

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

In the Matter of)	Case No.: 09-H-12713-LMA
)	
GEORGE A. JUAREZ,)	DECISION
)	
Member No. 75295,)	
)	
<u>A Member of the State Bar.</u>)	

I. Introduction

In this reproof violation proceeding, the court finds that respondent **GEORGE A. JUAREZ** is culpable of willfully violating three of the six conditions attached to the public reproof imposed on him in 2008 in *In the Matter of George Juarez*, State Bar Court case number 07-O-10786-LMA (hereafter *Juarez I*). In view of respondent’s misconduct, after weighing the aggravating evidence with the mitigating evidence, the court recommends that he be placed on one year’s stayed suspension and two years’ probation on conditions, including that he be suspended from practice during the first thirty days of his probation.

II. Pertinent Procedural History

On July 7, 2009, the Office of the Chief Trial Counsel of the State Bar of California (hereafter State Bar) initiated this proceeding by filing with the court and serving on respondent a notice of disciplinary charges (hereafter NDC). Respondent filed his response to the NDC on August 31, 2009.

On January 19, 2010, the parties filed an extensive stipulation as to facts and conclusions of law and admission of documents into evidence in the present case (hereafter January 2010 stipulation). (Rules Proc. of State Bar, rule 132.)¹ Even though the court approved the January 2010 stipulation, the court is not bound by the stipulated conclusions of law. Instead, the court accepts only those stipulated conclusions that are appropriate and clearly supported by the record. (*In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 407, 409, 410; see also *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 128 [even the review department must independently review stipulated conclusions of law].)

A one-day trial was held on January 20, 2009. After the parties filed posttrial briefs, the court took the matter under submission for decision on February 8, 2010.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent was admitted to the practice of law in the State of California on July 14, 1977, and has been a member of the State Bar of California since that time.

B. *Juarez I*

In *Juarez I*, respondent and the State Bar entered into a stipulation regarding facts, conclusions of law, and disposition (Rules Proc. of State Bar, rule 133) (hereafter *Juarez I* stipulation). In the *Juarez I* stipulation, the parties stipulated that respondent willfully violated his duty, under Business and Professions Code section 6068, subdivision (m),² to communicate with his clients and to keep them apprised of significant developments in their cases in a single

¹ In the stipulation, the parties incorrectly recite that they entered into the stipulation “Pursuant to rule 131 of the Rules of Procedure of the State Bar of California.” The parties entered into the stipulation in accordance with or under Rules of Procedure of the State Bar, rule 132.

² Unless otherwise indicated, all further statutory references are to the Business and Professions Code.

client matter because (1) respondent failed to appear at scheduled meetings with the client on March 30 and April 1, 2005, and (2) respondent failed to update the client on the status of her case.

Moreover, in the *Juarez I* stipulation, respondent agreed to accept, as the appropriate level of discipline for his violations of section 6068, subdivision (m), a public reproof with six specified reproof conditions attached to it for one year.

On January 25, 2008, after “Finding that the stipulation protects the public and that the interests of Respondent will be served by [the six] conditions attached to the reproof,” the State Bar Court filed an order in *Juarez I* in which the court approved the *Juarez I* stipulation and imposed, on respondent, the stipulated public reproof with six conditions attached (§ 6078; Cal. Rules of Court, rule 9.19(a)). Soon after January 25, 2008, respondent received both notice and actual knowledge of the stipulated public reproof (including the six conditions attached to it).

On February 14, 2008, the court’s January 25, 2008 order in *Juarez I* became final and respondent’s public reproof in *Juarez I* became effective. Accordingly, for one year from February 14, 2008, through February 17, 2009,³ respondent had an independent professional duty to comply with the six conditions attached to his reproof. (Cal. Rules of Court, rule 9.19(b); Rules Prof. Conduct, rule 1-110 [hereafter rule 1-110].)

C. Violations of the Conditions Attached to Respondent’s Reproof in *Juarez I*

1. Meeting-with-Office-of-Probation Condition

One of the conditions attached to respondent’s reproof in *Juarez I* required that he contact and meet with the State Bar’s Office of Probation as follows:

³ Obviously, a one-year period that began on February 14, 2008, would have ended on February 14, 2009. But February 14, 2009, was a Saturday, and the following Monday, February 16, 2009, was a holiday. Thus, for purposes administering respondent’s public reproof, the one-year period following the February 14, 2008 effective date of respondent’s reproof, ended on Tuesday, February 17, 2009.

