

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case Nos.: 13-O-10219-LMA
)	13-O-13465 (Cons.)
EDWARD GRIFFIN DUREE,)	
)	DECISION
Member No. 116569,)	
)	
A Member of the State Bar.)	
)	
)	

Introduction¹

In this disciplinary matter, respondent Edward Griffin Duree is charged with two counts of professional misconduct involving two separate matters. The charged acts of misconduct include failing to comply with conditions of disciplinary probation and failing to obey a court order.

This court finds, by clear and convincing evidence, that respondent is culpable on both counts. Based on the nature and extent of culpability, as well as the applicable aggravating and mitigating circumstances, in conjunction with meeting the goals of attorney discipline, the court recommends, among other things, that respondent be suspended for two years and until he provides proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law.

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

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) in case no. 13-O-10219 on January 28, 2013. Respondent did not initially file a response. Consequently, the court issued an order entering his default on March 18, 2013. On September 20, 2013, the State Bar filed a petition for respondent's disbarment pursuant to rule 5.85 of the Rules of Procedure of the State Bar. On October 16, 2013, the court issued an order submitting this matter for decision.

On November 19, 2013, respondent filed a motion to set aside the default. In this motion, respondent articulated his personal struggles, financial difficulties, and alcohol abuse that led to his default. On December 4, 2013, the court issued an order setting aside the default.

On December 13, 2013, the State Bar filed a motion to amend the NDC. This motion was granted and an amended NDC was filed on January 10, 2014. On February 4, 2014, respondent filed a response to the amended NDC.

On February 14, 2014, the State Bar filed a second NDC, case no. 13-O-13465. On March 28, 2014, respondent filed a response to the second NDC. This response was late, as it should have been filed by March 11, 2014. (Rules Proc. of State Bar, rule 5.43.)

The two NDCs were subsequently consolidated. On May 9, 2014, the parties filed a Stipulation as to Facts and Conclusions of Law.

A two-day trial commenced on May 13, 2014. The State Bar was represented by Deputy Trial Counsel Heather E. Abelson. Respondent represented himself with the assistance of co-counsel, his brother John Rex Duree, Jr. This matter was submitted for decision on May 14, 2014.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 3, 1984, and has been a member of the State Bar of California at all times since that date.

The following findings of fact are based on the parties' stipulation and the testimony and evidence presented at trial.

Case No. 13-O-10219 – The Disciplinary Probation Matter

Facts

On December 29, 2011, respondent signed a stipulation in State Bar Court case nos. 10-O-11373 and 11-O-13908 in which he agreed to receive a one-year suspension, stayed, with a two-year probation and a thirty-day actual suspension. By signing the stipulation, respondent promised to comply with the probation conditions set forth in the stipulation.

On April 28, 2012, respondent was arrested on sexual assault charges and released from jail on the next day.

On June 28, 2012, the Supreme Court of California issued an order, in case no. S200688 (State Bar Court case nos. 10-O-11373 and 11-O-13908), suspending respondent from the practice of law for one year, stayed, and placing respondent on probation for a period of two years subject to a thirty-day actual suspension and compliance "with the other conditions recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation." On July 18, 2012, the Office of Probation of the State Bar of California sent respondent a letter attaching a copy of the Supreme Court's Order. In the letter, the Office of Probation set forth the terms of respondent's probation, including scheduling a meeting with the Office of Probation within 30 days from the effective date of discipline and filing quarterly reports. Respondent received this letter and was aware of its contents.

The Supreme Court Order became effective on July 28, 2012, and remained in full force at all times thereafter. As of July 2012, respondent knew that no criminal charges would be filed against him for the sexual assault allegations.

From August to December 2012, respondent started drinking heavily and abandoned his law practice. On December 21, 2012, respondent checked in to a 30-day alcohol rehabilitation program.

