit a final report providing the same information during the last 20 days of the condition period; (6) provide proof to the Office of Probation of having attended State Bar Ethics School (ethics school) and of having passed the test given at the end of that session within one year of the reproof's effective date; and (7) provide proof to the Office of Probation of having passed the Multistate Professional Responsibility Examination (MPRE) within one year of the reproof's effective date.

On May 3, 2006, a probation deputy wrote a letter to respondent and reminded him of the terms and conditions of the reproof, specifically reminding him of his obligations to schedule a meeting with her by June 2, 2006, to file quarterly reports commencing on July 10, 2006, to submit proof of successful completion of ethics school by May 3, 2007, and to submit proof of

successful passage of the MPRE by May 3, 2007. Enclosed with this letter were copies of the relevant portion of the stipulation setting forth the reprobation conditions, an MPRE schedule and information sheet, a quarterly report instruction sheet, a quarterly report form specially tailored for respondent to use for his reports, an information sheet and an application regarding ethics school, and a calendar with the dates on which ethics school was offered. The letter also notified respondent that if he needed to request an extension of time to comply with, or a modification of, the reprobation conditions, he should direct his request to the State Bar Court. This letter was mailed to respondent on May 3, 2006, by first-class mail, postage prepaid, at respondent's official address at the time, and respondent received the letter.

Respondent failed to contact the Office of Probation by June 2, 2006, to schedule a meeting with his probation deputy. In fact, as of October 4, 2007, the date the NDC was filed, respondent had not: (1) met with his probation deputy; (2) submitted any of the quarterly reports, including the final report; (3) provided proof of having completed ethics school; (4) provided proof of taking and passing the MPRE; or (5) complied with any reprobation conditions.

**Count One: Rule 1-110 of the Rules of Professional Conduct of the State Bar of California<sup>5</sup>**

Rule 1-110 requires, among other things, that State Bar members comply with conditions attached to reprobations. The State Bar has proven by clear and convincing evidence that respondent wilfully violated rule 1-110 by failing at any time prior to the filing of the NDC to: (1) meet with his assigned probation deputy; (2) submit any quarterly reports, including the final report; (3) provide proof of having completed ethics school; (4) provide proof of having taken and passed the MPRE; and (5) comply with any of his reprobation conditions.

**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.

---

<sup>5</sup>Unless otherwise indicated, all further references to rules refer to these Rules of Professional Conduct.

1.2(e).)<sup>6</sup>

**B. Aggravation**

Respondent's prior record of discipline is an aggravating factor. (Std. 1.2(b)(i).) In the underlying matter, case number 05-O-2322, respondent was publicly reprovved with a one-year condition period for misconduct in a single client matter involving failing to perform legal services competently. There was no aggravation in the prior case, and the only mitigating factor was respondent's lack of a prior record of misconduct.<sup>7</sup>

Respondent's violation of multiple reprovval conditions constitutes multiple acts of misconduct and is an aggravating factor. (Standard 1.2(b)(ii); Cf. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 76 [violating three separate conditions of probation constituted misconduct involving multiple acts of wrongdoing].)

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).)

The State Bar urges the court to also find as an aggravating factor that respondent's conduct harmed the administration of justice. (Std. 1.2(b)(iv).) The harm to the administration of justice that occurred was inherent in the reprovval violation. Therefore, the court declines to make such a finding as it would be duplicative. (Cf. *In the Matter of Hunter, supra*, 3 Cal. State Bar Ct. Rptr. at p. 76 [where the harm that occurred to the administration of justice was the harm inherent in the violation of probation, giving aggravating weight to that same harm would be duplicative].) Similarly, the State Bar argues that respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct by not complying with any of the terms and conditions of his public reprovval and by failing to participate in the proceedings prior to the entry of default. However, because these acts are the same used to find either culpability or aggravation for failure to cooperate with the State Bar during disciplinary

---

<sup>6</sup>All further references to standards are to this source.

<sup>7</sup>The record discloses that respondent's misconduct began in November 2004, giving him ten years' discipline-free practice prior to the commencement of his misconduct.

proceedings, the court declines to give additional weight in aggravation to these acts under standard 1.2(b)(v). (See *In the Matter of Hunter*, *supra*, 3 Cal. State Bar Ct. Rptr. at pp. 76-77.)

## 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; std. 1.3.) In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) While the standards are not binding, they are entitled to significant weight. (*In re Silvertown* (2005) 36 Cal.4th 81, 92.)

