

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case No.: 12-O-14104-DFM
)
DOUGLAS WILLIAM DAVIS,) DECISION INCLUDING DISBARMENT
) RECOMMENDATION AND
Member No. 132620,) INVOLUNTARY INACTIVE
) ENROLLMENT ORDER
)
A Member of the State Bar.)

INTRODUCTION

Respondent **Douglas William Davis** (Respondent) is charged here with willfully violating section 6068, subdivision (k) of the Business and Professions Code¹ (failure to comply with conditions of probation). The State Bar had the burden of proving the above charges by clear and convincing evidence. In view of Respondent’s misconduct and the aggravating factors, the court recommends, *inter alia*, that Respondent be disbarred from the practice of law.

PERTINENT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed in this matter by the State Bar of California on July 17, 2012. On July 31, 2012, Respondent filed his response to the NDC, admitting some, but not all, of the alleged probation violations. On August 20, 2012, an initial status conference was held in the matter at which time the case was scheduled to commence trial on November 7, 2012. Trial was commenced and completed as scheduled. The State Bar was

¹ Unless otherwise noted, all future references to section(s) will be to the Business and Professions Code.

represented at trial by Deputy Trial Counsel Meredith McKittrick. 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 extensive stipulation of undisputed facts and conclusions of law previously 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 14, 1987; was a member at all times pertinent to these charges; and is currently a member of the State Bar of California.

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On October 21, 2009, Respondent entered into a Stipulation re Facts, Conclusions of Law and Disposition ("Stipulation") with the Office of the Chief Trial Counsel of the State Bar of California in case number 09-O-12784. On November 16, 2009, the Hearing Department of the State Bar Court filed an Order Approving the Stipulation and recommending to the California Supreme Court the discipline set forth in the Stipulation.

On March 11, 2010, the California Supreme Court filed and served an Order in case number S179472 (State Bar Court Case Number 09-O-12784) ("Disciplinary Order") that Respondent be suspended from the practice of law in California for two years, that execution of that suspension be stayed, and that Respondent be placed on probation for three years subject to the conditions of probation recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation filed on November 16, 2009. Respondent received the Disciplinary Order, which became effective on April 10, 2010.

Pursuant to the Disciplinary Order, Respondent was ordered to comply with the following conditions of probation, among others:

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.

During the period of his probation Respondent must pay restitution to Cornelius Scott. [sic] M.D. or the Client Security Fund if it has paid, in the total amount of \$22,813.38.

Respondent must pay the above-referenced restitution in monthly installments of at least \$1,000.00 until paid in full. Said monthly payments will commence no later than thirty (30) days after the effective date of the Supreme Court's disciplinary order herein.

Respondent must provide satisfactory proof of monthly payments of installments of at least \$1,000.00 to the Office of Probation with each quarterly probation report required herein, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation, Respondent must make any necessary final payment(s) in order to complete the payment of restitution in full.

(Exh. 3, pp. 11, 14-15, emphasis in original.)

On April 27, 2010, the Office of Probation of the State Bar of California mailed a letter to Respondent ("April 27, 2010 letter"), reminding him of the terms and conditions of his probation imposed pursuant to the Disciplinary Order and providing him with forms and instructions to use in complying with the probation conditions. Respondent received the letter.

April 10, 2011 Quarterly Report

Respondent was obligated as a condition of probation to file a quarterly report by the due date of April 10, 2011. Respondent did not timely file a complete quarterly report. Instead, Respondent sought to file a quarterly report on April 6, 2011, that lacked the required declaration regarding the existence of any proceedings against him in State Bar Court. As a result, the

proffered report was rejected. On April 7, 2011, Michael Kanterakis of the Office of Probation telephoned Respondent and informed him of the deficiencies with the submitted quarterly report. On April 8, 2011, Respondent then sought to file a modified copy of the previously-rejected April 6, 2011 quarterly report. This proffered report was rejected because it lacked an original signature. On April 13, 2011, after again being notified by the Office of Probation of the deficiency of his submitted report, Respondent filed a complete quarterly report for the April 10, 2011, reporting deadline.

January 10, 2012 Quarterly Report

Respondent did not timely file a complete quarterly report by the due date of January 10, 2012. Respondent tried to file a quarterly report on January 10, 2012, which was rejected because, like the previous April 6, 2011 report, it lacked the required declaration regarding the existence of proceedings against him in State Bar Court. Ultimately, on February 15, 2012, Respondent filed a complete quarterly report for the January 10, 2012, reporting deadline.

