

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case No.: 12-H-17270
)
FREDERICK T. JELIN,)
) DECISION
Member No. 105786,)
)
A Member of the State Bar.)

INTRODUCTION

Respondent **Frederick T. Jelin** (Respondent) is charged here failing to comply with the conditions of his public reproof in willful violation of rule 1-110 of the Rules of Professional Conduct.¹ The court finds culpability and recommends discipline as set forth below.

PERTINENT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed in this matter by the State Bar of California on April 11, 2013.

On May 21, 2013, the initial status conference was held in the case. Appearing was Deputy Trial Counsel Kelsey Blevings for the State Bar. Respondent did not appear. At that time, the case was given a trial date of August 6, 2013, with a one-day trial estimate. A pretrial conference was ordered to take place on July 29, 2013, with parties were ordered to comply with

¹ Unless otherwise noted, all future references to rule(s) will be to the Rules of Professional Conduct.

Rules 1220-1225 of the Rules of Practice of the State Bar Court and file pretrial conference statements.

On June 19, 2013, Respondent filed his response to the NDC. In his response he declined to wholly admit any of the allegations, save for (1) the jurisdictional allegation that he was a member of the bar and the date that he was admitted to the practice law, and (2) he had not filed quarterly reports as of April 11, 2013. And even as to those allegations, he was defiant. With regard to the above jurisdictional allegation, Respondent expressed his disagreement as such: “As to whether or not the State Bar has all the elements necessary for jurisdiction, Respondent reserves that challenge. There was a lack of due process underlying the filing of this Notice, and the events that preceded it.” And with regard to the fact that he had not filed any quarterly report, his response “reserves the right to present evidence that under the circumstances no quarterly reports were required.”

The pretrial conference was held as scheduled. The State Bar filed a pretrial conference statement. Respondent did not.

On the day of the pretrial conference, Respondent filed a request for referral of this matter to a program judge for possible acceptance into the Alternative Discipline Program. Respondent’s request was made after the deadline had passed for such a request. (Rules Proc. of State Bar, rule 5.381(B).) Accordingly, it was denied.

Trial was commenced and completed as scheduled. The State Bar was represented at trial by Deputy Trial Counsel Blevings. Respondent acted as counsel for himself.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on Respondent’s response to the NDC, the stipulation of undisputed facts filed by the parties, and the documentary and testimonial evidence admitted at trial.

Jurisdiction

Respondent was admitted to the practice of law in the State of California on December 3, 1982, and has been a member of the State Bar of California since that time. This court has jurisdiction to decide this matter.

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Background of Public Reproval

On July 20, 2012, in case No 07-C-11016, State Bar Court Judge Lucy Armendariz issued a decision and order, publicly reproving Respondent for his conduct that resulted in his criminal conviction of resisting arrest.

As set forth in that decision of this court, the arrest and subsequent conviction resulted from Respondent's failure and refusal to comply with repeated instructions of a flight attendant that he turn off his cell phone while seated on a commercial airplane about to take off from LAX. When the flight attendant physically turned off Respondent's phone herself, he immediately turned it back on. A decision was then made by the flight crew to remove him from the plane, despite the problems that this would create for the plane's schedule and the many other passengers aboard the plane.

When Respondent was informed that he was required to leave the plane, first by an airline representative and then by the police, he refused to do so. Instead, he told the police officers that he was a lawyer and knew his rights. He continued to refuse to leave the plane even after being informed by the police that his continued refusal would result in his arrest. Then, when the police officers attempted to effectuate the arrest, Respondent curled up into a ball, wrapped at least one arm around the armrest of his seat, and actively resisted his arrest. He was eventually forcefully removed from the plane. His conduct delayed the plane for about an hour.

On November 17, 2008, a jury convicted Respondent of resisting arrest.

