

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO**

In the Matter of)	Case No.: 08-O-10128-LMA
)	
JANET ANN GALENO,)	DECISION
)	
Member No. 114814,)	
)	
<u>A Member of the State Bar.</u>)	

I. Introduction

In this default matter, respondent Janet Ann Galeno is charged with one count of professional misconduct, the failure to comply with conditions of probation. The court finds, by clear and convincing evidence, that respondent is culpable of the misconduct as more fully set forth below.

In view of respondent=s misconduct, considered in conjunction with the mitigating and aggravating circumstances and the goals of attorney discipline, the court recommends that respondent be disbarred.

II. Pertinent Procedural History

On January 18, 2008, Supervising Trial Counsel Donald Steedman (STC Steedman) sent by first-class mail a Notice of Intent to File Disciplinary Charges to respondent at her official membership records address (official address).¹ This letter was not returned to the State Bar of

¹Respondent maintained her official membership records address with the State Bar pursuant to Business and Professions Code section 6002.1. All further statutory references are to

California, Office of the Chief Trial Counsel (State Bar) by the United States Postal Service (USPS) as undeliverable or for any other reason.² The letter asked respondent to meet with STC Steedman, but respondent did not respond to the letter. STC Steedman also sent a courtesy copy to respondent's former counsel, Attorney Margolin.

This matter was assigned to Deputy Trial Counsel Treva R. Stewart (DTC Stewart) in February 2008, and on March 3, 2008, the State Bar filed and served a Notice of Disciplinary Charges (NDC) against respondent. A copy was served on respondent at her official address by certified mail, return receipt requested. On April 15, 2008, the USPS returned the return receipt to the State Bar as unclaimed.

On March 5, 2008, the State Bar Court filed and served a Notice of Assignment and Notice of Initial Status Conference,³ setting an initial conference for April 14, 2008.

Also on March 5, 2008, DTC Stewart attempted to contact respondent by telephone at her official membership records telephone number. The greeting at that number stated in part, "this is Janet Galeno . . . please leave a message." DTC Stewart left a message identifying herself, stating that she was calling from the State Bar regarding the NDC in this case, leaving her telephone number, and requesting that respondent return her call as soon as possible.

the Business and Professions Code unless otherwise indicated.

²Pursuant to Evidence Code section 452, subdivision (h), the court takes judicial notice of all respondent's official membership records addresses to the date of the filing of this decision and admits into evidence exhibit one attached to the State Bar's motion for entry of respondent's default (a certified copy of respondent's address history on file in the State Bar's Membership Records Department as of April 18, 2008).

³This notice and all other documents sent to respondent by the court, except for the order entering respondent's default, were sent to respondent at her official address by first-class mail, postage fully prepaid. The order entering default was sent to respondent at her official address by certified mail, return receipt requested. None of the various documents that the court served on respondent were returned to the court. On May 20, 2008, the court received a return receipt from the same copy of the order served on respondent, which contains a signature that appears to be that of respondent; however, the return receipt does not indicate that it was signed by the addressee.

Respondent had not returned the telephone call as of April 24, 2008.

On the same date, DTC Stewart also sent the NDC via facsimile to respondent at her official membership records fax number; however, the receipt showed that the faxes did not go through. DTC Stewart also performed various internet searches to locate respondent, but was able to locate no viable listings.

Respondent failed to appear at the status conference on April 14, 2008, either in person or through counsel. The court filed and served a Status Conference Order the following day.

On April 24, 2008, DTC Stewart contacted Attorney Margolin by telephone, who confirmed that he had received the 20-day letter but stated that he was not representing respondent in the current case. However, Attorney Margolin stated that after receiving the letter, he had attempted unsuccessfully to contact respondent.

On April 24, 2008, the State Bar filed and served a motion for the entry of respondent=s default. A copy was served on respondent at her official address by certified mail, return receipt requested. The record does not reflect whether this document was returned to the State Bar.