April 10, 2012 Quarterly Report

Respondent did not timely file a complete quarterly report by the due date of April 10, 2012. Instead, Respondent filed a quarterly report on April 13, 2012, for the April 10, 2012, reporting deadline. The report itself was dated April 12, 2012, after the deadline had passed.

Monthly Restitution Payments/Reports

As previously noted, Respondent was obligated as a condition of probation to pay restitution to Cornelius Scott, M.D. or the Client Security Fund if it has paid, in the total amount of \$22,813.38. This restitution obligation also required Respondent to pay monthly installments of at least \$1,000.00 until the restitution obligation was satisfied. He was also required as a condition of probation to provide satisfactory proof of these monthly installment payments to the Office of Probation with each quarterly probation report.

Respondent failed to provide satisfactory proof of monthly payments toward restitution in installments of at least \$1,000.00 with his quarterly reports due October 10, 2011, and January 10 and April 10, 2012.

Count 1 – Failure to Comply with Conditions of Probation [Bus. & Prof. Code, § 6068, subd. (k)]

Business and Professions Code section 6068, subdivision (k), provides that it is the duty of every member to “comply with all conditions attached to any disciplinary probation, including a probation imposed with the concurrence of the attorney.” Respondent’s conduct in failing to comply with the conditions of probation, set forth above, constituted willful violations by him of this obligation.

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).)² The court finds the following with regard to aggravating factors.

Prior Discipline

In aggravation, Respondent has a record of three prior disciplines. In chronological order, they are as follows:

August 28, 2003 Private Reproval

On August 28, 2003, this court issued a private reproval to Respondent, based on a Stipulation re Facts, Conclusions of Law and Disposition, executed by Respondent and the State Bar and filed with this court. The order included a two-year period of conditions attached to the reproval, including quarterly reports to the Office of Probation comparable to quarterly probation reports and the payment of \$8,700 restitution to a former client. The misconduct included client abandonment in willful violation of Rules of Professional Conduct, rule 3-700(A)(2), and failure

² All further references to standard(s) or std. are to this source.

to keep the client informed of significant developments [section 6068, subd. (m)]. The conduct constituting client abandonment included failing to comply with court orders requiring Respondent to appear in court on the client's matter, not opposing a motion for summary judgment, failing to appear for the scheduled trial, failing to file an appeal or otherwise respond to a judgment entered against the client because of the failure to appear at trial, and failure to take reasonable steps to avoid reasonably foreseeable prejudice to the client when Respondent effectively terminated the relationship.

February 10, 2006 Supreme Court Order (S139323)³

On February 10, 2006, the California Supreme Court filed and served an order in case number S139323 (State Bar Court Case Number 03-O-02690) that Respondent be suspended from the practice of law in California for two years and until he makes restitution to Dr. Cornelius Scott (or the Client Security Fund) in the amount of \$35,523.50 and complies with the requirements of standard 1.4(c)(ii), that execution of that suspension be stayed, and that Respondent be placed on probation for three years subject to the conditions of probation. Respondent's misconduct in the matter involved a single client matter and included failure to comply with repeated court orders that a matter be arbitrated [Section 6103]; failure to pay a \$70,650 sanctions order for failing to comply with the orders to arbitrate [Section 6103]; failure to report the sanctions order to the State Bar [section 6068, subd. (o)(3)]; and failure to inform his client (Dr. Scott) of a significant development [section 6068, subd. (m)], to wit, that the \$70,650 sanction order had been issued against both Respondent and Dr. Scott. The conditions of probation included the obligation to make and report monthly restitution installment payments of \$1,000 and to file timely quarterly probation reports.

³ This order was modified nunc pro tunc by the court on March 1, 2006.

March 11, 2010 Supreme Court Order (S179472)

As previously noted, on March 11, 2010, the California Supreme Court filed and served an order in case number S179472 (State Bar Court Case Number 09-O-12784) that Respondent be suspended from the practice of law in California for two years, that execution of that suspension be stayed, and that Respondent be placed on probation for three years subject to the conditions of probation. That discipline arose out of Respondent's failure to comply with the conditions of probation imposed by Supreme Court's order (S139323). The stipulation of facts entered into by the parties in that matter recited that Respondent had timely paid the principal amount (\$35,523) ordered to be paid in restitution to Dr. Scott, but had failed to pay the required accrued interest on that sum. The discipline also resulted from Respondent's repeated failure to file quarterly probation reports on a timely basis.