Conditions of Reproval Order

Under the terms of the reproval order, Respondent was publicly reproved by the State Bar Court and subject to conditions of reproval for a period of one year. The conditions of reproval included, inter alia, the following:

Within thirty days after the effective date of his public reproval, Respondent must contact the Office of Probation and schedule a meeting with a probation deputy to discuss the conditions attached to his public reproval. Upon the direction of the Office of Probation, Respondent must meet with a probation deputy either in-person or by telephone. During the one-year period in which these conditions are in effect, Respondent must promptly meet with probation deputies as directed and upon request.

Respondent was required to submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period attached to the reproval. In those quarterly reports Respondent was required to state under penalty of perjury whether he had complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reproval during the preceding calendar quarter.

On July 25, 2012, , Ivy Cheung, the assigned probation deputy of the State Bar's Office of Probation, mailed a letter to Respondent, reminding him of the conditions attached to his public reproval. The letter provided Respondent with the form to use in completing his quarterly reports. The letter also reminded Respondent in bold letters: **“You must also schedule a meeting with me to discuss the terms and conditions of your discipline within 30 days from the effective date of discipline.”**² The letter explicitly warned Respondent that failure to comply with any of the various conditions of reproval could result in additional discipline. Respondent received the letter from the Office of Probation.

Despite the language of the State Bar Court's Decision and Reproval Order and the reminder letter from the Office of Probation, Respondent failed to comply with each of the above conditions of reproval, as set forth more fully below.

² The letter began by noting that the effective date of Respondent's reproval was August 25, 2012.

Required Meeting with Probation Deputy

Respondent did not contact the Office of Probation to schedule a meeting to discuss the conditions of his reprobation within 30 days after his reprobation became effective.

When Respondent failed to contact the Office of Probation as required, Probation Deputy Cheung sent Respondent a letter on October 1, 2012, reminding him of his obligations under the reprobation order and informing him that he was already remiss in complying with the requirement that he contact her. Probation Deputy Cheung enclosed with this letter a copy of her July 25, 2012, and she again reminded Respondent of his obligation to file timely quarterly reports. She even included, once again in bold type, the fact that: **“Your first quarterly report is due no later than October 10, 2012.”** The letter warned Respondent that non-compliance could result in further discipline.

On October 23, 2012, Probation Deputy Cheung tried to reach Respondent by telephone to seek his compliance, albeit belated, with the conditions of his reprobation. She was successful in reaching his voicemail box and left a message for Respondent to contact her. He did not do so.

Despite the efforts of Probation Deputy Chang, Respondent did not contact the Office of Probation prior to these disciplinary charges being filed. In fact, he did not contact and meet with the Office of Probation until July 29, 2013, just a week prior to the scheduled trial in this matter, more than three months after formal disciplinary charges had been filed, and less than a month before his period of reprobation was scheduled to expire.

Quarterly Reports

Respondent also failed to file any of the quarterly reports that were due prior to the NDC being filed in this matter. Although reports were due on October 10, 2012, and January 10 and April 10, 2013, Respondent did not file any of those quarterly reports until August 1, 2013, five days before the trial in this matter began. To make explicit the obvious, these were all filed late.

**Count 1 - Rule 1-110, Rules of Professional Conduct [Failure to Comply with
Conditions of Reproval]**

Rule 1-110 requires an attorney to comply with the conditions attached to a reproval.

When a reproval becomes final, the conditions attached to it are presumed valid. (*In the Matter of Pyle* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 929, 933.)

Respondent acknowledged at trial that his first three quarterly reports were filed late and that his meeting with the Office of Probation was late.

Respondent was aware of all the reproval conditions, but failed to comply with them. Respondent's failure to perform the conditions of reproval, itemized above, constituted a willful violation by him of his obligations under rule 1-110.

Aggravating Circumstances

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b).)³ The court finds the following with respect to alleged aggravating factors.

Prior Discipline

As noted above, Respondent has been formally disciplined on one prior occasion. Respondent's prior record of discipline is an aggravating circumstance. (Std. 1.2(b)(i).)

