

PUBLIC MATTER

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STATE BAR COURT OF CALIFORNIA HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 08-H-10305-PEM
)	
ROBERT E. OSMUNDSON,)	DECISION
)	
Member No. 202432,)	
)	
<u>A Member of the State Bar.</u>)	

INTRODUCTION

In this default matter, respondent **Robert E. Osmundson** (respondent) is charged with failing to comply with conditions attached to a reprobation administered by the State Bar pursuant to sections 6077 and 6078 of the Business and Professions Code and former rule 956 (now 9.19) of the California Rules of Court.

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 for one year, that execution of the 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 at its conclusion or upon such later date ordered by the court. (Rules Proc. of State Bar, rule 205(a)-(c).)

PERTINENT PROCEDURAL HISTORY

This proceeding was initiated by the filing of a Notice of Disciplinary Charges (NDC) against respondent by the State Bar of California, Office of the Chief Trial Counsel (State Bar) on February 22, 2008.¹ The State Bar was represented in this matter by Deputy Trial Counsel Treva R. Stewart (DTC Stewart).

A copy of the NDC was properly served on respondent on February 22, 2008, by certified mail, return receipt requested, addressed to respondent at his official membership records address (official address).

On March 10, 2008, a Notice of Assignment and Notice of Initial Status Conference was filed in this matter, setting a telephonic status conference for April 14, 2008. A copy of the notice was properly served on respondent by first-class mail, postage fully prepaid, on March 10, 2008, addressed to respondent at his official address. The copy of the notice was not returned to the State Bar Court by the U.S. Postal Service as undeliverable or for any other reason.

On April 14, 2008, the court held a status conference in this matter. Respondent did not appear at the status conference either in person or through counsel. On April 15, 2008, the court filed a Status Conference Order which set forth that the matter was to proceed by default. A copy of said order was properly served on respondent by first-class mail, postage fully prepaid, on April 15, 2008, addressed to respondent at his official address. The copy of the order was not returned to the State Bar Court by the U.S. Postal Service as undeliverable or for any other reason.

¹ On January 30, 2008, Supervising Trial Counsel Donald Steedman (STC Steedman) sent a Notice of Intent to File Disciplinary Charges by first-class mail to respondent at his official membership records address. This letter asked respondent to meet with STC Steedman on or before February 19, 2008. The U.S. Postal Service did not return STC Steedman's January 30, 2008 letter as undeliverable or for any other reason. Respondent did not telephone STC Steedman or otherwise communicate with him.

Efforts by DTC Stewart to locate respondent through various internet searches led to no viable alternative addresses or telephone numbers. DTC Stewart tried to contact respondent by telephone on March 10 and April 7, 2008, but respondent's mailbox was full, and she was unable to leave a message. Although DTC Stewart paged respondent, he did not call her.

As respondent did not file a response to the NDC as required by rule 103 of the Rules of Procedure of the State Bar of California (Rules of Procedure), on May 5, 2008, the State Bar filed a motion for the entry of respondent's default. The motion also contained a request that the court take judicial notice, pursuant to Evidence Code section 452, subdivision (h), of respondent's address history, the declaration of Treva R. Stewart² and Exhibit 1.³ A copy of the motion was properly served on respondent on May 2, 2008, by certified mail, return receipt requested, addressed to respondent at his official address.

When respondent failed to file a written response within 10 days after service of the motion for the entry of his default, on May 22, 2008, the court filed an Order of Entry of Default (Rule 200 – Failure to File Timely Response), Order Enrolling Inactive and Further Orders.⁴ A copy of said order was properly served on respondent on May 22, 2008, by certified mail, return receipt requested, addressed to respondent at his official address. The copy of said order was returned to the State Bar Court by the U.S. Postal Service with a stamp indicating it had been unclaimed.

² The declaration of DTC Stewart refers to case number 08-O-10128 as “the current case”. The court will consider reference to case number 08-O-10128 as merely a typographical error. However, the State Bar in cautioned to verify the accuracy of any declaration submitted to the court.

