

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No. 10-O-08937-LMA
)	
STEVEN ALLEN ROYSTON,)	
)	Decision
Member No. 97862,)	
)	
<u>A Member of the State Bar.</u>)	

1. Introduction

In this default disciplinary matter, respondent **Steven Allen Royston** is found culpable, by clear and convincing evidence, of violating his probation conditions as ordered by the California Supreme Court.

In view of respondent's misconduct and the evidence in aggravation, the court recommends, among other things, that respondent be suspended from the practice of law for four years, that execution of suspension be stayed, and that he be actually suspended from the practice of law for two years and until the State Bar Court grants a motion to terminate respondent's actual suspension. (Rules Proc. of State Bar, *former* rule 205.)¹

2. Pertinent Procedural History

¹ The *new* Rules of Procedure of the State Bar effective January 1, 2011, are not applicable to this proceeding because the court has determined that injustice would otherwise result. Instead, the *former* Rules of Procedure of the State Bar continue to govern the proceeding in the hearing department. (See Rules Proc. of State Bar (eff. Jan. 1, 2011), Preface, item 3.)

On October 19, 2010, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) properly served on respondent a Notice of Disciplinary Charges (NDC) at his official membership records address. Respondent received the NDC but did not file a response. (Rules Proc. of State Bar, *former* rule 103.)

On the State Bar's motion, respondent's default was entered on December 28, 2010, and respondent was enrolled as an inactive member on December 31, 2010, under Business and Professions Code section 6007, subdivision (e).² An order of entry of default was sent to respondent's official address by certified mail.

Respondent did not participate in the disciplinary proceedings. This matter was submitted for decision on January 19, 2011, following the filing of the State Bar's brief on culpability and discipline.

3. 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, *former* rule 200(d)(1)(A).)

Respondent was admitted to the practice of law in California on May 29, 1981, and has been a member of the State Bar of California at all times since that date.

Supreme Court Case No. S173688

On August 11, 2009, the California Supreme Court ordered respondent suspended from the practice of law for one year, that execution of the suspension be stayed, and that he be placed on probation for two years subject to the conditions of probation, as recommended by the Hearing Department of the State Bar Court in its order approving stipulation (Supreme Court

²All references to section (§) are to the provisions of the Business and Professions Code, unless otherwise indicated.

case No. S173688; State Bar Court case Nos. 07-O-13669; 07-O-14682). The order became effective September 10, 2009, and was duly served on respondent. Respondent received a copy of the order.

Among other probation conditions, respondent was required to:

1. Make restitution as follows:

“Within one year from the effective date of discipline in this matter, respondent must make restitution to the San Francisco Superior Court the amount of the sanctions imposed against respondent in the matter of *Manubhai Tandel and Gandabhai Unnatiben vs. Vikas Nehru Aiguo Zhang William Chow*, Case Number CGC-04-434832, filed in Superior Court, County of San Francisco, or to the Client Security Fund if it has paid, in the principal amount of \$1,500.00 and furnish satisfactory evidence of restitution to the Office of Probation. Respondent shall include in each quarterly report required herein satisfactory evidence of all restitution payments made by him or her during that reporting period.”

2. Complete Ethics School 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 State Bar Ethics School, and passage of the test given at the end of that session.”

The deadline for compliance with the probation conditions expired on or about September 10, 2010.

To date, respondent has made no payment toward satisfying the restitution condition, has provided no evidence that any such payment has been made, and has made no motion requesting the State Bar Court or the Supreme Court to modify the restitution condition.

And, to date, respondent has not attended a session of Ethics School, has not passed the Ethics School test, and has submitted no proof of attendance to the Office of Probation.

Failure to Comply With Probation Conditions (Bus. & Prof. Code, § 6068, Subd. (k))

Section 6068, subdivision (k), provides that it is the duty of an attorney to comply with all conditions attached to a disciplinary probation.

Respondent failed to comply with his probation conditions as ordered by the Supreme Court in S173688, by clear and convincing evidence, in willful violation of section 6068, subdivision (k): (1) by failing to make restitution by September 10, 2010; and (2) by failing to attend the Ethics School by September 10, 2010.

