

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of)	Case No.: 11-O-13659-PEM
)	
GEORGE A. JUAREZ,)	DECISION & ORDER OF INVOLUNTARY
)	INACTIVE ENROLLMENT (Bus. & Prof.
Member No. 75295,)	Code, § 6007, subd. (d))
)	
<u>A Member of the State Bar.</u>)	

Introduction¹

In this contested, original disciplinary proceeding, respondent **GEORGE A. JUAREZ** is charged with failing to comply with one of the conditions of the two-year disciplinary probation that the Supreme Court imposed on him in *In re George A. Juarez on Discipline*, case number S184645 (State Bar Court case number 09-H-12713) (*Juarez II*) in an order filed on September 21, 2010 (Supreme Court's September 21, 2010 order). As stated below, this court finds, by clear and convincing evidence, that respondent failed to comply with one of the probation conditions imposed on him under the Supreme Court's September 21, 2010 order.

In view of respondent's failure to comply with one of his probation conditions, the found aggravation, which includes three prior records of discipline, and the significant found mitigation, this court will recommend that respondent be placed on two years' stayed suspension and three years' probation on conditions, including a nine-month suspension. In addition,

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.

because the requirements of section 6007, subdivision (d)(1) have been met, the court will order 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. (§ 6007, subd. (d)(1); Rules Proc. of State Bar, rule 5.315.) The court will also recommend that the period of respondent's involuntary inactive enrollment be credited against the recommended nine-month suspension. (§ 6007, subd. (d)(3).)

Significant Procedural History

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a notice of disciplinary charges (NDC) on June 30, 2011. On August 5, 2011, respondent filed a response to the NDC. And, on October 11, 2011, the parties filed a partial stipulation as to facts.

A three-day trial was held on October 11 and 27 and November 10, 2011. The State Bar was represented by Deputy Trial Counsel Mark Hartman on October 11. However, on October 27 and November 10, 2011, Deputy Trial Counsel Bruce Robinson represented the State Bar because DTC Hartman was sick on those two days. Respondent represented himself.

This court took the case under submission for decision on November 10, 2011, following closing arguments.

Findings of Fact and Conclusions of Law

Findings of Fact

Respondent was admitted to the practice of law in California on July 12, 1977, and has been a member of the State Bar of California since that time.

In the Supreme Court's September 21, 2010 order, the high court placed respondent on one year's stayed suspension and two years' probation with conditions, including a 30-day suspension, as recommended by the State Bar Court Hearing Department in State Bar Court case

number 09-H-12713. The Supreme Court's September 21, 2010 order became effective on October 21, 2010, (Cal. Rules of Court, rule 9.18(a)) and has remained in effect since that time. Likewise, respondent's two-year disciplinary probation under the Supreme Court's September 21, 2010 order began on October 21, 2010, and respondent has been on probation under that order since that time.

Notice of the Supreme Court's September 21, 2010 order was properly served on respondent. (Cal. Rules of Court, rule 9.18(b).) One of the probation conditions imposed on respondent under the Supreme Court's September 21, 2010 order provides as follows:

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.

In late July 2011, respondent prepared his quarterly reports for January 10, 2011; April 10, 2011; and July 10, 2011. However, he did not mail those reports to the Office of Probation until early August 2011. When the Office of Probation received those three reports, it asked respondent to resubmit them because of various deficiencies in them.

On September 23, 2011, respondent faxed, to the Office of Probation, fully compliant quarterly reports for April 10, 2011, and for July 10, 2011. Thereafter, on September 26, 2011, the Office of Probation received the original, signed versions of both of those fully compliant reports.

Furthermore, on September 26, 2011, respondent faxed, to the Office of Probation, a fully compliant quarterly report for January 10, 2011. And, on September 27, 2011, the Office of Probation received the original, signed version of that fully compliant January 10, 2011 report.

Respondent submitted his October 10, 2011 quarterly report to the Office of Probation on time.

Conclusions of Law

Culpability

In the NDC, the State Bar charges that respondent willfully violated his duty, under section 6068, subdivision (k), to comply with all conditions attached to any disciplinary probation imposed on him. Specifically, the State Bar charges that respondent violated section 6068, subdivision (k) by failing to timely submit, to the Office of Probation, the quarterly probation reports that were due no later than January 10, 2011, and April 10, 2011, respectively.

Respondent readily admits that he violated his quarterly-reporting condition of probation by failing to timely submit the reports that were due no later than January 10, 2011, and April 10, 2011, respectively. Accordingly, the court finds that the record clearly establishes that respondent willfully violated section 6068, subdivision (k) as charged in the NDC.