³ The court grants the State Bar's request and takes judicial notice of respondent's address history maintained for respondent by the State Bar's Membership Records Department.

⁴ 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.

On June 19, 2008, the State Bar filed a brief on the issues of culpability and discipline.⁵ In its brief, the State Bar requested the waiver of the hearing in this matter.

This matter was submitted for decision on June 4, 2008. However, on August 25, 2008, the court filed notice of its intent to take judicial notice of respondent's prior record of discipline in State Bar Court case number 05-O-04716. Any response to such notice was required to be filed and served within ten days after service of the order. Furthermore, the State Bar was ordered to file with the court within fifteen days after service of this notice/order a certified copy of respondent's prior record of discipline. The court also directed the clerk to vacate the submission date. A copy of said order was properly served on respondent by first-class mail, postage fully prepaid, on August 25, 2008, addressed to respondent at his official address. The copy of the order was not returned to the State Bar Court by the U.S. Postal Service as undeliverable or for any other reason.

Respondent did not file any response to the court's August 25, 2008 notice/order; however, on September 10, 2008, the State Bar filed a request for an extension of time to submit to the court respondent's prior record of discipline. A copy of said request was properly served on respondent on September 10, 2008, by regular mail, addressed to respondent at his official address. The copy of the request was not returned to the State Bar Court by the U.S. Postal Service as undeliverable or for any other reason.⁶

Thereafter, on September 11, 2008, the State Bar filed a certified copy of respondent's disciplinary record. A copy of such record was properly served on respondent on September 11,

⁵ The court grants the State Bar's motion to extend the time to file its brief regarding the appropriate discipline in this matter which was attached to the State Bar's brief filed June 19, 2008. The motion actually requested an extension to only June 16, 2008. Nevertheless, the court grants the extension of time. A court case administrator is therefore directed to file the motion nunc pro tunc to June 19, 2008.

⁶ The court grants the State Bar's request for an extension of time to submit respondent's prior record of discipline.

2008, by regular mail, addressed to respondent at his official address.⁷ This copy of respondent's prior disciplinary record was not returned to the State Bar Court by the U.S. Postal Service as undeliverable or for any other reason.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Jurisdiction

Respondent was admitted to the practice of law in the State of California on August 26, 1999, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

Violation of Repeal Conditions

On October 19, 2006, respondent signed a stipulation in which he agreed to receive a reproof and to comply with conditions attached to the reproof for a period of one year. The conditions attached to the reproof were specified in the stipulation that respondent signed.

On November 7, 2006, acting under the authority of Business and Professions Code section 6077, the State Bar Court issued an order imposing a public reproof upon respondent in case number 05-O-04716. Pursuant to former California Rule of Court 956 (now rule 9.19), the State Bar Court order required respondent to comply with the stipulated conditions attached to the reproof. The court found that the stipulation "...protects the public and that the interests of Respondent will be served by any conditions attached to the reproof...."

The November 7, 2006 State Bar court order and reproof conditions became final on November 30, 2006, and at all times thereafter have remained in full force and effect. Soon after

⁷ Although the declaration of service indicates that respondent's last name was misspelled on the first line of the address, respondent's name was correctly spelled on the second line of the address which stated, "Law Office of Robert E. Osmundson." Thus, the court finds the misspelling of respondent's name on the first line of the address a de minimis error, and thus the court finds that service was proper.

November 9, 2006, respondent received notice of the State Bar Court order and reprobation conditions.

On November 17, 2006, the Office of Probation mailed respondent a reminder letter setting forth the conditions of the reprobation. Respondent received this letter shortly thereafter.

One of the conditions of the reprobation required respondent to submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the condition period attached to the reprobation. In addition to all quarterly reports, a final report was due no later than the last day of the condition period.

Respondent was therefore required to submit quarterly reports no later than January 10, April 10, July 10, October 10 and November 30, 2007. Respondent failed to submit the October 10, 2007 report until November 9, 2007, and, as of February 22, 2008, respondent had not submitted the November 30, 2007 report.