4. Mitigating and Aggravating Circumstances

A. Mitigation

No mitigating evidence was offered or received. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)³

B. Aggravation

There are several aggravating factors. (Std. 1.2(b).)

Respondent's two prior records of discipline are an aggravating circumstance. (Std. 1.2(b)(i).) In the underlying matter, respondent stipulated to a one-year stayed suspension and two-year probation for his misconduct in two client matters, involving failure to perform services, failure to obey court orders, failure to communicate with a client, and failure to return client papers. (Supreme Court case No. S173688.)

In his second prior record of discipline, on February 11, 2011, respondent was suspended for four years, stayed, placed on probation for four years, and actually suspended for two years and until he complies with standard 1.4(c)(ii). His misconduct involved six client matters, including failing to perform services, failing to obey court orders, failing to cooperate with the State Bar, committing an act of moral turpitude, sharing legal fees with a nonlawyer, aiding a

³All further references to standards are to this source.

person in the unauthorized practice of law, and failing to comply with probation conditions. (Supreme Court case No. S187954; State Bar Court case Nos. 09-O-14063 et al.)⁴

Respondent's multiple acts of misconduct are an aggravating factor. (Std. 1.2(b)(ii).) He violated two probation conditions – failure to pay restitution and failure to attend Ethics School.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct by failing to comply with the probation conditions even after the NDC in the instant proceeding was filed. (Std. 1.2(b)(v).)

Respondent's failure to participate in this disciplinary matter before the entry of his default is a serious aggravating factor. (Std. 1.2(b)(vi).) Respondent informed deputy trial counsel Treva Stewart in November 2010 that his caretaking responsibilities of his very ill wife and extreme financial difficulties prevented him from participating in the State Bar proceedings and that he deferred the level and imposition of discipline to the State Bar and the State Bar Court.

5. Discussion

Public protection and attorney rehabilitation are the primary goals of disciplinary probation. (*In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445, 452.) Respondent's prior misconduct and his present probation violations involve inattention to his professional duties and a continued unwillingness or inability to conform to the standards required of attorneys licensed in this state. Absent compelling mitigating circumstances, an attorney who willfully violates a significant condition of probation can anticipate actual suspension as the expected result. (*In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567, 574.)

⁴ The court takes judicial notice of the Supreme Court order, which was filed after the NDC was filed.

Although respondent advised the State Bar that he was caring for his very ill wife, that he was unable to work, and that he had extreme financial difficulties, the court has no clear and convincing evidence about the underlying cause of his misconduct or of any mitigation surrounding his misconduct absent his participation in this proceeding.

The State Bar urges that respondent be actually suspended for two years. The court agrees.

In view of respondent's misconduct, the case law and the aggravating evidence, placing respondent on an actual suspension for a minimum of two years would be appropriate to protect the public and to preserve public confidence in the profession.

6. Recommendations

A. Discipline

Accordingly, the court hereby recommends that respondent **Steven Allen Royston** be suspended from the practice of law in California for four years, that said suspension be stayed, and that respondent be actually suspended from the practice of law for a minimum of two years. He is to remain suspended until he files and the State Bar Court grants a motion to terminate his suspension and until he has shown proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law pursuant to standard 1.4(c)(ii). (Rules Proc. of State Bar, *former* rule 205.)

The court recommends that respondent be ordered to comply with any probation conditions imposed by the State Bar Court as a condition for terminating his suspension. (Rules Proc. of State Bar, *former* rule 205(g).)

B. Multistate Professional Responsibility Exam

Because he was previously ordered to take and pass the Multistate Professional Responsibility Examination in the underlying matter, S173688, the court does not recommend that respondent be ordered to do so in this matter. (Cal. Rules of Court, rule 9.10(b).)

C. California Rules of Court, Rule 9.20

The court also recommends that the Supreme Court order respondent to comply with California Rules of Court, rule 9.20(a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter. Willful failure to comply with the provisions of rule 9.20 may result in revocation of probation, suspension, disbarment, denial of reinstatement, conviction of contempt, or criminal conviction.⁵

D. Costs

The court further 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 Business and Professions Code section 6140.7 and as a money judgment.

Dated: April _____, 2011

LUCY ARMENDARIZ
Judge of the State Bar Court

⁵ Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)