

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of)	Case No.: 11-O-15715-LMA
)	
DANIEL EUGENE KRITZ,)	DECISION, ORDER OF INVOLUNTARY
)	INACTIVE ENROLLMENT, AND
Member No. 148714,)	ORDER VACATING STIPULATION
)	
<u>A Member of the State Bar.</u>)	

Introduction¹

In this disciplinary matter, respondent Daniel Eugene Kritz stipulated to willfully violating Business and Professions Code, section 6068, subdivision (k) by failing to comply with the conditions attached to his disciplinary probation in a prior disciplinary matter. Respondent and the Office of the Chief Trial Counsel of the State Bar of California (State Bar) stipulated to the facts surrounding respondent's misconduct and the disposition. The State Bar Court approved the stipulation.

In June 2012, the California Supreme Court returned this disciplinary matter for further consideration of the recommended discipline in light of the applicable attorney discipline standards.

Thus, the sole issue in this matter is the level of discipline.

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.

Significant Procedural History

On September 8, 2011, the State Bar filed a Notice of Disciplinary Charges (NDC), charging respondent with willfully violating section 6068, subdivision (k). As respondent failed to file a written response to the NDC, the court entered his default on October 20, 2011. Respondent filed a motion to set aside the default on October 27, 2011. On November 7, 2011, the court granted respondent's motion and vacated the default conditioned on respondent filing a response within 10 days of the court's order. Respondent filed a response to the NDC on November 15, 2011.

On December 12 and 14, 2011, respondent and the State Bar, respectively, signed a Stipulation Re Facts, Conclusions of Law and Disposition, which the court approved on January 3, 2012. The Stipulation Re Facts, Conclusions of Law and Disposition and Order Approving was filed on January 4, 2012.

On June 21, 2012, the Supreme Court issued an order in case No. S200177, returning the January 4, 2012 Stipulation (the returned stipulation) "for further consideration of the recommended discipline in light of the applicable attorney discipline standards. (*In re Silvertown* (2005) 36 Cal.4th 81, 89-94; see *In re Brown* (1995) 12 Cal.4th 205, 220.)"

On August 28, 2012, the State Bar filed a motion to amend the Notice of Disciplinary Charges. On September 18, 2012, the State Bar also filed a motion for an order permitting the introduction of facts to supplement the returned stipulation or, in the alternative, withdrawal from the returned stipulation and the filing of an amended notice of disciplinary charges. Respondent did not file any responses to the State Bar's motions.

On August 29, 2012, however, respondent tendered a resignation with charges pending. After submitting his resignation, respondent and the State Bar entered a Stipulation as to Facts and Conclusions of Law, which was filed on October 1, 2012 in case No. 12-Q-16298.²

On October 2, 2012, the court denied the State Bar's motion to amend the Notice of Disciplinary Charges. But, it granted the State Bar's motion to supplement the returned stipulation with additional facts that do not contradict those facts to which the parties had stipulated in the January 4, 2012 (returned) stipulation. The October 1, 2012 stipulation that was filed in case No. 12-Q-16298 sets forth those facts to which the parties previously had stipulated in the returned stipulation, as well as supplemental/additional facts to which the parties had not stipulated in that January 4, 2012 (returned) stipulation. The October 1, 2012 stipulation has been admitted into evidence as the State Bar's exhibit 8 in the instant proceeding.³

The State Bar was represented by Senior Trial Counsel Robin Brune at the December 4, 2012 hearing in this matter. As noted, *ante*, respondent failed to appear at that hearing. On December 4, 2012, after the conclusion of the hearing, this matter was submitted for decision.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 4, 1990, and has been a member of the State Bar of California at all times since that date.

² On December 14, 2012, the Review Department of the State Bar Court filed a recommendation on resignation in case No. 12-Q-16298 in the State Bar Court, wherein it recommended that the Supreme Court decline to accept the respondent's resignation with charges pending.

³ The supplemental/additional facts set forth in the October 1, 2012 stipulation will not be used as evidence for the purpose of determining culpability in this matter. Those additional/supplemental facts admitted into evidence are being considered only for the purpose of determining mitigating and/or aggravating circumstances.