On May 12, 2008, the court filed and served an Order for Entry of Default (Rule 200 - Failure to File Timely Response), Order Enrolling Inactive and Further Orders.⁴

On June 3, 2008, the State Bar filed and served a brief on culpability and discipline and requested a waiver of a default hearing.

III. Findings of Fact and Conclusions of Law

All factual allegations of the NDC are deemed admitted upon entry of respondent=s default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

A. Jurisdiction

Respondent was admitted to the practice of law in California on December 3, 1984, and

⁴The court=s order that respondent be involuntarily enrolled as an inactive member under section 6007, subdivision (e), was effective three days after service of the court=s order.

has been a member of the State Bar of California at all times since that date.

B. Facts and Culpability

On January 20, 2006, respondent signed a stipulation in case number 05-O-02401 et al. in which she admitted professional misconduct, agreed to receive actual suspension, and agreed to comply with certain conditions of probation. These conditions were specified in the stipulation that respondent signed. On June 13, 2006, the Supreme Court filed an order imposing discipline in that case and requiring respondent to comply with specified conditions of probation. The order became effective on July 13, 2006. Notice of the order was properly served upon respondent at her official address. Respondent received the order and was aware of it. Respondent has remained on probation at all times since July 13, 2006.

On June 22, 2006, the Office of Probation mailed a reminder letter to respondent setting forth the conditions of probation. Respondent received this letter.

One of these conditions required respondent to submit quarterly reports on each January 10, April 10, July 10, and October 10 of the probation period. Respondent violated this condition by failing to submit quarterly reports prior to October 10, 2006; January 10, 2007; April 10, 2007; July 10, 2007; October 10, 2007; and January 10, 2008.⁵

Another condition of respondent's probation required her to contact the Office of Probation by August 12, 2006, to schedule a meeting with her assigned probation deputy. However, respondent initially contacted the Office of Probation on September 8, 2006.

Another condition of probation required respondent to meet with the probation deputy promptly upon request. On December 28, 2007, the probation deputy left a voice message for respondent at her official membership records telephone number, directing her to contact the probation deputy for a meeting. Respondent received the voice message but did not contact the

⁵Although the NDC sets forth the last date in this series as January 10, 2007, it appears to be a typographical error, and the correct date would logically be the next due date in chronological order. However, even if the court were to disregard the last date in the series, it is clear that respondent failed to timely submit quarterly reports on the remaining five dates.

probation deputy. As of March 3, 2008, respondent had not met with the probation deputy.

Business and Professions Code Section 6068, Subdivision (k)

The State Bar proved by clear and convincing evidence that respondent willfully violated section 6068, subdivision (k). That statute provides that it is an attorney's duty "[t]o comply with all conditions attached to any disciplinary probation, including a probation imposed with the concurrence of the attorney." By failing to submit quarterly reports, make timely initial contact with the Office of Probation, and meet with the probation deputy upon request, respondent failed to comply with her disciplinary probation, in violation of section 6068, subdivision (k).

IV. Mitigating and Aggravating Circumstances

A. Mitigation

Because respondent's default was entered, no evidence in mitigation was offered in this proceeding, and none can be gleaned from this record. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)⁶

B. Aggravation

Respondent has two prior records of discipline (std. 1.2(b)), as set forth below.

On May 12, 2005, the Supreme Court filed an order imposing on respondent a one-year stayed suspension, a one-year probation on conditions, and a 30-day actual suspension in case number 03-O-02448. In that case, respondent stipulated that, in one client matter, she practiced law and held herself out as entitled to practice law when she was not an active member of the State Bar. She also misrepresented to her client that she was entitled to practice law by failing to inform the client otherwise, thereby committing an act involving moral turpitude or dishonesty; collected and retained an illegal fee for services performed while she was not entitled to practice law; and failed to participate in the State Bar investigation of the matter. This misconduct took place between July 25, 2002, and September 22, 2003. No aggravating circumstances were

⁶All further references to standards are to this source.

found, and the only mitigation was respondent's lack of a prior record of discipline.

