

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 08-O-12312-RAP
)	
KENNETH B. ALEXANDER)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 115336)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

I. Introduction and Pertinent Procedural History

This default matter was submitted for decision on September 29, 2009. Respondent is charged with 44 counts of failing to comply with conditions attached to a single disciplinary probation. At the time of submission, the State Bar of California (“State Bar”) was represented in this matter by Deputy Trial Counsel Elina Kreditor. Respondent **Kenneth B. Alexander** 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 June 24, 2009. A copy of the NDC was properly served on respondent on June 24, 2009, 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 as undeliverable.

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 August 19, 2009, 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 September 10, 2009, 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 August 19, 2009 motion for the entry of respondent's default and Exhibits 1-3 attached to the State Bar's September 23, 2009 brief regarding culpability and discipline are admitted into evidence.

Respondent was admitted to the practice of law in California on December 3, 1984, and has been a member of the State Bar of California at all times since that date.

B. Case No. 08-O-12312

In March 2005, respondent entered into a Stipulation Re Facts, Conclusions of Law and Disposition with the State Bar in State Bar Court Case Nos. 03-C-00723; 03-C-00724; 04-C-11676; 05-O-00411 (the “stipulation”). In the stipulation, respondent agreed to comply with certain conditions of probation in order to resolve the cases.

On March 8, 2005, the Hearing Department of the State Bar Court filed an order approving the stipulation and recommending the disposition set forth in the stipulation to the California Supreme Court.

On July 8, 2005, the California Supreme Court filed an order in case number S133429 (State Bar Court Case Nos. 03-C-00723; 03-C-00724; 04-C-11676; 05-O-00411 (Cons.)), relating to the stipulation. The Supreme Court ordered that respondent be suspended from the practice of law for four years, that execution of the suspension be stayed, and that he be placed on probation for five years with conditions, including the condition that he be actually suspended for 18 months and until he complied with standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct (“the Order”).⁵ The Order became effective on August 7, 2005. On or about July 8, 2005, the California Supreme Court Clerk served a copy of the Order on respondent by mail. Respondent received a copy of the Order.

As conditions of probation, the California Supreme Court ordered respondent to do the following:

- a. During the period of probation, comply with the State Bar Act and the Rules of Professional Conduct;

⁵All further references to standard(s) are to this source.

- b. Submit written quarterly reports to the State Bar's Office of Probation ("Office of Probation") on each January 10, April 10, July 10, and October 10 during the period of probation, stating under penalty of perjury whether respondent had complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar;
- c. Report to the State Bar's Membership Records Office ("Membership Records") and to the Office of Probation all changes of information, including his current office address and telephone number or, if no office was maintained by him, an address to be used for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code, within 10 days of any change;
- d. Subject to a proper or good faith assertion of any applicable privilege, fully, promptly, and truthfully answer any inquiries of the Office of Probation directed to him, whether personally or in writing, relating to whether he is complying or has complied with the conditions of his probation;
- e. Comply with all conditions of probation imposed in his underlying criminal matter and so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation;
- f. Make minimum monthly restitution payments as laid out in the stipulation and provide satisfactory proof of such payments to the Office of Probation with each quarterly report; and
- g. Abstain from the use of any alcoholic beverages, and not consume or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia ("abstinence"), except with a valid prescription, during the probation period, and to report his compliance with this condition by

a statement under penalty of perjury in each of his quarterly reports due to the Office of Probation.

On or about July 18, 2005, the Office of Probation mailed a letter to respondent at his membership records address with information regarding all of the probation conditions contained in the Order. With the letter, the Office of Probation sent a blank quarterly report form that respondent could use to report his compliance to the Office of Probation. In the letter, the Office of Probation informed respondent that his first quarterly report was due on October 10, 2005. Respondent received the letter.

1. Quarterly Probation Reports (Counts 1 - 11)

Respondent was required under the terms of his probation to submit quarterly reports to the Office of Probation in a timely manner. Respondent, however, filed his first three quarterly reports late and then failed to file any subsequent quarterly reports, as follows:

Quarterly Report #	Due Date	Date Filed
1	October 10, 2005	October 12, 2005
2	January 10, 2006	March 2, 2006 ⁶
3	April 10, 2006	April 12, 2006
4	July 10, 2006	N/A
5	October 10, 2006	N/A
6	January 10, 2007	N/A
7	April 10, 2007	N/A
8	July 10, 2007	N/A
9	October 10, 2007	N/A
10	January 10, 2008	N/A
11	April 10, 2008	N/A

2. Criminal Probation Declarations (Counts 12 - 22)

Respondent was required under the terms of his probation to submit, in conjunction with his quarterly reports, declarations under penalty of perjury regarding his compliance with all conditions of probation imposed in his underlying criminal matter. Between October 10, 2005

⁶ In this report, respondent failed to state whether he complied with the State Bar Act and the Rules of Professional Conduct during the period covered by this report.

and April 10, 2008, respondent was therefore required to submit 11 declarations to the Office of Probation regarding his compliance with all conditions of probation imposed in his underlying criminal matter. Respondent did not submit any such declarations to the Office of Probation.

3. Proof of Restitution (Counts 23 - 33)

Respondent was required under the terms of his probation to make restitution payments and provide the Office of Probation with proof of said payments with his quarterly reports. Between October 10, 2005 and April 10, 2008, respondent was therefore required to submit proof of restitution payments with his 11 quarterly reports. Respondent did not submit such proof to the Office of Probation as required by the terms of his probation.