Case No. 11-O-15715 – The Probation Matter

Facts Based on the January 4, 2012 (Returned) Stipulation

On September 15, 2010, the California Supreme Court filed a disciplinary order in case number S184621 (State Bar Court case No. 09-H-19146), which among other things, placed respondent on disciplinary probation for a period of two years, beginning on the date the disciplinary order became effective, and required him to comply with the conditions of his probation, as recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation filed on April 27, 2010.

Notice of the disciplinary order was properly served upon respondent (California Rule of Court 9.18(b)).

The Supreme Court order became effective on October 15, 2010, and at all times thereafter has remained in full force and effect.

At all times pertinent hereto: (1) respondent had notice of and was aware of the September 15, 2010 Supreme Court order and (2) respondent also had notice of and was aware that his probation conditions remained in full force and effect.

One of the conditions of probation, required respondent to submit quarterly reports, 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 period of probation. 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 probation during the preceding calendar quarter. Respondent must also state 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 30 days, that report must be submitted on the next 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 period of probation and no later than the last day of probation.

Respondent did not timely file the quarterly reports that were due on January 10, 2011, April 10, 2011, and July 10, 2011.

Respondent failed to file the report due on January 10, 2011, until on or about February 3, 2011. However, that January 10, 2011 report, was not only untimely submitted, but was a flawed report when it was submitted.

As of the dates the parties executed the returned stipulation, i.e., December 12 and December 14, 2011, respondent had not filed the quarterly reports that had been due on April 10 and July 10, 2011.

Additional Facts Based on the Parties' October 1, 2012 Stipulation

In addition to the probation violations to which he had stipulated in the January 4, 2012 (returned) stipulation, respondent affirmed in the October 1, 2012 stipulation that he committed additional misconduct, as set forth below.

On May 31, 2012, respondent submitted untimely, flawed reports for April 10, 2011, July 10, 2011, October 10, 2011, January 10, 2012, and April 10, 2012.

Another of respondent's probation conditions stated:

Subject to the assertion of applicable privileges, Respondent must answer fully, promptly, and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.

On June 4, 2012, Probation Deputy Ivy Cheung (Cheung) called respondent and left a message for him to contact her regarding the deficient probation reports. Respondent received Cheung's message, but failed to return the phone call.

On July 26, 2012, Cheung mailed a letter to respondent. In her letter, she stated the reasons the probation reports had been rejected and requested that respondent submit corrected

reports. Respondent received Cheung's July 26, 2012 letter, but did not submit corrected quarterly reports or otherwise respond to her inquiry.

In its order, filed on September 15, 2010 in case number S184621 (State Bar Court case No. 09-H-19146), the Supreme Court also ordered that respondent take and pass the MPRE within one year of the effective date of the disciplinary order, i.e., by October 15, 2011. Respondent failed to do so. Thus, on November 30, 2011, respondent was ordered inactive due to his failure to comply with the Supreme Court order to take and pass the MPRE by October 15, 2011. Respondent has been on inactive status since that date.

In its order filed on September 15, 2010, in case number S184621, the Supreme Court also ordered respondent to file a 9.20 affidavit, which was due by November 24, 2010. Respondent failed to timely file his 9.20 affidavit. The 9.20 affidavit was not filed until December 6, 2010.

In sum, in the October 1, 2012 stipulation, in addition to stipulating to those facts that he had previously stipulated to in the January 4, 2012 returned stipulation, he admitted that he failed to cooperate with the Office of Probation and did not respond to its inquiries; failed to take and pass the Multistate Professional Responsibility Examination; and failed to timely file his rule 9.20 affidavit, as ordered by the Supreme Court in S184621. Respondent also stipulated to facts surrounding a criminal matter which is currently pending in the Marin County Superior Court.

Conclusions

Business and Professions Code § 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.

By failing to timely file the January 10, 2011, April 10, 2011, and July 10, 2011 quarterly reports and by filing a flawed/deficient report on February 3, 2011, for the report that had been

due on January 10, 2011, respondent failed to comply with all conditions attached to his probation as required by Supreme Court order No. S184621, in violation of Business and Professions Code section 6068, subdivision (k).