Standard 2.9 provides that an attorney's willful violation of rule 1-110 shall result in suspension. Standard 1.6(b) adds 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. Further, standard 1.7(a) provides that if an attorney found culpable of professional misconduct in a disciplinary proceeding has a record of one prior imposition of discipline, the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline was so remote in time and the offense so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.

Respondent's misconduct involved failing to: (1) meet with his assigned probation deputy; (2) submit any quarterly reports, including the final report; (3) provide proof of having completed ethics school; (4) provide proof of having taken and passed the MPRE; and (5) comply with any of the conditions of the reprobation order.

The State Bar urges a two-year stayed suspension and an actual suspension of six months and until the State Bar Court grants a motion to terminate respondent's actual suspension pursuant to rule 205 of the Rules of Procedure. In support of its recommended discipline, the State Bar cites *Conroy v. State Bar* (1990) 51 Cal.3d 799 (*Conroy*).



Conroy received a one-year stayed suspension, a one-year probation, and a 60-day actual suspension based upon his failure to timely take and pass the Professional Responsibility Examination (PRE) as he had been ordered to do as a condition of a private reproof. In aggravation, Conroy had one prior record of discipline, the underlying private reproof imposed after, in three separate matters, respondent: failed to communicate; failed to relinquish his clients' file to a new attorney; failed to file a timely inventory of estate property or an accounting prior to the disposition of funds while acting as an executor; abandoned a client resulting in the issuance of an arrest warrant; and subsequently failed to assist in having the arrest warrant withdrawn. Also in aggravation, Conroy failed to appreciate the seriousness of the charge; showed that he failed to comprehend the importance of participating in disciplinary proceedings by failing to appear at trial; and failed to comprehend the gravity of his earlier misdeeds, showing a lack of remorse. The court gave some weight in mitigation to Conroy's belated passage of the PRE but concluded that "this single extenuating factor [was] substantially outweighed by numerous aggravating circumstances." (*Conroy, supra*, 51 Cal.3d at p. 805.)

Respondent violated more conditions of his prior reproof than did Conroy. Also, Conroy received credit in mitigation for belated compliance with his PRE requirement, while no mitigation appears in the instant case. However, *Conroy* involved more serious aggravation than the present case in that Conroy's prior record of discipline was based on three matters and numerous acts of misconduct, as opposed to respondent's single act of failing to perform legal services competently in a single client matter. Moreover, while both respondent and Conroy failed to participate in the proceedings before the State Bar Court, Conroy implied to the Supreme Court "that his misconduct constituted a mere technical lapse" (*Conroy, supra*, 51 Cal.3d at p. 806), showing an absence of remorse for his earlier misdeeds.

The court agrees with the State Bar that this case is overall somewhat more serious than *Conroy* due to the serious nature of respondent's failure to comply with *any* of the conditions attached to his disciplinary reproof. The court also recognizes that respondent's failure to participate in this disciplinary proceeding prior to the entry of his default renders the case even

more serious. On balance, however, the court determines that a lower level of discipline than that recommended by the State Bar is most appropriate in this matter, given that respondent's one prior public reproof involved only one violation in a single client matter. The court determines that a 90-day actual suspension is sufficient in this case to protect the public, preserve public confidence in the profession, and maintain high standards for attorneys.

#### **VI. Recommended Discipline**

The court hereby recommends that respondent Sean Lymus Andrews be suspended from the practice of law for two years, that execution of said suspension be stayed, and that respondent be actually suspended from the practice of law for 90 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.) The court also recommends that respondent be ordered to comply with the conditions of probation, if any, hereinafter imposed on him by the State Bar Court as a condition for terminating his actual suspension. (Rules Proc. of State Bar, rule 205(g).)

The court further recommends that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court and to perform the acts specified in paragraphs (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court's order.<sup>8</sup>

If the period of actual suspension reaches or exceeds two years, it is further recommended that respondent remain actually suspended until he has shown 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. (See also Rules Proc. of State Bar, rule 205(b).)

It is also recommended that respondent be ordered to take and pass the Multistate

---

<sup>8</sup>Failure to comply with rule 9.20 of the California Rules of Court could result in disbarment. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Respondent is required to file a California Rules of Court, rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

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 actual suspension, whichever period is longer, and to furnish satisfactory proof of such passage to the State Bar's Office of Probation within the same period.

**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 \_\_\_\_, 2008

---

RICHARD A. HONN  
Judge of the State Bar Court