On June 13, 2006, the Supreme Court filed an order imposing on respondent a one-year stayed suspension, a two-year probation, and an actual suspension of 90 days and until respondent made specified restitution as ordered. In that case, number 05-O-02401 et al., respondent stipulated that, in one client matter, she held herself out to her clients as entitled to practice law when she was not; she practiced law when not entitled to do so; she charged and collected an illegal fee for legal services while not entitled to practice law; she failed to release promptly, upon termination of employment and upon client request, all client papers and property; she failed to participate in the disciplinary investigation of this client matter; and she disobeyed a court order by failing to comply with certain conditions of her earlier probation. This misconduct took place between December 2001 and January 10, 2006. In aggravation, she had one prior record of discipline, her misconduct significantly harmed her clients, and she committed multiple acts of misconduct. In mitigation, she acted in good faith and experienced serious family problems at the time of the misconduct.

The court agrees with the State Bar that respondent's failure to participate in this disciplinary proceeding prior to the entry of her default is an aggravating circumstance. (Std. 1.2(b)(vi).) However, the court declines to find additional aggravation based on the failure to participate in the disciplinary proceedings prior to the entry of the default, as any such additional aggravation would be duplicative. (See *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 76-77.)

V. Discussion

The purpose of disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession, and 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 Silverton* (2005) 36 Cal.4th 81, 92.)

In this case, the standards provide for discipline ranging from suspension to disbarment depending on the gravity of the offense or the harm, if any, to the victim. (Std. 2.6.) 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. The State Bar recommends disbarment.

Respondent has been found culpable in this matter of one count of failing to comply with conditions attached to a prior disciplinary probation. The court is guided by *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646 (*Rose*), one of the cases cited by the State Bar, in which the Supreme Court ordered disbarment. There, *Rose* failed to comply timely with probation conditions that required him to attend and satisfactorily complete Ethics School, develop an approved law office management plan, and complete an approved law office management course. Although *Rose* had three prior records of discipline, whereas there are only two present in this case, the court notes that the present case presents the serious aggravating circumstance that respondent failed to participate in the disciplinary proceedings prior to the entry of her default, whereas *Rose* participated in his disciplinary proceedings. In addition, *Rose* presented evidence in mitigation, whereas none appears in the present case.

The court concludes that *Rose* presents overall a similar case to that currently before the court. Moreover, the court sees no good cause in this case to recommend a discipline lower than that called for under standard 1.7(b), which provides for disbarment upon a finding of culpability in a disciplinary proceeding if the member has a record of two prior impositions of discipline unless the most compelling mitigating circumstances predominate. Here, as previously stated, no mitigation appears. While the court is cognizant that the misconduct from respondent's first prior disciplinary proceeding took place during the same time as much of the misconduct in the second case, the court also notes that respondent's failure to promptly return papers at the client's request upon termination of employment, failure to cooperate in the State Bar

investigation, and failure to comply with certain probation conditions of respondent's first disciplinary proceeding all took place after respondent had signed the stipulation in her first disciplinary case. Thus, as in *Rose*, probation and suspension appear to have proven inadequate to deter future misconduct. Under all of the circumstances, the court agrees with the State Bar that disbarment is warranted.

VI. Recommended Discipline

Accordingly, the court hereby recommends that respondent Janet Ann Galeno be disbarred from the practice of law in the State of California and that her 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, after the effective date of its order imposing discipline in this matter.⁷

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 Business and Professions Code section 6007, subdivision (c)(4), and rule 220(c) of the

⁷Respondent is required to file a rule 9.20(c) affidavit even if she has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

Rules of Procedure of the State Bar. The inactive enrollment will become effective three calendar days after this order is filed.

Dated: August ___, 2008

LUCY ARMENDARIZ

Judge of the State Bar Court