This record of three prior disciplines is a significant aggravating factor. (Std. 1.2(b)(i).)

Multiple Acts of Misconduct

Respondent engaged in multiple acts of misconduct. (Std. 1.2(b)(ii).)

Indifference

Respondent's failure to comply with the probation conditions, after being reminded by the Office of Probation, demonstrates indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).)

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 regard to mitigating factors.

Financial Problems

In his response to the NDC and during his argument to this court, Respondent indicated that his failure to make timely restitution payments was due to financial problems resulting from his prior suspension from the practice of the law due to his failure to pass the Multistate Professional Responsibility Examination. That suspension lasted from December 19, 2011 until April 27, 2012. At trial, however, Respondent made no effort to offer any evidence showing any such financial hardship, despite having the burden of proof on this issue. There was also no evidence offered that Respondent sought any prior relief from this court for any such financial hardship. Therefore, the court does not find financial hardship to be a mitigating factor in this matter.

Cooperation

Respondent entered into an extensive stipulation of facts and freely admitted certain of the probation violations in this case, for which conduct he 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; *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [where appropriate, more extensive weight in mitigation is accorded those who admit to culpability as well as facts].)

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 20 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; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

The State Bar contends that Respondent's disbarment is called for by both the case law and the standards and that such is necessary to protect both the public and the profession. This court agrees.

In the present proceeding, the most severe sanction for Respondent's misconduct is found in standard 17(b), which provides that when an attorney has two prior records of discipline, the degree of discipline in the current proceeding is to be disbarment unless the most compelling mitigating circumstances clearly predominate.⁴

Notwithstanding its unequivocal language to the contrary, disbarment is not mandated under standard 1.7(b) even if there are no compelling mitigating circumstances that 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.) That is because the ultimate disposition of the charges varies

⁴ Standard 2.6 is also applicable. It provides that violation of section 6068, subdivision (k) of the Business and Professions Code 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.

according to the proof. (*In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121, 125.) In this case, however, the facts indicate that disbarment is both appropriate and necessary to protect the public and the profession.

Respondent has demonstrated over time a recurring inability to conform his conduct to the requirements of court orders, the State Bar Act, and the Rules of Professional Conduct, notwithstanding efforts within the disciplinary system to alter his attitude and/or behavior. When it becomes evident that imposition of discipline will not result in a cessation of misconduct by a member, it becomes both necessary and appropriate to remove that member from the practice of law before additional harm to the public and profession results. (*In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646.) For Respondent, that time has now arrived.

RECOMMENDED DISCIPLINE

Disbarment

The court recommends that respondent **DOUGLAS WILLIAM DAVIS**, Member No. 132620, be disbarred from the practice of law in the State of California and that his name be stricken from the Roll of Attorneys of all persons admitted to practice in this state.

California Rules of Court, Rule 9.20

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

Costs and Other Reimbursement

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that such costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Respondent must also reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds, and such payment is enforceable as provided under Business and Professions Code section 6140.5.⁵

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that respondent **DOUGLAS WILLIAM DAVIS**, Member No. 132620, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after service of this decision and order by mail. (Rules Proc. of State Bar, rule 5.111(D)(1).)⁶

Dated: November _____, 2012.

DONALD F. MILES
Judge of the State Bar Court

⁵ Because Respondent is already subject to a continuing order of restitution in the prior disciplinary action, no recommendation is being made for a further restitution order in this matter.

⁶ An inactive member of the State Bar of California cannot lawfully practice law in this state. (Bus. & Prof. Code, § 6126, subd. (b); see also Bus. & Prof. Code, § 6125.) It is a crime for an attorney who has been enrolled inactive (or disbarred) to practice law, to attempt to practice law, or to even hold himself or herself out as entitled to practice law. (*Ibid.*) Moreover, an attorney who has been enrolled inactive (or disbarred) may not lawfully represent others before any state agency or in any state administrative hearing even if laypersons are otherwise authorized to do so. (*Ibid.*; *Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 66-73.)