Aggravation⁴

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

Respondent has two prior disciplines.⁵

1. In his first prior record, respondent stipulated to a public reproof with conditions. (State Bar Court case Nos. 07-O-11553 (07-O-13682).) He stipulated to three counts of misconduct in three client matters. In the first client matter, he had failed to promptly release a client's file in violation of rule 3-700(D)(1). In the second and third client matters, he failed to attend criminal court hearings and take any action on behalf of his clients in violation of rule 3-110(A). His misconduct was aggravated by the harm to the administration of justice. In mitigation the court found that respondent suffered extreme difficulties in his personal life, which were other than emotional or physical in nature and that he had no prior record of discipline in his 16 years of practice before engaging in his misconduct.

2. In his second prior record (Supreme Court case No. S184621; State Bar Court case No. 09-H-19146), respondent stipulated to two years of stayed

⁴ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

⁵ Although the State Bar submitted respondent's first prior record of discipline as its Exhibit 7; it failed to submit respondent's second prior record of discipline, i.e., Supreme Court order No. S184621 and the April 27, 2010 Stipulation Re Facts, Conclusions of Law and Disposition and Order Approving in State Bar Court case No. 09-H-19146. The court, therefore, takes judicial notice of the pertinent State Bar Court records regarding respondent's second prior record of discipline, takes them into evidence and directs the Clerk to include copies in the record of the case.

suspension, two years of probation subject to conditions, including a 90-day actual suspension. Respondent violated several conditions attached to his public reproof regarding contacting and meeting with his assigned probation deputy, submitting quarterly reports, providing proof of Ethics School attendance, and taking and passing the Multistate Professional Responsibility Examination.

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

Respondent's misconduct demonstrates multiple acts of misconduct involving his inattention to the Supreme Court disciplinary order S184621. Respondent failed to timely file three quarterly reports and submitted a deficient report.

Misconduct Surrounded/Followed by Bad Faith, Dishonesty, Concealment, Overreaching or Other Violations of State Bar Act/ Rules of Professional Conduct; If Trust Funds/Property Involved, Refusal/Inability to Account to Client/Other Person for Improper Conduct Toward Funds/Property (Std. 1.2(b)(iii).)

In the October 1, 2012 stipulation respondent admitted that he did not take the Multistate Professional Responsibility Examination as ordered and also failed to timely comply with California Rules of Court, rule 9.20 by failing to timely file his rule 9.20 affidavit as ordered by the Supreme Court (Supreme Court order No. S184621).

Respondent also admitted that he failed to comply with a probation condition as ordered by the Supreme Court (Supreme Court case No. S184621; State Bar Court in case No. 09-H-19146) requiring him to cooperate with the Office of Probation, when he failed to respond to his probation deputy's June 4 and July 26, 2012 inquiries and requests.

Respondent further admitted that he failed to appear for trial in June 2012, in a criminal matter arising out of the driving incident, although he had been present when the court had ordered him to appear for trial. Thus, respondent violated yet another court order. Respondent also stipulated to telling a police officer who stopped him for making a right turn against a red traffic light that he had a driver's license, but had it in a wallet that he forgot. Respondent,

however, has admitted that he knew that his license had been suspended, not left in a wallet, when he made the statement to the police officer.

Thus, respondent's admissions not only evidence instances of failing to obey court orders in violation of section 6103, but also reveal an act of dishonesty in violation of section 6106. As such respondent's admissions serve as instances of uncharged misconduct in the instant matter. (Std. 1.2(b)(iii); see *Edwards v. State Bar* (1990) 52 Cal.3d 28, 35-36.)

Mitigation

Lack of Candor/Cooperation to Victims/State Bar (Std. 1.2(b)(vi).)

