

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

In the Matter of)	Case No. 07-O-12140-RAH
)	
SCOT DOUGLAS STIRLING,)	DECISION
)	
Member No. 188063,)	
)	
<u>A Member of the State Bar.</u>)	

I. Introduction

The above-entitled matter was submitted for decision on February 6, 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 shortly after the Notice of Disciplinary Charges (NDC) was filed in this matter, the State Bar has been represented by Deputy Trial Counsel Miho Murai (DTC Murai). Respondent Scot Douglas Stirling (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 of probation previously imposed on him in a disciplinary proceeding.

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 disbarred.

II. Pertinent Procedural History

On August 10, 2007, a letter regarding the State Bar's intention to file an NDC in this

case was mailed to respondent at his official membership records address (official address)¹ maintained by respondent pursuant to Business and Professions Code section 6002.1, subdivision (a).² The letter was not returned by the United States Postal Service (USPS).

On August 10, 2007, Supervising Trial Counsel Kristen Ritsema (STC Ritsema) telephoned respondent at his official membership records telephone number (official telephone number) and left a message with a woman who identified herself as respondent's mother. STC Ritsema left her name, title, and telephone number, and requested that respondent return her call. Respondent's mother agreed to give respondent the message, but respondent never returned the call.

On November 1, 2007, the State Bar filed and served an NDC against respondent with the State Bar Court. A copy was served on respondent by certified mail, return receipt requested, addressed to respondent at his official address. On November 21, 2007, the State Bar received the signed return receipt card from respondent, acknowledging receipt of the NDC. There was a

¹Attached to the State Bar's December 20, 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 December 19, 2007. This exhibit is admitted into evidence. The court also notes that DTC Murai "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 Respondent on the AS-400 computer records maintained by the State Bar." (Para. 3 of Decl. of DTC Murai 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, under Evidence Code section 452, subdivision (h), of all respondent's official membership addresses to the date of the filing of this decision. The court notes that DTC Murai's declaration states that a letter regarding the State Bar's intention to file an NDC, the NDC, and a courtesy copy of the NDC were all sent to respondent at his official address; however, the declaration lists the incorrect zip code of 92505 for respondent's official address, while the certified copy of respondent's address history establishes that the correct zip code is 92502. Contrary to the statement in the declaration, the proof of service attached to the NDC in the court's official file establishes that the NDC was served on the correct official address, with the correct zip code of 92502. The court views the three incorrect listings of the zip code in the declaration as typographical errors and finds that the documents referred to in the declaration were sent to respondent's correct official address.

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

stamp on the card by Downtown STA Riverside CA 92501, bearing the date “November 16, 2007.”

On November 7, 2007, a Notice of Assignment and Notice of Initial Status Conference was filed and served in this matter, setting an in-person status conference for December 5, 2007. A copy of the notice was properly served on respondent by first-class mail, postage fully prepaid, 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 as scheduled on December 5, 2007. Respondent did not appear in person or through counsel. An Order Pursuant to In Person Status Conference was filed and served on December 11, 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.

Also on December 5, 2007, DTC Murai conducted public record searches at www.whitepages.com and www.lexis.com for “Scot Stirling.” Only the www.whitepages.com search revealed any listings, and even then listed only one telephone number and no address. DTC Murai was unsuccessful in her attempt to contact respondent at that one telephone number. DTC Murai also conducted an internet search for respondent at www.martindale.com. The search revealed one result but no address or telephone number for respondent.

On December 6, 2007, DTC Murai telephoned respondent at his official telephone number and left a voice mail with her name, title, and telephone number. She requested that respondent return her call, but she had received no response as of December 13, 2007. Also on December 6, a courtesy copy of the NDC was mailed to respondent by first-class mail, postage prepaid, at respondent’s official address. The letter had not been returned by the USPS as of December 13, 2007.

On December 13, 2007, DTC Murai checked the 2007 Parker Directory of California Attorneys but found no address or telephone number for respondent.

The State Bar filed and served a motion to enter respondent’s default on December 20,

2007. This motion was served on respondent by certified mail, return receipt requested, at respondent's official address. The record does not reflect whether or not the State Bar's motion for entry of default was returned by the USPS.

Because respondent failed to file a response to the motion, on January 7, 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.³ 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 as unclaimed.

On February 6, 2008, the State Bar filed a brief on the issues of culpability and discipline, requesting the waiver of the hearing in this matter.⁴ 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 admitted into evidence as stated in this decision.

A. Jurisdiction

Respondent was admitted to the practice of law in the State of California on June 2, 1997, and has been a member of the bar since that time.