Aggravation²

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

Respondent has three prior records of discipline. Respondent's first prior record of discipline is the public reproof with conditions attached for one year that was imposed on him in 2008 in State Bar Court case number 07-O-10786-LMA (*Juarez I*). That reproof was imposed on respondent in accordance with a stipulation regarding facts, conclusions of law, and

² All references to standards (or stds.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

disposition that respondent and the State Bar entered into in January 2008. In *Juarez I*, respondent also stipulated that he was culpable of the following three counts of misconduct in a single client matter: (1) failing to keep his client reasonably informed of significant developments (§ 6068, subd. (m)); (2) failing to promptly release the client's file in accordance with the client's request that was made after respondent's employment was terminated (rule 3-700(D)(1)); and (3) failing to cooperate in a State Bar disciplinary investigation ((§ 6068, subd. (i)).

Respondent's second record of discipline is the Supreme Court's September 21, 2010 order in *Juarez II*. As noted *ante*, in the Supreme Court's September 21, 2010 order, the Supreme Court placed respondent on one year's stayed suspension and two years' probation on conditions, including a thirty-day suspension. In addition, the Supreme Court ordered respondent to take and pass the Multistate Professional Responsibility Examination within one year after the effective date of its September 21, 2010 order.

The discipline in *Juarez II* was imposed on respondent because he failed to comply with three of the conditions attached to the public reproof that the State Bar Court imposed on him in *Juarez I* in 2008 (rule 1-110). Specifically, respondent failed to comply with the conditions requiring: (1) that he meet with his assigned probation deputy; (2) that he submit quarterly reports to the Office of Probation; and (3) that he attend and successfully complete ethics school within one year after the effective date of the reproof.

Respondent's third prior record of discipline is the review department's September 8, 2011 opinion in State Bar Court case number 09-O-10247 (*Juarez III*) in which the review department recommended that respondent be placed on two years' stayed suspension and two years' probation on conditions, including a one-year suspension. Even though the Supreme Court has not yet acted on the review department's discipline recommendation in *Juarez III*, the record

in *Juarez III* is nonetheless admissible in the present proceeding as a prior record of discipline. (Rules Proc. of State Bar, rule 5.106(A), (E).)

In *Juarez III*, the review department found that respondent was culpable on the following four counts of misconduct in a single client matter: (1) engaging in the unauthorized practice of law (UPL) while suspended (§ 6068, subd. (a)); (2) engaging in acts involving moral turpitude while engaging in UPL (§ 6106); (3) engaging in acts involving moral turpitude by attempting to mislead a judge (§ 6106); and (4) failing to competently perform legal services (rule 3-110(A)). In addition, the review department found that respondent was culpable on one count of failing to cooperate in a State Bar disciplinary investigation (§ 6068, subd. (i)).

Mitigation

Candor/Cooperation to State Bar (Std. 1.2(e)(v).)

Respondent stipulated to the key facts in this case and eliminated the need for the State Bar to call witnesses in this matter.

Remorse/Recognition of Wrongdoing (Std. 1.2(e)(vii).)

Respondent established that he realizes the extent of his wrongdoing and is very remorseful for failing to timely submit his quarterly reports to the Office of Probation. Such recognition of wrongdoing and remorse are mitigating factors. (*Toll v. State Bar* (1974) 12 Cal.3d 824, 832.)

Good Character (Std. 1.2(e)(vi).)

Respondent presented a wide range of character references from the legal and general community. Two of respondent's seven good-character witnesses are attorneys. All of respondent's character witnesses had previously reviewed respondent's prior records of discipline and the NDC in the present proceeding. Respondent's witnesses credibly testified that respondent is a person of high integrity and good moral character.

Moreover, as noted in more detail *post*, respondent has engaged in extensive pro bono work for the community. Respondent's pro bono work clearly corroborates the testimony of respondent's seven good-character witnesses. (See *In the Matter of Distefano* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 668, 675.)

Community Service – Pro Bono Activities

Respondent has engaged in substantial community service/pro bono activities. He performed pro bono work for the non-profit Moraga Park Foundation and for the non-profit Hacienda Foundation of Moraga. In addition, he served as general counsel, on a pro bono basis, for the Academy of Magical Arts for at least 5 years and up until September 2011. Such service alone “is a mitigating factor that is entitled to ‘considerable weight.’ ” (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785, quoting *Schneider v. State Bar* (1987) 43 Cal.3d 784, 799.)

Daughter's Drug Addiction & Mental Health Issues

Respondent has three children; the youngest is 20-year-old daughter Alexa. In September 2010, respondent first learned that Alexa was a drug addict with severe emotional problems. In September 2010, Alexa was admitted into an in-patient program in Texas where she was diagnosed as being addicted to drugs and having a personality disorder.