Respondent entered two stipulations as to facts. He stipulated to all the facts in the NDC in the January 4, 2012 stipulation. Thereafter, in the resignation proceeding, respondent again stipulated to facts and conclusions of law. In addition to the probation violations, he also affirmed that he committed additional misconduct. Respondent admitted to misconduct that was not charged in the NDC or set forth in the returned January 4, 2012 stipulation, but which establishes instances of additional professional misconduct in which he engaged. Included in those admissions are facts relating to a pending criminal matter. Respondent, however, failed to participate in the hearing in this matter. Under the circumstances, respondent's candor and cooperation merit moderate mitigation.

Discussion

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. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

Respondent's misconduct included repeated violations of his probation conditions. The standards provide a broad range of sanctions ranging from suspension to disbarment, depending upon the gravity of the offenses and the harm to the victim. (Stds. 1.6, 1.7 and 2.6.)

Standard 1.7(b) 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. Here respondent has two prior records of discipline. And, "compelling mitigating circumstances" have not been shown to predominate in the instant matter.

The standards, however, 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.) Thus, the court also will look to applicable case law for guidance. Nevertheless, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

"[A] probation 'reporting requirement permits the State Bar to monitor [an attorney probationer's] compliance with professional standards.'" (*In the Matter of Wiener* (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 Wiener, supra*, 3 Cal. State Bar Ct. Rptr. at p. 763.)

Here, respondent failed to comply with his probation requirements in 2011, by failing to timely file three quarterly reports for January 10, April 10 and July 10, 2011. One of the untimely filed reports was a flawed report. The October 1, 2012 stipulation reveals that on May

31, 2012, respondent submitted five more flawed reports for April 10, 2011, July 10, 2011, October 10, 2011, January 10, 2012, and April 10, 2012.

On June 4, 2012, respondent's assigned probation deputy left a phone message for respondent to contact her regarding the deficient reports. He did not do so. Thereafter, on July 26, 2012, the probation deputy wrote a letter to respondent, advising him of the reasons the reports were rejected and requesting that he correct the reports and submit them. Respondent, who received the probation deputy's letter still did not submit the corrected reports or otherwise respond to the probation deputy. Thus, from January 2011 through 2012, respondent has demonstrated indifference to following orders, including Supreme Court orders. He has also demonstrated that he is indifferent to or fails to recognize the importance of his discipline in the rehabilitative process.

Respondent's two prior disciplines provided him with an opportunity to reform his conduct. He was given ample opportunity to conform his conduct to the ethical requirements of the profession, but repeatedly failed or refused to do so. Unfortunately, reproof conditions, probation, and suspension have proven inadequate to prevent continued misconduct. Respondent's culpability in the matter presently under consideration sadly indicates either his unwillingness or inability to comply with the ethical strictures of the profession. (See *Arden v. State Bar* (1987) 43 Cal.3d 713, 728.)

As the Supreme Court noted, disbarment is particularly appropriate when a respondent repeatedly demonstrates indifference to successive disciplinary orders. (See *Morgan v. State Bar* (1990) 51 Cal.3d 598, 607.)

Unfortunately, respondent has not provided the court with evidence about the underlying cause of his misconduct. Absent respondent's participation in this proceeding, the court has been

left with no means of gleaning further mitigation that might have explained or counterbalanced respondent's misconduct.

Thus, in view of respondent's prior disciplinary record and the lack of compelling mitigating factors, the court recommends disbarment to protect the public and the integrity of the legal profession. It would undermine the integrity of the disciplinary system and damage public confidence in the legal profession if respondent were not disbarred for his repeated probation violations, particularly in view of his two prior records of discipline.

Recommendations

It is recommended that respondent Daniel Eugene Kritz, State Bar Number 148714, 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 further recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

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.

Order Vacating Stipulation

The order filed on January 4, 2012, approving the parties' Stipulation Re Facts, Conclusions of Law and Disposition in the above-entitled matter is hereby VACATED.

The Stipulation Re Facts, Conclusions of Law and Disposition filed on January 4, 2012, is hereby converted to a stipulation as to facts and conclusions of law only, and State Bar Court staff is directed to remove the Stipulation Re Facts, Conclusions of Law and Disposition filed on January 4, 2012, from the State Bar's website.

Dated: March ____, 2013

LUCY ARMENDARIZ
Judge of the State Bar Court