Another condition of the reprobation required respondent to "...provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year of the effective date of the reprobation." As of February 22, 2008, respondent has failed to: (1) take the MPRE; (2) pass the MPRE; and (3) provide proof of passage of the MPRE.

One of the conditions of the reprobation required respondent to provide, within one year of the effective date of the discipline herein, satisfactory proof to the Office of Probation of attendance at a session of the Ethics School, and passage of the test given at the end of that session. As of February 22, 2008, respondent has failed to attend Ethics School and has failed to provide any such proof.

Rule 1-110 of the Rules of Professional Conduct of the State Bar of California⁸

By failing to: (1) timely submit the October 10, 2007 quarterly report; (2) submit the November 30, 2007 quarterly report; (3) take and pass the MPRE and provide proof thereof to the Office of Probation; and (4) attend Ethics School and provide proof thereof to the Office of Probation, respondent failed to comply with conditions attached to a reproof administered by the State Bar pursuant to Business and Professions Code sections 6077 and 6078 and former rule 956 (now 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).

MITIGATING/AGGRAVATING CIRCUMSTANCES

As respondent's default was entered in this matter, respondent failed to introduce any mitigating evidence on his behalf and none can be gleaned from the record.

In aggravation, respondent has a prior record of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(b)(i).) Effective November 30, 2006, respondent was privately reproofed with conditions for one year in State Bar Court case number 05-O-04716. In this prior disciplinary matter, respondent stipulated to a violation of rule 3-110(A) of the Rules of Professional Conduct and section 6068(m) of the Business and Professions Code. In mitigation, respondent had no prior record of discipline. No aggravating circumstances were involved.

Respondent also engaged in multiple acts of misconduct by violating several conditions of his reproof. (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).)

⁸ Although the NDC charged respondent with a violation of rule 1-110(A), the court notes that no subdivision (A) exists. However, the court 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.

DISCUSSION

In determining the appropriate discipline to recommend in this matter, the court looks at the purposes of disciplinary proceedings and sanctions. Standard 1.3 set forth the purposes of disciplinary proceedings and sanctions as “the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession.”

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.) In this case, standard 2.9 provides that a willful violation of rule 1-110 of the Rules of Professional Conduct must result in suspension.

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.

Furthermore, 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 Silvertown* (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.)

Respondent has been found culpable of failing to comply with several of the condition 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.

The State Bar recommends that respondent be actually suspended from the practice of law for 90 days. In support of its discipline recommendation, the State Bar cites to *Conroy v. State Bar* (1990) 51 Cal.3d 799, *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697 and *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813. After reviewing and considering these cases, as well as the standards set forth above, the court concurs that the appropriate discipline in this matter should include a 90-day period of actual suspension.

RECOMMENDED DISCIPLINE

The court hereby recommends that respondent **ROBERT E. OSMUNDSON** 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 90 days and until the State Bar Court grants a motion to terminate respondent’s actual suspension at its conclusion or upon such later date ordered by the court. (Rules Proc. of State Bar, rule 205(a)-(c).)

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, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii). (See also, Rules Proc. of State Bar, rule 205(b).)

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

It is also 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 actual suspension, whichever is later, and furnish satisfactory proof of such to the State Bar's Office of Probation within said period.

It is further recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 (thirty) and 40(forty) days, respectively, after the effective date of the Supreme Court order herein. **Willful failure to comply with the provisions of rule 9.20 may result in revocation of probation; suspension; disbarment; denial of reinstatement; conviction of contempt; or criminal conviction.**

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 Business and Professions Code section 6140.7 and as a money judgment.

Dated: December 8, 2008



PAT E. McELROY
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on, December 8, 2008, I deposited a true copy of the following document(s):

DECISION

in a sealed envelope for collection and mailing on that date as follows:

- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**ROBERT E. OSMUNDSON
LAW OFC ROBERT E
OSMUNDSON
900 G ST #100
SACRAMENTO, CA 95814**

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

TREVA STEWART, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on December 8, 2008.


Laretta Cramer
Case Administrator
State Bar Court