In January 2011, Alexa left the drug treatment program in Texas and entered a treatment facility in Arizona. Not long thereafter, Alexa left the Arizona facility and ended up in a Los Angeles hotel where she was sexually assaulted. Following the sexual assault, she was placed on a “5150 hold,”³ after which she was admitted to a sober-living house in Los Angeles.

³ Under section 5150 of the Welfare and Institutions Code, when any person, as a result of mental disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer may, upon probable cause, take, or cause to be taken, the person into custody and place him or her in a facility designated by the county and approved by the State Department of Mental Health as a facility for a 72-hour period of treatment and evaluation.

Ever since September 2010, respondent has spent a very large amount of his time responding to Alexa's drug problems, mental health issues, and other crises. In addition, he has maintained constant contact with her and has had to frequently travel from Northern California to Los Angeles to attend to and care for Alexa. In so doing, respondent became distracted and was unable to focus on his duties as an attorney. He sincerely regrets this.

Discussion

Standard 1.3 provides that the primary purposes of disciplinary proceedings "are the protection of the public, the courts, and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession."

Standard 2.6 provides, inter alia, that a violation of section 6068 "shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3." Also, relevant, however, is standard 1.7(b), which provides that, if an attorney has two prior records of discipline, the degree of discipline in the current proceeding must be disbarment unless the most compelling mitigating circumstances clearly predominate.

Notwithstanding its unequivocal language to the contrary, standard 1.7(b) is not strictly applied. In other words, disbarment is not mandatory under standard 1.7(b) even if there are no compelling mitigating circumstances that clearly predominate in a case. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 506-507, citing *Arm v. State Bar* (1990) 50 Cal.3d 763, 778-779, 781.) Without question, standard 1.7(b) is not to be applied in a method that blindly treats all prior records of discipline as equally aggravating.

Standard 1.7(b) is to be applied "with due regard to the nature and extent of the respondent's prior records. [Citation.]" (*In the Matter of Meyer* (Review Dept. 1997) 3 Cal.

State Bar Ct. Rptr. 697, 704.) In that regard, great weight is placed “on whether or not there is a ‘common thread’ among the various prior disciplinary proceedings or a ‘habitual course of conduct’ which justifies disbarment. [Citation.]” (*In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 841.)

The court has examined the totality of respondent’s record. Respondent practiced law 28 years without any discipline. The first time he was disciplined was in 2008 when he received a public reproof in *Juarez I*. Then, in 2010 in *Juarez II*, respondent was found culpable of violating three of the conditions attached to his reproof. In that proceeding, the hearing judge recommended and the Supreme Court imposed, inter alia, a 30-day (actual) suspension due to respondent’s serious medical problems.

And, in September 2011 in *Juarez III*, the review department found that respondent, in a single client matter, practiced law while suspended for non-payment of his State Bar membership fees and for non-payment of a fee-arbitration award, failed to perform with competence, and failed to keep the client informed of significant developments in the case. In *Juarez III*, the review department recommended that respondent be placed on, inter alia, a one-year (actual) suspension.

The court finds that it was respondent’s distraction and stress from dealing with his daughter’s addiction, mental health issues, and continuing crises that led to respondent’s repeated inattention to the terms and conditions of his probation and to the misconduct found herein. The testimony of respondent’s very-credible character witnesses support the court’s finding. Respondent’s dereliction of his professional duty, under section 608, subdivision (k), to comply with the conditions of his disciplinary probation is not condoned. However, in light of the circumstances, lesser discipline than disbarment is appropriate. (See *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456, 472 [Disbarment is not to be recommended

when there is no evidence that a sanction short of disbarment is inadequate to deter future misconduct and to protect the public.]) In the present proceeding, respondent's misconduct in submitting two of his quarterly probation reports to the Office of Probation late does not warrant disbarment. Nor does respondent's misconduct warrant the two-year (actual) suspension urged by the State Bar.⁴ "[F]or purposes of discipline, not every probation violation should be treated the same. [Citation.]" (*In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 652.)

Respondent's misconduct does, however, warrant new periods of stayed suspension and probation on conditions, including a nine-month (actual) suspension. The court agrees with respondent that a nine-month actual suspension is sufficient to fulfill the purposes of attorney discipline, which purposes are set forth in standard 1.3.

The court considers the following three cases to be instructive on the level of discipline in this proceeding: *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523 (*Tiernan*); *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445 (*Howard*); and *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81 (*Hunter*). Each of these cases involves primarily the failure to timely file quarterly probation reports. However, unlike the present case, the three cited cases also involve additional serious misconduct that is not present here. In addition, the three cited cases also involve some form of failure to cooperate that is not present here.

In *Tiernan*, the discipline imposed included an 11-month (actual) suspension. In both *Howard* and *Hunter*, the discipline imposed included a one-year (actual) suspension.

