

**PUBLIC MATTER
FILED**

JAN 08 2013

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

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| In the Matter of |) | Case No.: 11-O-13014-PEM |
| |) | |
| WILLIAM CHIPMAN MILES, |) | DECISION INCLUDING DISBARMENT |
| |) | RECOMMENDATION AND ORDER OF |
| Member No. 40970, |) | INVOLUNTARY INACTIVE |
| |) | ENROLLMENT |
| <u>A Member of the State Bar.</u> |) | |

Introduction¹

Respondent William Chipman Miles has been charged with not complying with certain probation conditions. For the reasons set forth below, the court finds him culpable as charged and recommends that he be disbarred.

Respondent represented himself in these proceedings. The Office of the Chief Trial Counsel (State Bar) was represented by Robert A. Henderson.

Significant Procedural History

The notice of disciplinary charges was filed on June 10, 2011.

On September 6, 2011, respondent, with the State Bar's recommendation, tendered his resignation from the State Bar with charges pending and voluntarily took inactive status pending

¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.



action on his request.² (State Bar Court case no. 11-Q-15761.)³

On February 22, 2012, the Review Department recommended that the resignation be declined pursuant to California Rules of Court, rule 9.21(d) because: (1) he did not comply with the previous Supreme Court order requiring him to pay restitution;⁴ and (2) accepting the resignation would be inconsistent with the need to protect the public, the court and the legal profession.

On June 13, 2012, the California Supreme Court declined to accept respondent's resignation, noting, among other things, that he remained on inactive status, but could move to return to active status. Any return to active status would be conditioned on respondent's payment of any dues, penalty payments and restitution owed by him.

² Respondent was already ineligible to practice law since November 19, 2009, due to actual suspension ordered by the California Supreme Court, as will be discussed below.

³ At trial, the court judicially noticed its records in this file. (Evid. C. § 452, subd. (d).) Records contained in this file include, among other things, the parties' stipulation of facts, etc., in State Bar Court case no. 11-O-13014, report and supplemental report regarding resignation, Review Department's Recommendation on Resignation and the Supreme Court's order on resignation.

⁴ As part of his disciplinary probation, respondent was ordered to pay specified restitution, including interest, to Karen and David Walker or to the Client Security Fund (CSF) to the extent of any payment to the Walkers, plus interest and costs. On April 1, 2010, CSF paid Karen Walker \$2,803.56 and David Walker \$2,803.55. As of August 15, 2011, respondent owed CSF a total of \$6,558.74 for the amounts paid to the Walkers, including processing costs. He borrowed the funds and paid that amount to CSF on August 15, 2011. However, he had not paid any of the accrued interest to the Walkers as of August 15, 2011. The Supreme Court's disciplinary order allowed this condition to be satisfied during his five-year probationary period, which commenced on November 19, 2009, as more fully discussed below.

Respondent believes that he detrimentally relied on the acceptance of the stipulation submitted as part of his resignation documents. The stipulation resulted from an agreement with the State Bar in which he would borrow \$6,558 and fully reimburse CSF and, in exchange, both parties would stipulate to a resignation with charges pending. (See, respondent's Pretrial Statement, filed June 11, 2012.) As previously noted, the Review Department did not accept the parties' recommended disposition of a resignation with charges pending. However, the stipulation provides that the parties are bound by it even if the legal conclusions or stipulated disposition are rejected. (Stipulation, 2:12-13.)

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 21, 1967 and has been a member of the State Bar of California at all times since that date.

Case No. 11-O-13014-Probation Violation Matter

Facts⁵

In Supreme Court order no. S175659 (State Bar Court case nos. 00-O-11978; 07-O-13569 (Cons.)), effective November 19, 2009, discipline was imposed consisting of four years' stayed suspension and five years' probation on conditions, including actual suspension for two years and until he complied with standard 1.4(c)(ii), Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct.⁶ Notice of the disciplinary order was properly served on respondent.

Among the probation conditions imposed were making specified restitution, providing proof of Ethics School and Client Trust Accounting School successfully completed within one year after the effective date of the discipline; and the submission to the Office of Probation of quarterly reports and either client funds statements or CPA reports on each January 10, April 10, July 10, and October 10 of the period of probation. The period of probation commenced on November 19, 2009.

⁵ The facts and legal conclusion are based on the evidence admitted in this matter as well as the parties' stipulation, received August 15, 2011, as part of respondent's request to resign from the State Bar with disciplinary charges pending. The stipulation notes that respondent and the State Bar are bound by the stipulated facts even if the legal conclusions or stipulated disposition are rejected. (Stipulation, 2:12-13.) As previously indicated, the stipulation is part of State Bar Court case no 11-Q-15761, of which the court took judicial notice at trial.

⁶ Future references to standard or std. are to this source.

