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STATE BAR COURT
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STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

IN BANK

In the Matter of)	Case No. 12-Q-15338
)	
DUANE LYNN TUCKER,)	RECOMMENDATION ON
)	RESIGNATION
A Member of the State Bar, No. 88199.)	
_____)	

On July 16, 2012, Duane Lynn Tucker filed a Resignation with Charges Pending. We recommend Tucker's resignation be rejected under California Rules of Court, rule 9.21(d),¹ because: (1) he failed to file a rule 9.20 declaration, (2) he has not provided proof that all outstanding restitution obligations have been satisfied, (3) the pending matter is his third disciplinary proceeding and the presumptive discipline would be disbarment, and (4) accepting the resignation would be inconsistent with the need to protect the public, the courts, and the legal profession.

I. BACKGROUND

A. Pending Charges and Returned Stipulation

In October 2011, in the pending disciplinary proceeding, Tucker stipulated to misconduct that occurred from April 2008 to October 2011 in five client matters. He admitted that he

¹ Unless otherwise noted, all further references to "rule(s)" are to this source.

collected an illegal fee, failed to obey two court orders, failed to refund a total of \$11,499² in unearned fees to four clients, failed to promptly pay or deliver \$274 in client funds, failed to keep a client reasonably informed of significant case developments, and failed to competently provide legal services. These acts violated Business and Professions Code sections 6068, subdivision (m), and 6103, as well as Rules of Professional Conduct, rules 3-110(A), 3-700(D)(2), 4-100(B)(3) and 4-200(A). The parties stipulated that there were *no* mitigating circumstances, and that Tucker had two prior discipline records in aggravation.

The hearing judge approved the stipulation and recommended that Tucker be suspended for one year, stayed, and placed on three years of probation subject to conditions, including his actual suspension for six months. On June 21, 2012, the Supreme Court returned the stipulation to the State Bar Court “for further consideration of the recommended discipline in light of the applicable attorney discipline standards.” After the stipulation was returned by the Supreme Court, Tucker filed his resignation. The disciplinary proceeding remains pending in the hearing department.

B. Prior Record of Discipline

Tucker has two prior records of discipline. He received a public reproof in 1992 for misconduct committed in 1989 that involved disobeying a court order, failing to maintain respect for the courts and judicial officers and failing to report judicial sanctions. In his second disciplinary matter in 1996, the Supreme Court ordered a 90-day stayed suspension and placed Tucker on probation for three years for failing to comply with the restitution conditions of his public reproof.

² The stipulation required restitution of only \$7,999 in unearned fees. It is unclear why the \$3,500 due to the Daly clients is not included or otherwise addressed.

C. State Bar Recommendation on Resignation

On September 20, 2012, the State Bar filed its Report Regarding Resignation (Rules Proc. of State Bar, rule 5.427(C)), and pursuant to our order, filed a supplemental report on November 21, 2012. The State Bar recommended Tucker's resignation be rejected. Although he was provided an opportunity to do so, Tucker did not file a response.

II. CONSIDERATION OF THE GROUNDS SET FORTH IN RULE 9.21(d)

We have considered Tucker's resignation in light of the grounds set forth in rule 9.21(d).

Below is a summary of the relevant information as to each ground:

1. Whether the preservation of testimony is complete

In light of the stipulation, the State Bar reports perpetuation of testimony is not a factor.

2. Whether Tucker committed the unauthorized practice of law after he submitted his resignation

The State Bar reports that it has no evidence that Tucker has practiced law since he tendered his resignation.

3. Whether Tucker performed the acts specified by rule 9.20(a)-(b)

The State Bar reports that Tucker failed to comply with these requirements.

4. Whether Tucker provided proof of compliance with rule 9.20(c)

The State Bar reports that Tucker did not file a rule 9.20 declaration.

5. Whether the Supreme Court has filed a disbarment order

The Supreme Court has not filed a disbarment order.

6. Whether the State Bar Court has filed a decision recommending disbarment

The State Bar Court has not filed a decision or opinion recommending Tucker's disbarment. However, trial was held and the matter was submitted for decision on November 27, 2012. The hearing judge has 90 days to file her decision.

7. Whether Tucker previously resigned or has been disbarred and reinstated to the practice of law

Tucker has not previously resigned or been disbarred.

8. Whether Tucker and the State Bar have entered into a stipulation as to facts and conclusions of law regarding the pending disciplinary matter

On November 7, 2011, the State Bar Court approved and filed the stipulation between Tucker and the State Bar as to the facts and conclusions of law regarding the pending disciplinary proceeding. (State Bar Court case numbers 09-O-17390, 10-O-03276, 10-O-07140, 10-O-09824, and 10-O-11310.) However, as stated above, that stipulation was returned by the Supreme Court and the proceeding remains pending in the hearing department.

9. Whether the acceptance of Tucker's resignation will reasonably be inconsistent with the need to protect the public, the courts, or the legal profession

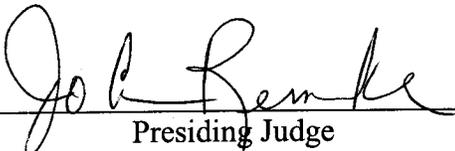
Tucker has failed to fully cooperate in this resignation proceeding. He failed to file a rule 9.20 declaration or otherwise provide evidence he complied with the requirements of rule 9.20. Most troubling is his failure to provide any evidence that he has returned at least \$11,499 in unearned fees to his former clients. Furthermore, due to Tucker's extensive disciplinary record, the presumptive level of discipline in the pending proceeding would be disbarment under the standards for attorney discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.7(b).) Standard 1.7(b) provides that if a member has two prior records of discipline the level of discipline in the current proceeding should be disbarment unless the most compelling mitigating circumstances clearly predominate. The parties stipulated that there are *no* mitigation factors in the pending proceeding.

Under these circumstances, Tucker should not be entitled to the benefit of resigning as it would undermine public confidence in the disciplinary system and the legal profession. Thus,

we find that acceptance of Tucker's resignation would be inconsistent with the need to protect the public, the courts, and the legal profession.

III. RECOMMENDATION

We recommend that the Supreme Court decline to accept the resignation of Duane Lynn Tucker, State Bar number 88199.



Presiding Judge

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on December 7, 2012, I deposited a true copy of the following document(s):

RECOMMENDATION ON RESIGNATION FILED DECEMBER 7, 2012

in a sealed envelope for collection and mailing on that date as follows:

- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**DUANE LYNN TUCKER
PO BOX 43061
OAKLAND, CA 94624**

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

Joseph R. Carlucci, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 7, 2012.



Paul Barona
Case Administrator
State Bar Court