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 [his reprobation]. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

Respondent willfully violated his duty, under rule 1-110, to comply this reprobation condition because respondent failed to contact the Office of Probation and to schedule the required meeting no later than 30 days after the February 14, 2008 effective date of his public reprobation. What is more, to date, respondent has still not contacted the Office of Probation and scheduled a meeting. Nor has respondent ever otherwise meet with the Office of Probation in accordance with the foregoing reprobation condition.

2. Reporting Condition

Another one of the conditions attached to respondent's reprobation in *Juarez* I required that respondent submit reports to the Office of Probation 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 condition period attached to the reprobation. 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 the reprobation during the preceding calendar quarter. Respondent must also state in each report 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 thirty (30) days, that report must be submitted on the next following 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 condition period and no later than the last day of the condition period.

Respondent willfully violated his duty, under rule 1-110, to comply with this reprobation condition because he failed to submit (1) the four, quarterly reports that were due no later than April 10, 2008; July 10, 2008; October 10, 2008; and January 10, 2009; and (2) the final report

that was due no later than February 17, 2009. To date, respondent has not submitted any of these five reports to the Office of Probation.

3. Ethics-School Condition

Another one of the conditions attached to respondent's reproof in *Juarez I* required that respondent successfully complete the State Bar's Ethics School no later than February 17, 2009 as follows:

Within one (1) year of the effective date of 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 willfully violated his duty, under rule 1-110, to comply with this reproof condition because he failed to attend Ethics School on or before February 17, 2009. Moreover, to date, respondent has still not attended Ethics School.

D. Additional Communications From the State Bar

On February 27, 2009, the Office of Probation mailed respondent a letter again reminding him of the conditions of his reproof and requesting that he immediately submit the required reports and contact the Office of Probation. Even though respondent received this letter shortly after it was mailed, respondent failed to submit the required reports or to contact the Office of Probation.

On June 11, 2009, a State Bar Supervising Trial Counsel mailed respondent a letter stating that the State Bar was "interested in resolving [the current case] before filing [an NDC and invite you to meet to discuss settlement. Please call me immediately to arrange a meeting to take place on or before **July 1, 2009**; otherwise, the NDC will be filed by the close of business on **July 1, 2009**." Even though respondent received this letter shortly after it was mailed, respondent failed to call or otherwise communicate with the Supervising Trial Counsel.

IV. Aggravation and Mitigation

A. Aggravation

1. Prior Record of Discipline

Respondent has one prior record of discipline, which is an aggravating circumstance. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i).)⁴ Respondent's prior record of discipline is the stipulated public reproof that was imposed on him in *Juarez I* in 2008. As noted *ante*, in *Juarez I*, respondent stipulated to willfully violating his duty, under section 6068, subdivision (m), to adequately communicate with his clients because, in a single client matter, respondent failed to appear at scheduled meetings with the client on March 30 and April 1, 2005, and failed to update the client on the status of her case.

2. Multiple Acts

Respondent's misconduct involves seven separate violations of the conditions attached to his private reproof in *Juarez I*. (Std. 1.2(b)(ii).) Five of the seven violations are for failing to submit any of the four, quarterly reports and the final report. "When an attorney commits multiple violations of the same [reproof] condition, the gravity of each successive violation increases. Respondent's [fifth] successive failure to timely file one of his reports unquestionably warrants [a very significant] level of discipline." (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 531.)

3. Indifference

Even after respondent learned that the State Bar had filed the present reproof violation proceeding against him, respondent failed to promptly rectify his misconduct by, at least, belatedly filing his four, quarterly reports; filing his final report; and attending and successfully completing Ethics School. Respondent indifference towards rectification of his misconduct is a

⁴ All further references to standards are to this source.

very serious aggravating circumstance. (Std. 1.2(b)(v); *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 702.) Moreover, respondent's indifference is particularly aggravating because respondent failed to respond to either the Office of Probation's February 27, 2009 letter or the Supervising Trial Counsel's June 11, 2009 letter and because respondent failed to consider or view those two letters as "calls" for him to rectify his misconduct.⁵