The Office of Probation wrote to respondent twice, on November 6, 2009 and February 24, 2011, to remind respondent about his responsibilities regarding the probation conditions ordered.

Probation Violations

(1) Ethics and Client Trust Accounting Schools

Respondent was obligated to attend Ethics School and Client Trust Accounting School and submit satisfactory proof thereof on or before November 19, 2010. He did not do so.

(2) Quarterly and Client Funds Reports.

Respondent was required to timely submit a quarterly report between the 1st and the 10th of each January, April, July, and October of the period of probation. At the same time, he was required to submit a CPA report regarding the handling of client funds or a statement under penalty of perjury under California law that he did not receive, possess or otherwise handle client funds or property in any manner during the preceding quarter (hereafter, client funds report).

Respondent did not timely submit the quarterly and client funds reports to the Office of Probation due on the 10th of January, April, June and October 2010 and January, April and July 2011. Respondent asserts that he was wrongly advised that compliance with the disciplinary order was unnecessary if he planned to retire. Once he learned that compliance was necessary irrespective of his plans, he prepared quarterly reports and sent them to the Office of Probation.

On July 12, 2011, respondent prepared quarterly reports and submitted them to the Office of Probation and to the Office of the Chief Trial Counsel. They were received on July 27 and 14, 2011, respectively. The Office of Probation found the reports "defective" because they did not contain the case number and notified respondent of this on August 9, 2011. He emailed the quarterly reports back on August 11, 2011. The client funds reports were not submitted until July 21, 2011.

Respondent did not timely file the quarterly reports and client funds statements due on the 10th of October 2011 and January and April 2012. Copies of these reports, dated June 28, 2012, were filed with the State Bar Court on June 29, 2012 with a Notice of Compliance.⁷

Conclusions

Section 6068, subd. (k) [Failure to Comply with Probation Conditions]

Section 6068, subdivision (k), provides that an attorney has a duty to comply with all conditions attached to any disciplinary probation. As more fully set forth above, respondent violated this provision by not timely filing seven quarterly reports and client funds reports and by not completing Ethics School and Client Trust Account School and providing proof thereof as ordered by the Supreme Court in S175659.

Discussion

Aggravating Circumstances

It is the prosecution's burden to establish aggravating circumstances by clear and convincing evidence. (Std. 1.2(b).)

The court finds the following aggravating factors by clear and convincing evidence although the parties stipulated that there were no aggravating factors. (Stipulation 2:8.)

Prior Record of Discipline (Std. 1.2(b)(i).)

The underlying matter on which these probation violations are based is a prior record of misconduct. (Std. 1.2(b)(i).) As previously noted, in Supreme Court order no. S175659,

⁷ These reports, as did the seven prior reports, indicate that since respondent has "determined to retire from the practice of law, [he has] elected not to attend" Ethics School, Client Trust Accounting School or to take the Multistate Professional Responsibility Examination. It appears that respondent believes that he did not have to comply with probation conditions unless he sought reinstatement to the practice of law. (See, i.e., Response, filed July 15, 2011.) His desire to retire (and resign) rather than practice law is evidenced throughout his court filings. (See, i.e., Response, 1:13-18; Pretrial Statement, 1:26-27 and 2:9; Trial Brief, 1:21-23, 4:17-18.) He believes the possible outcomes of the instant proceeding to be either resignation or disbarment.

respondent was actually suspended for two years and until he complied with standard 1.4(c)(ii), among other things, for misconduct in two matters in which he represented multiple clients. Fifteen counts of misconduct were found, including representing clients with adverse interests, improperly entering into an aggregate settlement and splitting attorney fees, entering into an agreement not to pursue disciplinary charges, not accounting for client funds that were not properly maintained in trust, misappropriating client funds, concealing facts from clients, not performing competently and breaching client confidentiality. In aggravation, the court considered multiple acts of misconduct, committing acts of uncharged misconduct (misrepresentations to a superior court; conflict of interest), client harm, indifference toward rectification of his actions and not cooperating with the State Bar. Mitigating factors included no prior discipline in 27 years of practice, good character and pro bono activities.

Multiple Acts/Pattern of Misconduct (Std. 1.2(b)(ii).)

The multiple failures to comply with probation, set forth above, constitute multiple acts of misconduct. (Std. 1.2(b)(ii).)

Misconduct Surrounded/Followed by Other Violations of State Bar Act /Rules of Professional Conduct (Std. 1.2(b)(iii).)

There is additional uncharged misconduct in this matter. Respondent did not file the quarterly reports and client funds statements due on the 10th of October 2011 and January and April 2012 until June 28, 2012. Copies of these reports were filed with the State Bar Court on July 17, 2012 with his Notice of Compliance. Untimely compliance with the aforementioned reporting requirements violates section 6068, subdivision (k).

Harm to Client/Public/Administration of Justice (Std. 1.2(b)(iv).)