Quarterly Reporting Condition

One of the conditions of probation required respondent to submit 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 violated this condition by failing to submit the quarterly reports that were due no later than October 10, 2012; January 10, 2013; April 10, 2013; July 10, 2013; and October 10, 2013. Respondent ultimately filed these reports on February 10, 2014. To date, respondent is still not timely submitting his quarterly reports. The court heard credible evidence from respondent’s State Bar probation officer that respondent has yet to submit his quarterly report due April 10, 2014.²

² Respondent’s testimony that he mistakenly submitted his April 10, 2014 quarterly report to the State Bar’s former address on Hill Street was not credible. The court notes that respondent properly sent his January 10, 2014 quarterly report to the State Bar’s new address on Figueroa Street. The court further notes that respondent’s January 10, 2014 quarterly report was filed late, on February 10, 2014.

Condition Requiring Respondent to Contact the Office of Probation

Another probation condition required respondent to contact the Office of Probation as follows:

“Within thirty (30) days from 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. Upon the direction of the Office of Probation, Respondent 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.”

Respondent violated this condition by failing to contact the Office of Probation and schedule a meeting by August 27, 2012.

Ethics School

Another probation condition required that “[w]ithin one (1) year of the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School and passage of the test given at the end of that session.”

Respondent violated this condition by failing to provide to the Office of Probation satisfactory proof of attendance at a session of Ethics School, and passage of the test given at the end of that session, by July 28, 2013.

Client Trust Accounting School

Another probation condition required that “[w]ithin one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.”

Respondent violated this condition by failing to provide to the Office of Probation satisfactory proof of attendance at a session of Client Trust Accounting School, and passage of the test given at the end of that session, by July 28, 2013.

On October 30, 2012, the Office of Probation sent a letter to respondent reminding him of the terms and conditions of his probation. The letter further stated that the Office of Probation had not received the quarterly report due October 10, 2012, and that respondent had not scheduled a meeting with the office by August 27, 2012. Respondent received the October 30, 2012 letter, and was aware of its contents.

To date, respondent has failed to attend or pass Ethics School. To date, respondent has failed to attend or pass Client Trust Accounting School.³ At no time did respondent request a waiver of costs in order to attend either Ethics School or Client Trust Accounting School.

Conclusions of Law

Count One – § 6068, Subd. (k) [Failure to Comply with Conditions of Probation]

Section 6068, subdivision (k), provides that an attorney has a duty to comply with all conditions attached to any disciplinary probation. By not submitting quarterly reports due October 10, 2012; January 10, 2013; April 10, 2013; July 10, 2013; and October 10, 2013; not timely contacting the Office of Probation to schedule a meeting, and failing to provide the Office of Probation, by July 28, 2013, proof of attendance at a session of Ethics School and a session of Client Trust Accounting School, and passage of the tests given at the end of those sessions, respondent failed to comply with conditions attached to his disciplinary probation, in willful violation of section 6068, subdivision (k).⁴

³ Respondent also failed to take or pass the Multistate Professional Responsibility Exam (MPRE). Respondent did not request a waiver of costs to take the MPRE.

⁴ Respondent and the State Bar stipulated to these conclusions of law.

Case No. 13-O-13465 – The Solano County Superior Court Matter

Facts

Respondent represented Lonnie Earle Crane (Crane) in the criminal matter *People v. Crane*, Solano County Superior Court, case nos. FC34139, FC34140, FC37868, and FCR200528. Respondent appeared on behalf of Crane at a petition hearing on April 13, 2012.

At the April 13, 2012 hearing, the court set the next hearing date for April 27, 2012. Respondent failed to appear on behalf of Crane at the petition hearing on April 27, 2012.⁵ That same day, the Solano County Superior Court issued an order to show cause as to why sanctions should not be imposed for respondent's failure to appear at the April 27, 2012 hearing, and ordered respondent to appear in court on November 15, 2012.

On May 4, 2012, the Order to Show Cause for Failure to Appear was filed in Solano County Superior Court, and served on respondent at 622 Jackson Street, Fairfield, CA 94533. Soon thereafter, respondent received a copy of the order to show cause.

From August to December 2012, respondent started drinking heavily and abandoned his law practice. Respondent failed to appear at the November 15, 2012 order to show cause hearing because he forgot about the appearance. As previously noted, on December 21, 2012, respondent checked in to a 30-day alcohol rehabilitation program.