B. Violation of Probation Conditions

In September 2005, respondent and the State Bar signed a stipulation regarding facts, conclusions of law, and disposition (stipulation) in State Bar Case number 00-O-14661, et al.

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

⁴Exhibit 3 (a certified copy of documents from respondent's prior disciplinary case) attached to the State Bar's brief on the issues of culpability and discipline is admitted into evidence.

The stipulation provided that respondent be suspended for two years and until he complied with standard 1.4(c)(ii),⁵ that execution of that two-year suspension be stayed, and that respondent be placed on probation for seven years on various conditions, including an actual suspension of one year.

On October 28, 2005, the State Bar Court filed and served an order approving the stipulation. The stipulation and order approving it and recommending the discipline to the Supreme Court were served on respondent by first-class mail, postage fully prepaid, at his official address. The Supreme Court order imposing the recommended discipline was filed and properly served on respondent on March 1, 2006, and effective on March 31, 2006.⁶

Pursuant to the Supreme Court's order imposing discipline, as clarified by stipulation of the parties, respondent was required, among other things, to: (1) comply with the State Bar Act and Rules of Professional Conduct of the State Bar of California; (2) report within ten days, to the Membership Records Office of the State Bar and to the Office of Probation, all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1; (3) contact the Office of Probation within 30 days of the effective date of discipline and schedule a meeting with respondent's assigned probation deputy to discuss the terms and conditions of probation; (4) submit written quarterly reports to the Office of Probation no later than January 10, April 10, July 10, and October 10 of each year or part thereof during the probationary period, certifying under penalty of perjury that respondent has complied during the preceding calendar quarter with the State Bar Act, the Rules of Professional Conduct, and all probation conditions and stating whether or not there are any

⁵Unless otherwise indicated, this and all further references to standards are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

⁶In April 2006, the parties entered into a stipulation to clarify one of the probation conditions, and an order approving that clarifying stipulation was filed and properly served on respondent on April 24, 2006. This April 2006 stipulation and order clarified that the probation monitor condition would commence one year after the effective date of the discipline and that the probation monitor would monitor respondent for two years.

matters pending against him in the State Bar Court, and if so, the case number and status of the matter; (5) submit a final report providing the same information during the last 20 days of the probation period; (6) be assigned a probation monitor one year after the effective date of discipline, thereafter promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance, cooperate fully with the probation monitor, and furnish to the monitor such reports as may be requested, in addition to the quarterly reports; (7) subject to the assertion of applicable privileges, answer fully, promptly, and truthfully any inquiries of the Office of Probation and any assigned probation monitor; (8) provide proof to the Office of Probation, within one year of the disciplinary order's effective date, of having attended and completed State Bar Ethics School (ethics school) and of having passed the test given at the end of that session; (9) provide proof to the Office of Probation, within one year of the effective date of the disciplinary order, of having attended and completed State Bar Client Trust Accounting School (trust accounting school) and of having passed the test given at the end of that session; (10) no later than 30 days prior to the end of the actual suspension period, develop and have approved by the probation monitor and the Office of Probation a Law Office Management Plan which must include specified procedures; (11) no later than 30 days prior to the end of the actual suspension period, join the Law Practice Management and Technology Section and the Solo and Small Firm Section of the State Bar and pay the dues and costs of enrollment in each section for two years and provide proof of same to the Office of Probation in the first report required; (12) if 90 days prior to the termination of the actual suspension period the Office of Probation has not notified respondent of the identity of his probation monitor, promptly contact the Office of Probation and request such notice; (13) within 30 days of the effective date of discipline, contact specified complaining witnesses and offer them binding fee arbitration and then complete the arbitration within six months of the effective date of discipline.

On May 9, 2006, a probation deputy wrote a letter to respondent and reminded him of the terms and conditions of his probation, specifically advising him of his obligations, among other things: to file quarterly probation reports, with the first due on July 10, 2006; to make fee

arbitration offers by April 30, 2006; to complete the fee arbitration by September 31, 2006; to complete a Law Office Management Plan by March 1, 2007; to join the Law Practice Management Section and the Solo and Small Firm Section by March 1, 2007; to contact the probation deputy regarding respondent's assigned probation monitor by May 1, 2007; and to complete trust accounting school and ethics school by March 31, 2007. Enclosed with this letter were, among other things: copies of the Supreme Court order imposing discipline in that matter; the relevant portion of the stipulation setting forth the probation conditions; a counsel representation form; a quarterly report instruction sheet; a quarterly report form specially tailored for respondent to use for his reports; a Multistate Professional Responsibility Examination (MPRE) schedule; and an information sheet, schedule, and application regarding ethics school and trust accounting school. This letter was mailed to respondent on May 9, 2006, by USPS express mail, postage prepaid, at respondent's official address. The letter was delivered on May 11, 2006, to respondent personally, who received and signed for the letter.

