PUBLIC MATTER

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STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: **09-O-13289**
	)	
NICHOLAS GEORGE DEMMA	)	**DECISION**
	)	
Member No. 47318	)	
	)	
A Member of the State Bar.	)	

INTRODUCTION

Respondent Nicholas George Demma was charged with one count of misconduct of violating the conditions of his probation imposed in a previous discipline case. Respondent failed to participate in this case either in-person or through counsel and his default was entered. The State Bar was represented by Deputy Trial Counsel David Sauber. The court finds by clear and convincing evidence that respondent is culpable of the charged violation. In view of respondent's misconduct and the evidence in aggravation, the court recommends that respondent be suspended for three years, execution of that suspension be stayed, and that he be suspended for a minimum of two years. He is to remain suspended until the State Bar Court grants a motion to terminate his suspension and he provides proof of his rehabilitation, fitness to practice and learning and ability in the general law.

PROCEDURAL HISTORY

The notice of disciplinary charges (NDC) in this case was filed on November 16, 2009, and was properly served on respondent on the same date. Respondent received a copy of the

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NDC but did not file an answer or otherwise participate in the case and his default was entered on February 18, 2010.[1] The matter was taken under submission for decision on March 10, 2010, after the State Bar waived a hearing and submitted a brief on the issues of culpability and discipline.

FINDINGS AND CONCLUSIONS

Pursuant to rule 200(d)(1)(A) of the Rules of Procedure of the State Bar, upon entry of default the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. Accordingly, the court adopts the facts alleged in the NDC as its factual findings. Briefly, those facts show that respondent was admitted to the practice of law in the State of California on July 15, 1970, and has been a member since then.

By order filed November 15, 2006, and effective December 15, 2006, the California Supreme Court suspended respondent from the practice of law for two years, stayed execution of the suspension, placed him on probation for two years, and ordered him to comply with certain conditions of probation. (Supreme Court case no. S146417; State Bar Court case no. 05-H-03434.)[2] Respondent was properly served with, and received, the Supreme Court order.

The conditions of respondent's probation included the requirements that he (1) contact the Office of Probation within 30 days of the effective date of discipline and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of probation; (2) submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and

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[1] Respondent attempted to file an answer to the NDC but the pleading was rejected for filing on procedural grounds. Respondent did not resubmit a corrected answer for filing as he was permitted to do by rule 1112(c) of the Rules of Practice of the State Bar Court. The court concludes that respondent had actual knowledge of this disciplinary case. (See *Jones v. Flowers* (2006) 547 U.S. 220.)

[2] The parties stipulated to the facts, conclusions of law and disposition in this 2006 case. The State Bar Court approved the stipulation by order filed July 26, 2006. The State Bar did not provide the Court with a certified copy of the stipulation or order. The Court therefore takes judicial notice of the stipulation and order approving it, filed July 26, 2006, and directs the clerk to include a copy as part of the record of this case.

October 10 of the probation period; (3) submit a final quarterly report no earlier than 20 days before the last day of the period of probation and no later than the last day of probation; (4) successfully complete 12 hours of continuing legal education courses in legal ethics and provide proof of completion to the Office of Probation; and (5) successfully complete the State Bar Ethics School in the last year of probation and provide proof of completion to the Office of Probation.

Respondent failed to comply with these conditions of probation in that he (1) did not meet with his assigned probation deputy until June 13, 2007, which was five months after his deadline of January 14, 2007; (2) did not file the quarterly reports due on July 10, 2007, October 10, 2007, January 10, 2008, April 10, 2008, July 10, 2008, and October 10, 2008, and did not file the report due April 10, 2007 until June 20, 2007; (3) did not file the final report which was due on December 15, 2008; (4) did not complete or provide the Office of Probation with proof of completion of twelve hours of continuing legal education; and (5) did not attend or provide the Office of Probation with proof of completion of Ethics School.

The court concludes that by failing to comply with the above conditions of his disciplinary probation, respondent willfully violated Business and Professions Code section 6068, subdivision (k).

MITIGATING AND AGGRAVATING CIRCUMSTANCES

No mitigating circumstances have been shown. In aggravation, respondent has been disciplined on two prior occasions. By order of the State Bar Court filed June 17, 2004, respondent was privately reproved and ordered to comply with certain specified conditions attached to that reproval for a period of one-year. (State Bar Court case no. 02-O-11130.) The misconduct underlying this discipline involved a single matter. Respondent stipulated that he violated Business and Professions Code section 6068, subdivision (a), by failing to list his

community property interest in several parcels of real property in his personal bankruptcy case. No aggravating circumstances surrounded this misconduct and in mitigation, respondent had no prior discipline, he demonstrated his good character and the misconduct involved his personal affairs and not a client's.