B. Mitigation

1. Emotional and physical difficulties

Respondent is entitled to some mitigation because, at the time he failed to comply with the reproof conditions, he suffered from multiple emotional and physical difficulties. Respondent credibly testified as to the serious strain that his mother's terminal illness and death placed on him during at least the first half of 2008. Respondent also credibly testified as to the serious health problems he incurred in 2008 and 2009 and as to how they interfered with his ability to function properly and work effectively. During the time of the misconduct, respondent suffered from sleep apnea, high blood pressure, and gastrointestinal issues, including surgery to remove a tumor and part of respondent's colon and resulting week-long hospitalization in October 2008. Without question, had respondent proffered expert testimony to establish that these difficulties were responsible for the misconduct and that respondent has demonstrated recovery and rehabilitation, respondent would be entitled to significantly much more mitigation for these difficulties. Respondent's failure to proffer such expert testimony, however, does not preclude the court from considering respondent's credible testimony on his emotional and physical difficulties in determining the appropriate degree of discipline. (*In re Brown* (1995) 12 Cal.4th 205, 222 [fact that attorney was ill at the time he engaged in misconduct was given some

⁵ The court rejects the State Bar's contention respondent's failures to respond to these two letters are "independent" aggravating circumstance. Clearly, respondent was under no duty to respond to the letters. Again, respondent's reproof period ended on February 17, 2009, and both of those letters were not mailed until after that date.

mitigation even though the attorney “offered no expert testimony to establish that his illness was ‘directly responsible’ for his misconduct”].)

The present case is distinguishable from the cases, such as *Bercovich v. State Bar* (1990) 50 Cal.3d 116, in which an attorney’s claim of emotional difficulties was rejected. For example, respondent has presented credible evidence of his emotional and physical difficulties, and respondent does not have a long history of failing to participate in disciplinary proceedings and permitting his default to be entered. Nor does respondent have a history of engaging in serious misconduct involving client matters.

2. Cooperation

Respondent stipulated to the facts establishing his culpability. Even though respondent stipulated to facts that were easily proved and even though respondent has a statutory duty to cooperate in State Bar disciplinary proceedings, the court finds that he is entitled to mitigation for his cooperation. (Std. 1.2(e)(v); *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 913.)

3. Remorse

Respondent expressed remorse for and acknowledged the wrongfulness of his failures to comply with the reproof conditions to which he, himself, agreed to comply when he executed the *Juarez I* stipulation. (Std. 1.2 (e)(vii).)

4. Good Character & Community Service

Even though respondent presented credible testimony as to his good character from two witnesses, the court is unable to give respondent any meaningful mitigation for that good character testimony because two witnesses are not a wide range of references in the legal and general communities who are aware of the full extent of respondent’s misconduct as required under standard 1.2(e)(vi). Nonetheless, the court may and does give respondent significant

mitigation for the substantial community and pro bono services that he provided after the parties executed the *Juarez I* stipulation. Respondent's substantial community and pro bono services were established by the very credible testimony of respondent's two witness and respondent. (*In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 840; see also *In re Brown, supra*, 12 Cal.4th at p. 223; *Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.)

V. Discussion

In determining the appropriate discipline to recommend in this matter, the court looks at the purposes of disciplinary proceedings and sanctions. 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. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

As found *ante*, respondent willfully violated his duty, under rule 1-110, to comply with the conditions attached to his public reproof in *Juarez I* by failing (1) to contact the Office of Probation and to schedule a meeting; (2) to submit his four, quarterly reports and a final report to the Office of Probation; and (3) to attend and successfully complete Ethics School.

For guidance in determining the appropriate level of discipline, the court first looks to the standards. (*In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The applicable standards in the instant matter are (1) standard 2.9, which provides that a willful violation of rule 1-110 must result in suspension and (2) standard 1.7(a), which provides that, when an attorney has a prior record of discipline, then "the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust."

Next, the court looks to caselaw for guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310 1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.) The case of *Conroy v. State Bar* (1990) 51 Cal.3d 799, is instructive on the issue of discipline here. In *Conroy*, the attorney was placed on one year's stayed suspension and one year's probation on conditions, including that the attorney be suspended during the first sixty days of his probation.

In *Conroy*, the attorney had previously been privately reprovved for committing three unrelated acts of misconduct. A condition attached to that reprovval required the attorney to take and pass the Professional Responsibility Examination (hereafter PRE) within one year. The attorney, however, failed to do so. In *Conroy*, the single extenuating factor was that the attorney took and passed the PRE at the next available opportunity. And the three aggravating circumstances in that case were (1) one prior record of discipline, (2) the attorney's default in the State Bar Court, and (3) the attorney's lack of remorse and failure to acknowledge the wrongfulness of his actions.