On October 10, 2006, respondent sent a letter to the State Bar asking for another probation package since he could not find his original package. He also notified the State Bar of his new telephone and facsimile numbers.

On October 26, 2006, the probation deputy sent respondent a second letter enclosing a copy of the May 9, 2006, letter sent to respondent. In the October 26, 2006, letter, the probation deputy advised respondent that the Office of Probation had not received the October 10, 2006, quarterly report and that respondent had not contacted the Office of Probation to review the terms and conditions of respondent's probation, as required. The probation deputy requested respondent to contact him upon receipt of the letter to discuss the matter. This letter was mailed to respondent on October 26, 2006, by first-class mail, postage prepaid, at respondent's official address, and respondent received the letter.

On February 5, 2007, respondent belatedly filed with the Office of Probation the quarterly reports that were due on October 10, 2006, and January 10, 2007. These reports were defective in that respondent failed to aver under penalty of perjury that he had complied with the State Bar

Act, the Rules of Professional Conduct, and the terms and conditions of probation during the applicable calendar quarters.

On June 13, 2007, the Office of Probation notified respondent of the identity of his assigned probation monitor, provided contact information for the probation monitor, and requested that respondent contact the probation monitor within 10 days. Respondent received notice of the identity of his probation monitor and his contact information.

As of October 31, 2007, respondent had: (1) failed to submit to the Office of Probation compliant quarterly reports for October 10, 2006, and January 10, 2007; (2) failed to submit to the Office of Probation the quarterly reports that were due on April 10, 2007, July 10, 2007, and October 10, 2007; (3) failed to contact the Office of Probation and meet with his assigned probation deputy to discuss the terms and conditions of probation, which was to have been completed by April 30, 2006; (4) failed to submit proof to the Office of Probation that he contacted the specified complaining witnesses and offered them binding fee arbitration, which was to have been completed by April 30, 2006; (5) failed to submit proof to the Office of Probation of having joined the Law Practice Management and Technology Section and the Solo and Small Firm Section of the State Bar and paid the dues and costs for enrollment for two years, which was to have been completed by March 1, 2007; (6) failed to contact his assigned probation monitor, which was to have been completed by no later than June 23, 2007; (7) failed to submit to his probation monitor or to the Office of Probation a Law Office Management Plan, which was to have been approved and completed by March 1, 2007; and (8) failed to take and complete ethics school and trust accounting school, pass the test given at the end of each course, and provide proof of the same to the Office of Probation, which was to have been completed by March 31, 2007.

Count One: Section 6068, Subdivision (k)

Section 6068, subdivision (k) requires that State Bar members comply with all conditions attached to any disciplinary probation. The State Bar has proved by clear and convincing evidence that respondent willfully violated this section by failing, prior to October 31, 2007, to:

(1) submit compliant quarterly reports for October 10, 2006, and January 10, 2007; (2) submit the quarterly reports due on April 10, July 10, and October 10, 2007; (3) contact the Office of Probation and meet with his assigned probation deputy to discuss the terms and conditions of probation; (4) submit proof to the Office of Probation that he contacted the specified complaining witnesses and offered them binding fee arbitration; (5) submit proof to the Office of Probation of having joined the Law Practice Management and Technology Section and the Solo and Small Firm Section of the State Bar and paid the dues and costs for enrollment for two years; (6) contact his assigned probation monitor; (7) submit to his probation monitor or to the Office of Probation a Law Office Management Plan; and (8) complete trust accounting school and ethics school, pass the test given at the end of each course, and provide proof of the same to the Office of Probation.

IV. Mitigating and Aggravating Circumstances

A. Mitigation

No evidence in mitigation was offered in this proceeding, and none can be gleaned from the record. (Std. 1.2(e).)