Conclusions of Law

Count One – § 6103 [Failure to Obey a Court Order]

Section 6103 provides, in pertinent part, that a willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the attorney's profession, which an attorney ought in good faith to do or forbear, constitutes cause

⁵ As previously noted, on April 28, 2012, respondent was arrested on sexual assault charges and released from jail on the next day. As of July 2012, respondent knew that no criminal charges would be filed against him for the sexual assault allegations.

for suspension or disbarment. The court finds that there is clear and convincing evidence that respondent failed to obey a court order, in willful violation of section 6103, by failing to comply with the Solano County Superior Court's May 4, 2012 order to appear and show cause on November 15, 2012.⁶

Aggravation⁷

Prior Record of Discipline (Std. 1.5(a).)⁸

On September 11, 1997, the Supreme Court issued Order No. S062620 (State Bar Court case no. 95-O-13101, et al.) suspending respondent from the practice of law for 90 days, stayed, with a one-year period of probation. In this matter, respondent stipulated to misconduct in two separate matters, including failing to cooperate in a State Bar investigation and engaging in the unauthorized practice of law. Respondent's unauthorized practice of law involved 23 appearances respondent made while he was inactively enrolled. Respondent was not aware of his involuntary inactive enrollment because he was working from home and not opening the mail being sent to his law office. In mitigation, respondent had no prior record of discipline, he cooperated with the State Bar, he presented evidence of his good character, he provided pro-bono services in at least 28 cases, and his misconduct did not result in client harm. No factors in aggravation were involved.

⁶ The court was not persuaded by respondent's testimony that he simply "forgot" to attend the order to show cause hearing. Respondent could not remember if he calendared the order to show cause hearing and acknowledged that with the other things going on in his life, the order to show cause was low on his priorities.

⁷ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

⁸ The State Bar failed to submit complete prior packages, as both of the prior records of discipline are lacking the Supreme Court Order. Accordingly, the court takes judicial notice of the pertinent Supreme Court Orders relating to respondent's prior discipline, admits them into evidence, and directs the Clerk to include copies in the record of this case.

On June 28, 2012, the Supreme Court issued Order No. S200688 (State Bar Court case no. 10-O-11373, et al.) suspending respondent from the practice of law for one year, stayed, and placing respondent on probation for two years, including a 30-day period of actual suspension. Here, respondent stipulated in two separate matters to issuing client trust account checks against insufficient funds, commingling funds in his client trust account, and failing to cooperate in a State Bar investigation. In aggravation, respondent had a prior record of discipline and the misconduct involved a trust account violation. In mitigation, respondent cooperated with the State Bar by entering into a stipulation and his misconduct did not result in client harm.

Multiple Acts/Pattern of Misconduct (Std. 1.5(b).)

Respondent is culpable of multiple acts of misconduct in two separate matters.

Mitigation

Good Character (Std. 1.6(f).)

Respondent presented testimony from nine character witnesses attesting to his honesty, good character, and competence and effectiveness as an attorney. Some of the witnesses also touted respondent's role as a founder and member of the Barristers club in Solano County. Respondent's character witnesses demonstrated an understanding of the charges and came from a wide range of impressive references, including several judges and attorneys, the mayor of the City of Vallejo, and a retired Chevron employee who is now attending law school. Respondent's positive character evaluations warrant significant consideration in mitigation.

Cooperation with the State Bar (Std. 1.6(e).)

Respondent entered into an extensive stipulation as to facts and conclusions of law. This stipulation saved court resources and warrants consideration in mitigation; however, the weight of this mitigation is diminished by respondent's initial failure to participate in these proceedings.

Extreme Emotional/Physical Difficulties (Std. 1.6(d).)

At the time of the stipulated acts of professional misconduct, respondent testified that he suffered extreme emotional difficulties or physical disabilities. Respondent, however, did not present any expert testimony on this subject. And while respondent credibly testified that he has been sober since December 21, 2012, he did not present clear and convincing evidence that his difficulties or disabilities no longer pose a risk that he will commit future misconduct. Accordingly, the court does not afford respondent weight in mitigation for his emotional/physical difficulties.

Discussion

The purpose of State Bar 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. 1.1.)

In determining the level of discipline, the 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). Second, the court looks to 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.)

