

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 08-O-11322-PEM
)	
JOHN WILLIAM JOHANSON)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 82001)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

I. Introduction and Pertinent Procedural History

This default matter was submitted for decision on August 14, 2008. At the time of submission, the State Bar of California (State Bar) was represented in this matter by Deputy Trial Counsel Maria Oropeza (DTC Oropeza). Respondent John William Johanson (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 May 7, 2008. A copy of the NDC was properly served on respondent on May 7, 2008, in the manner set forth in rule 60 of the Rules of Procedure of the State Bar of California (Rules of Procedure).¹ The NDC was returned by the U.S. Postal Service, but a return card was received by the State Bar signed by “Graham.”

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

As respondent did not file a response to the NDC, on July 8, 2008, the State Bar filed and properly served on respondent a motion for the entry of respondent's default.²

When respondent failed to file a written response within ten days after service of the motion for the entry of his default, on July 25, 2008, the court 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; however, it was subsequently returned to the court by the U.S. Postal Service as undeliverable.

Thereafter, the State Bar waived the hearing in this matter, and this matter was submitted for decision.⁴

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

A. Jurisdiction

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).)

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

³Respondent'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.

⁴Exhibit 1 attached to the State Bar's July 8, 2008, motion for the entry of respondent's default is admitted into evidence.

Respondent was admitted to the practice of law in California on November 29, 1978, and has been a member of the State Bar of California at all times since that date.

B. Case No. 08-O-11322

On or about November 28, 2006, the California Supreme Court filed an order in case number S146932 (State Bar Case No. 04-O-11698, 05-O-02925 (Cons.)) suspending respondent from the practice of law, staying the imposition of suspension, placing respondent on probation for a period of two years, and requiring respondent to comply with specified conditions of probation. The probation conditions were set forth in a stipulation that respondent signed.

Notice of the order was duly and properly served upon respondent in the manner prescribed by California Rule of Court 8.532 at respondent's address as maintained by the State Bar in accordance with Business and Professions Code section 6002.1.⁵

At all times thereafter, respondent had notice of and was aware of the November 28, 2006 Supreme Court order and each of the probation conditions. On or about December 20, 2006, and March 11, 2008, the State Bar's Office of Probation (Office of Probation) mailed letters to respondent both of which contained (1) the November 28, 2006 Supreme Court order, (2) the conditions of probation, and (3) information concerning how to comply with those conditions. Respondent received both letters shortly after they were mailed.

The November 28, 2006 Supreme Court order became effective on or about December 18, 2006, and thereafter remained in full force and effect.

One of the probation conditions provided in relevant part as follows:

⁵Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation.

Respondent failed to contact the Office of Probation prior to the expiration of the thirty day deadline and failed to contact the Office of Probation at any time thereafter. As of May 7, 2008, respondent had failed to schedule the required meeting.⁶

A second condition of probation required respondent to submit quarterly reports as follows:

Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

Respondent failed to timely submit the following quarterly probation reports to the Office of Probation that were due on April 10, 2007, July 10, 2007, October 10, 2007, January 10, 2008, and April 10, 2008. As of May 7, 2008, respondent had failed to submit any of the required probation reports.⁷

A third condition of probation stated as follows:

Respondent must obtain psychiatric or psychological help/treatment from a duly licensed psychiatrist, psychologist or clinical social worker at respondent's own expense a minimum of 2 times per month and must furnish evidence to the Office of Probation that Respondent is so

⁶May 7, 2008 reflects the date the NDC was filed. There is no indication in the record that respondent has since made any efforts to contact the Office of Probation.

⁷There is no indication in the record that respondent has since submitted any of the required probation reports to the Office of Probation.

complying with each quarterly report. Help/treatment should commence immediately, and in any event, no later than thirty (30) days after the effective date of the discipline in this matter. Treatment must continue for ___ days *or* 6 months *or* ___ years *or*, the period of probation or until a motion to modify this condition is granted and that ruling becomes final.

If the treating psychiatrist, psychologist, or clinical social worker determines that there has been a substantial change in Respondent's condition, Respondent or Office of Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 550 of the Rules of Procedure of the State Bar. The motion must be supported by a written statement from the psychiatrist, psychologist, or clinical social worker, by affidavit or under penalty of perjury, in support of the proposed modification.

At no time did respondent or the Office of Chief Trial Counsel file a motion to modify the above-quoted mental health treatment condition. At no time did the State Bar Court or the Supreme Court issue an order modifying the above-quoted mental health treatment condition. As of May 7, 2008, respondent had failed to provide evidence to the Office of Probation to establish that he has complied with the above-quoted mental health treatment condition.⁸

A fourth condition of probation stated as follows:

Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.

Respondent failed to attend Ethics School prior to the one-year period and failed to provide the required proof to the Office of Probation within the one-year period. As of May 7, 2008, respondent had failed to attend Ethics School and had failed to provide the required proof to the Office of Probation.⁹

⁸There is no indication in the record that respondent has since provided any evidence of compliance with this mental health treatment condition to the Office of Probation.

⁹There is no indication in the record that respondent has since attended Ethics School.