Multiple Acts of Misconduct

Respondent has been found culpable of four separate instances of failing to comply with the conditions of his reproval. Respondent's repeated failures to comply with the reproval conditions evidences multiple acts of misconduct and is an aggravating factor. (Std. 1.2(b)(ii); see *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 76 [violating three separate conditions of probation constituted multiple acts of wrongdoing].)

³ All further references to standard(s) or std. are to this source.

Indifference

Respondent's demonstrated defiance toward the disciplinary process and his obligations under this court's prior disciplinary order is an aggravating factor.

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).) The court finds the following with respect to alleged mitigating factors.

Cooperation

On the eve of trial, Respondent entered into a stipulation of facts and acknowledged culpability for having violated the conditions of his reproof. For that conduct, Respondent is entitled to some mitigation. (Std. 1.2(e)(v); see also *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443.) The weight of that mitigation, however, is greatly reduced by his prior denials of culpability and the lateness of his cooperation, with either this court or the Office of Probation.

Community Service

Respondent testified that he regularly performed services as a pro tem judge for the courts in the past, that he had performed considerable community service and pro bono work, and that he had worked extensively for various legal publications. For that work, he is entitled to mitigation credit for his efforts. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785; *Rose v. State Bar* (1989) 49 Cal.3d 646, 665; *In the Matter of Casey* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117, 126; but see *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 840 [limited mitigation weight for community service established only by respondent's testimony].)

Financial/Emotional Difficulties

Extreme emotional difficulties may be considered mitigating where it is established by expert testimony that they were responsible for the attorney's misconduct. (Std. 1.2(e)(iv); *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 701-702.) Respondent testified during trial to financial and emotionally troubling times that he has had in the last several years.

The evidence offered by Respondent did not provide clear and convincing evidence that his problems are a mitigating factor here. There was no expert testimony, or other convincing evidence, showing the required nexus between Respondent's problems and his misconduct. Nor was there sufficient evidence for this court to conclude that any of the problems suffered by Respondent in the past have now been satisfactorily resolved.

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney but 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. (Std. 1.3; *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 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The court then looks to the 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.) As the Review Department noted more than 21 years ago in *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 419, even though the standards are not to be applied in a talismanic fashion, they are to be followed unless there is a compelling reason that justifies not doing so. (Accord, *In re Silverton* (2005) 36

Cal.4th 81, 91; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *Gary v. State Bar* (1988) 44 Cal.3d 820, 828; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions. In the present proceeding, the most severe sanction for Respondent's misconduct is found in standard 2.9.

Standard 2.9 calls for “suspension” for willful violations of rule 1-100, but it does not provide a timeframe for the length of any actual suspension. Therefore, we look to comparable case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311).

In the prior published cases dealing with violations of conditions of reproof, discipline ranges from a further reproof to 90 days’ actual suspension, depending on mitigation, aggravation, and level of cooperation in the proceedings. (*Conroy v. State Bar* (1990) 51 Cal.3d 799 [60-day actual]; *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103 [90 days actual]; *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813 [further reproof for failing to pass MPRE]; *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697 [90-day actual].)

The determination of the appropriate discipline in these matters is governed more by the circumstances and attitude surrounding the respondent’s breach of the reproof conditions than by the nature and/or number of the conditions breached. In this situation, however, all factors call for substantial discipline. Respondent has violated the conditions of his reproof in multiple ways and on multiple occasions. Worse, those violations are merely a small aspect of his

ongoing failure to acknowledge the incorrectness of his prior misconduct, the significance of final adjudications both of a criminal court and of this court, and his need to participate in and comply with the procedures and orders of this disciplinary process.

It is recommended that Respondent be suspended from the practice of law for two years; that execution of that period of suspension be stayed; and that Respondent be placed on probation for a period of three years, with various conditions of probation including a requirement that he be actually suspended for a period of 90 days. (See *In the Matter of Meyer*, *supra*, 3 Cal. State Bar Ct. Rptr. 697; *In the Matter of Stansbury*, *supra*, 4 Cal. State Bar Ct. Rptr. 103.)