⁴ The State Bar failed to cite any authority or to provide any legal analysis to support its contention that respondent should be placed on at least a two-year (actual) suspension. And, in any event, the court is unaware of any authority supporting such a contention.

In *Tiernan*, 3 Cal. State Bar Ct. Rptr. at page 530, the review department found that Attorney Tiernan “committed six multiple acts of misconduct as follows: (1) four by not timely filing his probation reports . . . ; (2) one by not cooperating with his probation monitor; and (3) one by filing [a] report . . . with a defective accountant's certification.” In addition, the disciplinary history in *Tiernan* was more serious than in this case as Tiernan had four prior records of discipline.

In *Howard*, 2 Cal. State Bar Ct. Rptr. 445, Attorney Howard not only failed to file two quarterly probation reports, but he also failed to return a former client’s financial records, which prevented the client’s accountant from assessing whether disciplinary restitution was appropriate. Another important concern in *Howard*, which is not present here, was Howard’s sheer lack of cooperation. For example, Howard failed to turn over the former client’s financial records even after being ordered to do so both by the superior court in a malpractice case and by the Supreme Court in a disciplinary case (*id.* at p. 452). In addition, Howard failed to participate and defaulted in the State Bar Court. (*Id.* at p. 449.)

In *Hunter*, 3 Cal. State Bar Ct. Rptr. 81, Attorney Hunter not only filed his initial quarterly probation report three months late, but he also failed to pay about \$1,166 of the \$1,766 in restitution he was ordered to pay despite repeated reminders of his duty to pay restitution from the State Bar. In aggravation, Hunter also filed two defective quarterly reports, was indifferent to rectifying the harm caused by his failure to make full restitution, and was uncooperative in that he failed to comply with even the most basic pretrial procedures in the hearing department. (*Id.* at p. 87.)

On balance, the court concludes that the appropriate level of discipline in the present proceeding is two years’ stayed suspension and three years’ probation on conditions, including a nine-month (actual) suspension.

Recommendations

It is recommended that respondent **GEORGE A. JUAREZ**, State Bar number 75295, be suspended from the practice of law in California for two years, that execution of that two-year suspension be stayed, and that respondent be placed on probation⁵ for a period of three years subject to the following conditions:

1. Respondent is suspended from the practice of law for the first nine months of probation with credit given for the period of involuntary inactive enrollment (Bus. & Prof. Code, § 6007, subd. (d)(3)).
2. Respondent must comply with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation.
3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including respondent's current office address and telephone number, or *if no office is maintained*, an address to be used for State Bar purposes, respondent must report such change in writing to the State Bar's Membership Records Office *and* Office of Probation.
4. Respondent must report in writing quarterly to the Office of Probation. The reports must be postmarked no later than each January 10, April 10, July 10, and October 10. Under penalty of perjury, respondent must state in each report whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of respondent's probation conditions during the preceding calendar quarter or applicable reporting period. If the first report will cover less than 30 days, no report is required at that time; however, the following report must cover the period of time from the commencement of probation through the end of the next quarter.

In addition to all quarterly reports, a final report must be postmarked no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.

5. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation which are directed to respondent personally or in writing relating to whether respondent is complying or has complied with the probation conditions.
6. It is not recommended that respondent be required to attend the State Bar's Ethics School because he was recently required to attend and successfully complete that

⁵ Respondent's three-year probation will begin on the effective date of the Supreme Court order imposing discipline in this matter (see Cal. Rules of Court, rule 9.18).

school as a condition of the probation imposed on him in *Juarez II*. (See Rules Proc. of State Bar, rule 5.135(A).)

7. At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for two years will be satisfied and that suspension will be terminated.

Multistate Professional Responsibility Examination

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination because he was previously ordered to do so in *Juarez II*.

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 was previously ordered to do so in *Juarez III*.

Costs

It is recommended 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.

Order of Involuntary Inactive Enrollment

The court orders that **GEORGE A. JUAREZ**, State Bar number 75295, be involuntarily enrolled as an inactive member of the State Bar of California under Business and Professions Code section 6007, subdivision (d)(1), effective three days after service of this order by mail (Rules Proc. of State Bar, rule 5.315). Unless otherwise ordered by the State Bar Court or the Supreme Court, Juarez's involuntary inactive enrollment under this order will, without the necessity of further court order, terminate on the earlier of the effective date of the Supreme Court order in this matter or nine months after his involuntary inactive enrollment begins. (See Bus. & Prof. Code, § 6007, subd. (d)(2); Rules Proc. of State Bar, rule 5.315.)

Dated: December ____, 2011.

PAT E. McELROY
Judge of the State Bar Court