The Supreme Court was "extremely troubled by [the attorney's] failure 'to appreciate the seriousness of the charges in the instant proceeding or to comprehend the importance of participating in the disciplinary proceedings.' [Citation.] Despite numerous efforts by State Bar personnel to notify him of impending events and the consequences of nonappearance, [the attorney] remained unresponsive, totally ignoring his obligation to attend the hearing and explain his actions. [Citations.]" (*Conroy v. State Bar, supra*, 51 Cal.3d at pp. 805-806.)

In contrast to *Conroy*, respondent here has appeared and participated in this proceeding. In addition, respondent admitted his failures to comply with conditions attached to his reprovval and promised to timely comply with any probation conditions imposed on him now.

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On balance, the court finds that the appropriate level of discipline in the present proceeding is one years' stayed suspension and two years' probation with conditions, including that respondent be suspended from practice during the first thirty days of his probation.

VI. Recommended Discipline

The court hereby recommends that respondent **GEORGE A. JUAREZ**, State Bar number 75295, be suspended from the practice of law in California for one year, that execution of the one-year period of suspension be stayed, and he be placed on probation for two years subject to the following conditions:

1. Juarez is suspended from the practice of law in the State of California for the first 30 days of his probation.
2. Juarez is to comply with the provisions of the State Bar Act, the Rules of Professional Conduct of the State Bar, and all of the conditions of this probation.
3. Juarez is to maintain, with the State Bar's Membership Records Office and the State Bar's Office of Probation, his current office address and telephone number or, if no office is maintained, an address to be used for State Bar purposes (Bus. & Prof. Code, § 6002.1, subd. (a)(1)). In addition, Juarez is to maintain, with the State Bar's Office of Probation, his current home address and telephone number (Bus. & Prof. Code, § 6002.1, subd. (a)(5)). Juarez's home address and telephone number are not to be made available to the general public unless his home address is also his official address on the State Bar's Membership Records. (Bus. & Prof. Code, § 6002.1, subd. (d).) Juarez must notify the Membership Records Office and the Office of Probation of any change in this information no later than 10 days after the change.
4. Juarez is to submit written quarterly reports to the State Bar's Office of Probation no later than January 10, April 10, July 10, and October 10 of each year or part thereof in which he is on probation. Under penalty of perjury under the laws of the State of California, Juarez must state in each report whether he has complied with the State Bar Act, the Rules of Professional Conduct of the State Bar, and all conditions of this probation during the preceding calendar quarter. If the first report will cover less than 30 days, that report must be submitted on the next following quarter date, and cover the extended period.

In addition to the quarterly reports, Juarez is to submit a final report containing the same information during the last 20 days of his probation.

5. Subject to the assertion of any applicable privilege, Juarez is to fully, promptly, and truthfully answer all inquiries of the State Bar's Office of Probation that are directed to him, whether orally or in writing, relating to whether he is complying or has complied with the conditions of this probation.

6. Within the first year of his probation, Juarez is to attend and satisfactorily complete the State Bar's Ethics School; and to provide satisfactory proof of his successful completion of that program to the State Bar's Office of Probation. The program is offered periodically at either 180 Howard Street, San Francisco, California 94105-1639 or at 1149 South Hill Street, Los Angeles, California 90015-2299. Arrangements to attend the program must be made in advance by calling (213) 765-1287 and by paying the required fee. This condition of probation is separate and apart from Juarez's Minimum Continuing Legal Education requirements; accordingly, he is ordered not to claim any MCLE credit for attending and completing this program. (Accord, Rules Proc. of State Bar, rule 3201.)
7. This probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the period of this probation, if Juarez has complied with all the terms of probation, the order of the California Supreme Court suspending him from the practice of law for one year will be satisfied and that suspension will be terminated.

VII. Professional Responsibility Exam & Costs

The court further recommends that George A. Juarez be ordered to take and pass the Multistate Professional Responsibility Examination (hereafter MPRE) administered by the National Conference of Bar Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) within one year after the effective date of the Supreme Court order in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same year. Failure to pass the MPRE within the specified time results in actual suspension by the review department, without further hearing, until passage. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8; see also Cal. Rules of Court, rule 9.10(b); Rules Proc. of State Bar, rules 320, 321(a)&(c).)

Finally, the court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that those costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: May 5, 2010.

LUCY ARMENDARIZ
Judge of the State Bar Court