III. Conclusions of Law

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) timely submit quarterly reports to the Office of Probation on April 10, 2007, July 10, 2007, October 10, 2007, January 10, 2008, and April 10, 2008; (3) furnish evidence of psychological help/treatment to the Office of Probation with each quarterly report; and (4) provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar's Ethics School, and passage of the test given at the end of that session, respondent willfully failed to comply with all conditions attached to a disciplinary probation, in violation of section 6068, subdivision (k).

IV. Mitigating and Aggravating Circumstances

A. Mitigation

Respondent bears the burden of establishing mitigation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)¹⁰ Since respondent did not participate in these proceedings, the court has been provided no basis for finding mitigating factors.

B. Aggravation

Respondent's prior record of discipline includes three previous impositions of discipline. (Std. 1.2(b)(i).)

On August 28, 1998, the California Supreme Court issued an order (S071230) suspending respondent from the practice of law for two years, stayed, with a two-year

¹⁰All further references to standard(s) are to this source.

probationary period. This discipline resulted from respondent's failure to perform legal services competently, misappropriation of client funds, failure to withdraw from a trust account funds belonging to him at the earliest reasonable time after his interest became fixed, misrepresentations of fact to his client and a medical provider, and practicing law in another jurisdiction without authorization. In mitigation, respondent had no prior record of discipline; no harm resulted from the misconduct; respondent displayed spontaneous candor and cooperation to the State Bar; respondent promptly took objective steps to spontaneously demonstrate remorse and recognition of wrongdoing; the Nevada Bar investigated and found no ethical violation; respondent acted in good faith in obtaining approval by the Nevada Bar of his advertising, which advertising clearly stated that he was licensed only in California and would handle only California matters; and the delay in paying two medical providers was caused by a miscommunication with one provider and an office error with respect to the other provider. No aggravating factors were identified.

On November 28, 2006, the California Supreme Court issued an order (S146932) suspending respondent from the practice of law for two years, stayed, with a two-year probationary period, and an actual suspension of 60 days. This discipline was imposed as a result of respondent's failure to promptly release a client's file, his violation of a court order, and his failure to deposit client funds into a client trust account. In aggravation, respondent had one prior record of discipline, the misconduct significantly harmed his client and the public, and respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. In mitigation, respondent displayed candor and cooperation with the State Bar, and had suffered the death of his father and two close friends.

On August 27, 2008, the California Supreme Court issued an order (S164741) suspending respondent from the practice of law for four years, stayed, with a two year actual suspension and until he shows proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice, and present learning and ability in the law, pursuant to standard 1.4(c)(ii), and until the State Bar Court grants a motion to terminate respondent's actual suspension under Rules of Procedure, rule 205.¹¹ In this default matter, respondent was found culpable of failing to communicate with his client and failing to maintain his current address in the State Bar's official membership records. In aggravation, respondent displayed a lack of cooperation during the disciplinary proceedings and had a prior record of discipline. No mitigating factors were found.

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.

Standards 2.6 and 1.7(b) apply in this matter. Standard 2.6 recommends suspension or disbarment (depending on the gravity of the offense or the harm to the victim) for culpability of a member of a violation of Business and Professions Code section 6068. Standard 1.7(b) provides that, if a member is found culpable of

¹¹Said matter was pending before the California Supreme Court at the time the State Bar filed its brief on culpability and discipline in the present matter. Therefore, pursuant to Evidence Code section 452, subdivision (h), the court takes judicial notice of the Supreme Court's subsequent order regarding discipline in case no. S164741.

professional misconduct in any proceeding in which discipline may be imposed and the member has a record of two prior impositions of discipline, the degree of discipline in the current proceeding must be disbarment unless the most compelling mitigating circumstances clearly predominate.

The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silvertown* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) The standards are not mandatory; they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

The State Bar is requesting that respondent be disbarred. In support of disbarment, the State Bar cited *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646. In *Rose*, the attorney was found culpable of failing to timely complete three conditions of his disciplinary probation.¹² While the attorney did ultimately comply with the conditions of his probation, his compliance was not timely. In aggravation, the present misconduct involved multiple acts of wrongdoing and the attorney had been previously disciplined in four different matters. In mitigation, the Review Department gave some weight to the attorney’s cooperation and significant weight to the attorney’s community service. Despite the attorney’s significant evidence in mitigation, the Review Department found that the previously imposed probations and suspensions had proven inadequate in the past to protect against future misconduct. (*Id.* at p. 655.)

¹²Said conditions required that the attorney: (1) attend and satisfactorily complete the State Bar Ethics School, (2) develop an approved law office management plan, and (3) complete an approved law office management course.

Consequently, the Review Department concluded that disbarment was appropriate to protect the public, courts, and legal profession. (*Ibid.*)

The present case is similar to *Rose* in that respondent has been previously disciplined on multiple occasions. Unlike *Rose*, however, respondent has made no effort to effectuate belated compliance with the conditions of his probation, has made no showing in mitigation, and has failed to participate in the present proceeding.

Consequently, the court finds no reason to deviate from standard 1.7(b) and is in agreement with the State Bar's recommendation that respondent should be disbarred.

VI. Recommended Discipline

The court recommends that respondent **John William Johanson** 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.

The court 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.

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).)

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: November _____, 2008

PAT E. McELROY
Judge of the State Bar Court