Respondent significantly harmed the administration of justice as his failure to comply with the conditions of his probation made it more much difficult for the State Bar to appropriately monitor him in seeking to insure the protection of the public and the courts. (Std.

1.2(b)(iv).) The Office of Probation corresponded with respondent twice to obtain his compliance with the probation conditions.

Mitigating Circumstances

Respondent bears the burden of establishing mitigation by clear and convincing evidence. (Std. 1.2(e).) No such evidence was presented. Moreover, the parties stipulated that there were no mitigating factors. (Stipulation, 2:9.)

Discussion

Standard 1.3 provides that the primary purposes of discipline are to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, this court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Second, the court looks to decisional law. (*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.)

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. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. (Std. 1.6(a).)

Standard 2.6(a) applies in this matter. It recommends suspension or disbarment for violations of sections 6067 and 6068, depending on the gravity of the offense or harm, if any to the victim, with due regard to the purposes of imposing discipline. 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.) Although 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.) There is no reason to deviate from the standard in this case.

Protection of the public and rehabilitation of the attorney are the primary goals of disciplinary probation. (*In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445, 452; *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291, 298.)

“[A] probation ‘reporting requirement permits the State Bar to monitor [an attorney probationer’s] compliance with professional standards.’” (*In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759, 763, citing *Ritter v. State Bar* (1985) 40 Cal.3d 595, 605.) In addition, “an attorney probationer’s filing of quarterly probation reports is an important step towards the attorney’s rehabilitation.” (*In the Matter of Weiner, supra*, 3 Cal. State Bar Ct. Rptr. at p. 763.) Thus, respondent’s noncompliance with the requirement to timely file quarterly and client funds reports and proof of Ethics School and Client Trust Account School attendance warrants significant discipline.

Respondent no longer desires to practice law and has not done so since he was suspended. He wants to retire. He appears to believe that compliance with probation or other conditions such as Ethics School, Client Trust Accounting School and the Multistate Professional Responsibility Examination are required only if he intends to return to the practice of law or to shorten the time of his actual suspension. That is not so. Compliance with the conditions is required unless relief is otherwise granted. He unsuccessfully tried to resign from

the State Bar with charges pending. That matter has been adjudicated by the Review Department and the Supreme Court. This court cannot revisit that outcome.

The prior disciplinary order “provided [respondent] an opportunity to reform his conduct to the ethical strictures of the profession. His culpability in [the matter] presently under consideration sadly indicates either his unwillingness or inability to do so.” (*Arden v. State Bar* (1987) 43 Cal.3d 713, 728.) Accordingly, after considering the misconduct and the aggravating and absence of mitigating circumstances, the court recommends disbarment. Respondent no longer wishes to practice law. He repeatedly indicated his intent not to comply with certain probation and other conditions because of his desire to retire. Accordingly, he is not a good candidate for further probation during which time he would have the opportunity of demonstrating that he is desirous and able to meet these important ethical obligations in the timely and serious fashion expected of California attorneys. Under these circumstances, the court recommends disbarment. (*In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646.)

Recommendations

It is recommended that respondent William Chipman Miles, State Bar number 40970, be disbarred from the practice of law in California and respondent’s name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

It is not recommended that respondent be ordered to comply with California Rules of Court, rule 9.20 because he already did so in connection with S175659 and he has not practiced law since.

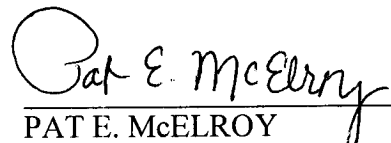
Costs

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.

Order of Involuntary Inactive Enrollment

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: January 8, 2013


PAT E. McELROY
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); 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 San Francisco, on January 8, 2013, I deposited a true copy of the following document(s):

DECISION INCLUDING DISBARMENT RECOMMENDATION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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 San Francisco, California, addressed as follows:

WILLIAM CHIPMAN MILES
PO BOX 133
WALNUT CREEK, CA 94597

by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

by overnight mail at , California, addressed as follows:

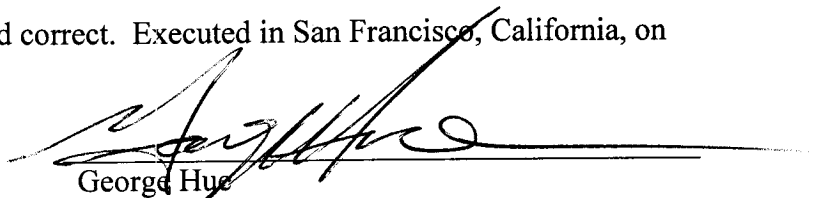
by fax transmission, at fax number . No error was reported by the fax machine that I used.

By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Robert Henderson, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on January 8, 2013.



George Hue
Case Administrator
State Bar Court