RECOMMENDED DISCIPLINE

Actual Suspension

For all of the above reasons, it is recommended that **Frederick T. Jelin**, Member No. 105786, be suspended from the practice of law for two years; that execution of that suspension be stayed; and that Respondent be placed on probation for three years, with the following conditions:

1. Respondent must be actually suspended from the practice of law for the first ninety (90) days of probation.
2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all the conditions of this probation.
3. Respondent must maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation, his current office address and telephone number or, *if no office is maintained*, an address to be used for State Bar purposes. (Bus. & Prof. Code, § 6002.1, subd. (a).) Respondent must also maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation, his current home address and

telephone number. (See Bus. & Prof. Code, § 6002.1, subd. (a)(5).) Respondent's home address and telephone number will *not* be made available to the general public. (Bus. & Prof. Code, § 6002.1, subd. (d).) Respondent must notify the Membership Records Office and the Office of Probation of any change in any of this information no later than 10 days after the change.

4. Within thirty (30) days after the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation and must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
5. Respondent must report, in writing, 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 Respondent is on probation (reporting dates).⁴ However, if Respondent's probation begins less than 30 days before a reporting date, Respondent may submit the first report no later than the second reporting date after the beginning of his probation. In each report, Respondent must state that it covers the preceding calendar quarter or applicable portion thereof and certify by affidavit or under penalty of perjury under the laws of the State of California as follows:

(a) in the first report, whether Respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation since the beginning of probation; and

⁴ To comply with this requirement, the required report, duly completed, signed and dated, must be received by the Office of Probation on or before the reporting deadline.

(b) in each subsequent report, whether Respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation during that period.

During the last 20 days of this probation, Respondent must submit a final report covering any period of probation remaining after and not covered by the last quarterly report required under this probation condition. In this final report, Respondent must certify to the matters set forth in subparagraph (b) of this probation condition by affidavit or under penalty of perjury under the laws of the State of California.

6. Subject to the proper or good faith assertion of any applicable privilege, Respondent must fully, promptly, and truthfully answer any inquiries of the State Bar's Office of Probation that are directed to Respondent, whether orally or in writing, relating to whether Respondent is complying or has complied with the conditions of this probation.
7. Within one year after the effective date of the Supreme Court order in this matter, Respondent must attend and satisfactorily complete the State Bar's Ethics School and provide satisfactory proof of such completion to the State Bar's Office of Probation. This condition of probation is separate and apart from Respondent's California Minimum Continuing Legal Education (MCLE) requirements; accordingly, Respondent is ordered not to claim any MCLE credit for attending and completing this course. (Rules Proc. of State Bar, rule 3201.)
8. Respondent's probation will commence on the effective date of the Supreme Court order imposing discipline in this matter.
9. At the termination of the probation period, if Respondent has complied with all of the terms of his probation, the two-years' period of stayed suspension will be satisfied and the suspension will be terminated.

California Rules of Court, Rule 9.20⁵

The court recommends that Respondent be ordered to comply with California Rules of Court, rule 9.20, 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.⁶

Costs

It is further recommended that costs be awarded to the State Bar in accordance with section 6086.10 and that such costs be enforceable both as provided in section 6140.7 and as a money judgment. It is also recommended that Respondent be ordered to reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and that such payment obligation be enforceable as provided for under Business and Professions Code section 6140.5.

Dated: November _____, 2013

DONALD F. MILES
Judge of the State Bar Court

⁵ This court does not recommend that Respondent be required to take and pass the MPRE examination, due to the fact that he was already ordered to do so pursuant to the reproof order. This court, however, reached a different conclusion with regard to the importance of Respondent's passage of another State Bar Ethics School during the first year of his forthcoming probation.

⁶ Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is also, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)