4. Abstinence Declarations (Counts 34 - 42)

Respondent was required under the terms of his probation to abstain from the use of alcoholic beverages and non-prescription narcotics and to report his compliance with this condition by a statement under penalty of perjury (“abstinence declaration”) in each of his quarterly reports due to the Office of Probation. Between October 10, 2005 and April 10, 2008, respondent was required to submit an abstinence declaration with each of his 11 quarterly reports. During this time period, however, respondent failed to provide the Office of Probation with nine required abstinence declarations.

5. Completion of 12-Month Residential Alcohol Treatment (Count 43)

Respondent was required under the terms of his probation to complete a 12-month residential alcohol treatment and recovery program, and to report, under penalty of perjury, his completion of the program upon request of the Office of Probation. On or about May 9, 2008, the Office of Probation sent a letter to respondent’s membership records address requesting that he immediately submit proof of completion of a 12-month residential program to the Office of

Probation. Respondent received this letter, but failed to report to the Office of Probation that he had completed a 12-month residential treatment program.

6. Compliance with Medication Recommendations (Count 44)

Respondent was required under the terms of his probation to comply with all recommendations for medication management of his depression made by a qualified medical provider, and to report his compliance with these recommendations in his quarterly reports and upon request by the Office of Probation. On or about September 23, 2005, respondent was evaluated by a qualified medical provider who prescribed three medications for respondent to take (“medication recommendation”).

On May 9, 2008, the Office of Probation sent respondent a letter requesting that he immediately submit to the Office of Probation proof showing his compliance with the medication recommendation. Respondent, however, failed to report his compliance with the medication recommendation to the Office of Probation.

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.

The State Bar charged each of respondent’s probation violations as an individual count. For instance, his failure to file or timely file 11 quarterly reports was charged as 11 individual counts of misconduct, rather than one count alleging his failure to file or timely file 11 quarterly reports. As illustrated below, the 44 counts of misconduct alleged in the NDC could have been adequately alleged in 6 counts. While the State Bar has discretion over its charging decisions, the court gives no additional weight to the gratuitous and redundant charges reflected in the NDC.

A. Quarterly Probation Reports (Counts 1 - 11)

By failing to timely file with the Office of Probation his quarterly reports due on October 10, 2005, January 10, 2006, and April 10, 2006, and failing to file eight additional quarterly reports with the Office of Probation between July 10, 2006 and April 10, 2008, respondent willfully failed to comply with all conditions attached to a disciplinary probation, in violation of section 6068, subdivision (k).

B. Criminal Probation Declarations (Counts 12 - 22)

By failing to provide to the Office of Probation 11 declarations stating that he complied with all conditions of probation imposed in his underlying criminal matter between October 10, 2005 and April 10, 2008, respondent willfully failed to comply with all conditions attached to a disciplinary probation, in violation of section 6068, subdivision (k).

C. Proof of Restitution (Counts 23 - 33)

By failing to provide to the Office of Probation proof of payment of restitution with his eleven quarterly reports that were due between October 10, 2005 and April 10, 2008, respondent willfully failed to comply with all conditions attached to a disciplinary probation, in violation of section 6068, subdivision (k).

D. Abstinence Declarations (Counts 34 - 42)

By failing to provide to the Office of Probation nine declarations stating whether he had maintained his abstinence from alcohol and drugs between January 10, 2006 and April 10, 2008, respondent willfully failed to comply with all conditions attached to a disciplinary probation, in violation of section 6068, subdivision (k).

E. Completion of 12-Month Residential Alcohol Treatment (Count 43)

By failing to report completion of a 12-month residential treatment program upon request of the Office of Probation, respondent willfully failed to comply with all conditions attached to a disciplinary probation, in violation of section 6068, subdivision (k).

F. Compliance with Medication Recommendations (Count 44)

By failing to report his compliance with the medication recommendation upon request of the Office of Probation, 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. (Std. 1.2(e).) 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 two previous impositions of discipline. (Std. 1.2(b)(i).)

On September 18, 2001, the California Supreme Court issued an order (S099222) suspending respondent from the practice of law for three years, stayed, with a four-year probationary period, and an actual suspension of one year. This discipline resulted from respondent's misconduct in 11 client matters including, among other things, failing to perform, failing to communicate, improper withdrawal, failing to refund unearned fees, failing to maintain client funds in trust, and moral turpitude relating to grossly negligent supervision of his client trust account. In addition, respondent received five criminal convictions for: (1) hit and run, (2) driving on a suspended license, (3) public intoxication, (4) driving under the influence of

alcohol, and (5) disturbing the peace. In mitigation, respondent had no prior record of discipline, he displayed spontaneous candor and cooperation to the State Bar, he was suffering from extreme emotional difficulties or physical disabilities at the time of the misconduct, and he suffered extreme difficulties in his personal life at the time of the misconduct. In aggravation, respondent committed multiple acts of misconduct, his misconduct caused significant harm, and respondent's misconduct involved trust funds.

On July 8, 2005, the California Supreme Court issued an order (S133429) suspending respondent from the practice of law for four years, stayed, with a five-year probationary period, and an actual suspension of 18 months and until he complies with standard 1.4(c)(ii). This discipline resulted from respondent's failure to comply with 28 conditions of his disciplinary probation in Supreme Court Case No. S099222. In addition, respondent received three additional criminal convictions for: (1) hit and run, (2) driving under the influence, and (3) felony driving under the influence. In aggravation, respondent committed multiple acts of misconduct, caused significant harm, and had one prior record of discipline. In mitigation, respondent displayed candor and cooperation with the State Bar.

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 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 Silverton* (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.)

Here, respondent has been disciplined on two previous occasions. This is also not the first time that respondent has failed to comply with the conditions of disciplinary probation. Respondent 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 **Kenneth B. Alexander**, State Bar Number 115336, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

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: December 9, 2009.

RICHARD A. PLATEL
Judge of the State Bar Court