Respondent was required to comply with several conditions that were attached to the 2004 private reproval, including filing quarterly probation reports, providing proof of completion of education courses in legal ethics and providing proof of completion of 60 hours of pro bono services. Respondent's failure to comply with these conditions gave rise to the second prior discipline case. As indicated above, by order filed November 15, 2006, the Supreme Court suspended respondent from the practice of law for two-years, stayed execution of the suspension and placed him on probation for two-years. In this 2006 case, respondent stipulated that (1) he violated rule 1-110 of the Rules of Professional Conduct by failing to file his final quarterly report and failing to provide the proof of completion of the legal education courses and the pro bono services; (2) his prior private reproval was a factor in aggravation as a record of prior discipline; and (3) there were no mitigating circumstances surrounding the misconduct. Respondent's failure to comply with the conditions of probation imposed by the Supreme Court in its November 15, 2006 order gave rise to the present discipline case.

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; std 1.3, Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct [stds].)

In determining the appropriate level of discipline, the court looks first for guidance to the standards. However, the standards 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.)

Of the standards that are applicable to this case, standard 1.7(b) is the most severe and it calls for disbarment when a member has a record of two prior impositions of discipline.[3] The Review Department has held that this Standard is to be applied "with due regard to the nature and extent of the respondent's prior [discipline] records." (*In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 704.) Neither of respondent's prior discipline cases nor the present case involved a client matter or the practice of law. Respondent's first discipline case involved his personal bankruptcy and his second and present discipline cases involved failing to comply with probation conditions that resulted from the prior discipline. In addition, neither prior discipline case resulted any period of actual suspension from the practice of law. The Court concludes that the nature and extent of respondent's two prior discipline matters are not sufficiently severe to justify recommending disbarment in the present case under standard 1.2(b).

Nevertheless, respondent's unwillingness or inability to comply with his probation conditions causes serious concern that his previous encounters with the discipline system have neither rehabilitated him nor deterred him from committing further misconduct. Further, respondent's failure to participate in this disciplinary proceeding leaves the court without any understanding as to the underlying cause or causes for respondent's misconduct. These factors demonstrate that the protection of the public, courts and profession require a substantial period of actual suspension be imposed, coupled with the requirement that respondent demonstrate his

[3] The other applicable standard is 2.6. It addresses respondent's violation of Business and Professions Code section 6068, subdivision (k), and calls for suspension or disbarment, depending upon gravity of the misconduct and degree harm to the victim.

rehabilitation, present fitness to practice and present learning and ability in the general law before he is relieved of the actual suspension.

RECOMMENDATION

The court recommends that respondent Nicholas George Demma be suspended from the practice of law in California for three years, execution of that period of suspension be stayed, and that respondent be suspended from the practice of law for a minimum of two years. He is to remain suspended until he (1) files and the State Bar Court grants a motion to terminate his suspension (Rules Proc. of State Bar, rule 205); and (2) provides proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law under standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct (Rules Proc. of State Bar, tit. IV).

It is also recommended that respondent be ordered to comply with the conditions of probation, if any, hereinafter imposed by the State Bar Court as a condition for terminating his suspension. (Rules Proc. of State Bar, rule 205(g).)

It is further recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination given by the National Conference of Bar Examiners during the period of his suspension and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

It is also recommended that respondent be ordered to comply with rule 9.20 of the California Rules of Court and 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. Failure to do so may result in disbarment or suspension.

It is further recommended that costs be awarded to the State Bar in accordance with

Business and Professions Code section 6086.10 and that the costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: May 28, 2010

RICHARD A. HONN
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 Los Angeles, on June 1, 2010, 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 Los Angeles, California, addressed as follows:

NICHOLAS G DEMMA ESQ
LAW OFC NICHOLAS DEMMA
118 W CARLISLE RD
THOUSAND OAKS, CA 91361 - 5308

NICHOLAS G DEMMA ESQ
224 CHARLIE CARSON RD.
JONESBOROUGH, TN 37659

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

Kevin B. Taylor, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 1, 2010.

Julieta E. Gonzales
Case Administrator
State Bar Court