B. Aggravation

Respondent's prior record of discipline is an aggravating factor. (Std. 1.2(b)(i).) In the underlying matter, case numbers 00-O-14661, et al., the Supreme Court suspended respondent for two years and until he complied with standard 1.4(c)(ii), stayed that two-year suspension, and placed him on probation for seven years on various conditions, including the condition that he be actually suspended for one year. This discipline resulted from misconduct in 32 client matters, all involving violations of Rules of Professional Conduct, rule 1-120, assisting in a violation of the Rules of Professional Conduct of the State Bar or the State Bar Act. The violations in which respondent assisted were generally failure to perform legal services with competence and failure to refund unearned fees. The stipulation establishes that, in aggravation, respondent's misconduct significantly harmed clients, the public, or the administration of justice (std. 1.2(b)(iv)), and the misconduct evidenced multiple acts of wrongdoing or demonstrated a pattern

of misconduct (std. 1.2(b)(ii)). In mitigation, respondent was given credit for displaying spontaneous candor and cooperation with the State Bar (std. 1.2(e)(v)).⁷

Respondent's violation of multiple probation conditions in the instant case 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 find as an additional aggravating factor that respondent's failure to participate in the proceeding prior to the entry of default and his multiple violations of probation demonstrate that he does not appreciate (1) the seriousness of these charges or his prior misconduct or (2) the importance of his participation in this proceeding. However, because these acts are the same used to find either culpability or aggravation for failure to cooperate with the State Bar during disciplinary 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 2.6 provides in relevant part that an attorney's violation of section 6068 shall

⁷The stipulation did not give respondent credit in mitigation for his lack of a prior record of misconduct.

result in disbarment or suspension depending on the gravity of the offense or any harm to the victim. 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 discipline. 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) submit compliant quarterly reports for October 10, 2006, and January 10, 2007; (2) submit the quarterly reports due on April 10, July 10, and October 10, 2007; (3) contact the Office of Probation and meet with his assigned probation deputy to discuss the terms and conditions of probation; (4) submit proof to the Office of Probation that he contacted the specified complaining witnesses and offered them binding fee arbitration; (5) submit proof to the Office of Probation of having joined the Law Practice Management and Technology Section and the Solo and Small Firm Section of the State Bar and paid the dues and costs for enrollment for two years; (6) contact his assigned probation monitor; (7) submit to his probation monitor or to the Office of Probation a Law Office Management Plan; and (8) complete trust accounting school and ethics school, pass the test given at the end of each course, and provide proof of the same to the Office of Probation. The State Bar urges disbarment.

The court is guided by *In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439. After having abandoned clients and failed to refund unearned fees in matters involving seven different clients, Grueneich had previously entered into a stipulated discipline consisting of a three-year stayed suspension and a period of probation on various conditions, including a four-month actual suspension. (*Id.* at pp. 442-443.) In Grueneich's current disciplinary matter, he was found culpable of failing to comply with California Rules of Court,

rule 9.20 (then numbered as rule 955) and of failing to comply with several conditions of his probation.⁸ Although Grueneich presented evidence in mitigation, including his numerous pro bono activities and severe personal problems (*id.* at p. 442), the review department noted that his involvement in the State Bar Court proceedings had been sporadic (*id.* at p. 444). Because the record as a whole established that Grueneich had “already injured a number of clients and pose[d] a substantial risk of continuing to do so” (*ibid.*), the review department concluded that disbarment was necessary to advance the goals of attorney discipline.

Other than Grueneich’s violation of California Rules of Court, rule 9.20, the instant case is more serious and establishes even more reason to be concerned with the risk that respondent may injure additional clients if allowed to continue to practice law. Respondent’s underlying misconduct involved no less than 32 client matters in which respondent assisted in the failure to perform legal services competently and the failure to refund unearned fees. Moreover, respondent violated a larger number of his probationary conditions than did Grueneich, respondent failed entirely to participate in these disciplinary proceedings prior to his default, and there is no evidence of any mitigation whatsoever in the instant case. In sum, the court agrees with the State Bar that disbarment is required in this case to protect the public, preserve public confidence in the profession, and maintain high standards for attorneys.

VI. Recommended Discipline

Accordingly, the court hereby recommends that respondent Scot Douglas Stirling be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

It is also recommended that the Supreme Court order respondent to comply with California Rules of Court, rule 9.20, paragraphs (a) and (c), within 30 and 40 days, respectively,

⁸Grueneich failed to comply with the probation conditions that he file probation reports, prepare a law office management plan, and make restitution to clients. (*In the Matter of Grueneich, supra*, 2 Cal. State Bar Ct. Rptr. at p. 442.)

of the effective date of its order imposing discipline in this matter.⁹

VII. Costs

The court recommends 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 section 6140.7 and as a money judgment.

VIII. Order of Involuntary Inactive Enrollment

It is ordered that respondent be transferred to involuntary inactive enrollment status under section 6007, subdivision (c)(4), and rule 220(c) of the Rules of Procedure of the State Bar. The inactive enrollment will become effective three calendar days after this order is filed.

Dated: May 6, 2008

RICHARD A. HONN
Judge of the State Bar Court

⁹Respondent 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.)