Standard 1.7(a) provides that if a member commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed. Standard 1.7(b) provides, in pertinent part, if aggravating circumstances are found, they should be considered alone and in balance with any mitigating factors. Standard 1.7(c) provides, in pertinent part, if mitigating circumstances are found, they should be considered alone and in balance with any aggravating factors.

In this case, the standards call for the imposition of a sanction ranging from actual suspension to disbarment. (Standards 2.2(a) and 2.10.) The most severe sanction is found at standard 2.2(a) which provides that disbarment or actual suspension is appropriate for disobedience or violation of a court order related to the member's practice of law.

Due to respondent's prior record of discipline, the court also looks to standard 1.8(b) for guidance. Standard 1.8(b) states that when an attorney has two prior records of discipline, disbarment is appropriate in the following circumstances, unless the most compelling mitigation circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current suspension: (1) actual suspension was ordered in any one of the prior disciplinary matters; (2) the prior disciplinary matters coupled with the current record of discipline demonstrate a pattern of misconduct; or (3) the prior disciplinary matters coupled with the current record of discipline demonstrate the member's unwillingness or inability to conform to ethical responsibilities.⁹

The standards, however, "do not mandate a specific discipline." (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has long been held that the court is "not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender." (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The State Bar urges that respondent be disbarred. Respondent argues that due to the compelling mitigating circumstances, he should receive probation.

⁹ Standard 1.8(b) does not distinguish between remote and recent priors.

Historically, the California Supreme Court and the Review Department of the State Bar Court have not followed standard 1.8(b) in a rigid fashion.¹⁰ (See *Conroy v. State Bar* (1991) 53 Cal.3d 495; *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697; *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138; *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131; *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229.) It has generally been held that standard 1.8(b) is to be applied with due regard to the nature and extent of the attorney's prior record. (*In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208, 217.)

Considering the nature and extent of respondent's prior record and the fact that the present misconduct occurred during a period of time when respondent was experiencing significant personal issues and difficulties, the court finds a recommendation of disbarment to be excessive and unnecessary. This is especially true considering the limited nature of respondent's prior misconduct and the fact that his longest prior period of actual suspension was only 30 days.

A disciplinary recommendation must be consistent with the discipline in similar proceedings. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.) In *In the Matter of Broderick, supra*, 3 Cal. State Bar Ct. Rptr. 138, the attorney's misconduct in the probationary proceeding and concurrent original disciplinary proceedings¹¹ was significantly related to his prior misconduct, in that both involved disobedience of court orders. The attorney violated the restitution and reporting requirements of his probation. In aggravation, he had one prior record of discipline, was culpable of multiple acts of wrongdoing, and committed an uncharged violation of the therapy requirement of his probation. In mitigation, the attorney made good faith attempts to pay some restitution and obtain therapy, and was candid and cooperative with the

¹⁰ Standard 1.8(b) was previously identified as standard 1.7(b).

¹¹ The original disciplinary proceeding involved the attorney's misuse of his client trust account, his loss of a settlement check, and his grossly negligent failure to reply to reasonable client status inquiries and two letters from a State Bar investigator.

State Bar. The Review Department recommended, among other things, that the attorney be suspended for a period of one year.

Respondent's misconduct is more serious than the misconduct found in *Broderick*. Respondent did not satisfy numerous probation conditions and has continued to violate some of his probation conditions despite the present proceeding. Respondent has two prior records of discipline and should be aware of his need for strict compliance with his probation obligations. Unlike *Broderick*, respondent did not make a good faith attempt to comply with his probation or seek a modification of his probation obligations.

On more than one occasion, respondent has shown an inclination toward "checking out" for extended periods of time. These extended episodes of inattention resulted in his first discipline (which was tied to respondent's failure to check his mail) and his present discipline (where respondent effectively put his head in the sand). Even during the present proceedings respondent's inaction caused this matter to go into default, nearly resulting in a default decision.

Neither the present matter nor respondent's prior misconduct involve a finding of client harm. Instead, respondent's misconduct has primarily harmed himself. While the court is impressed with his recognition of wrong doing and the growth he has shown, it remains to be seen whether he has truly put the past behind him. As articulated by respondent's counsel in closing arguments, respondent has clawed himself into a deep hole. Considering the present circumstances, including respondent's recognition of his misconduct, good character evidence, and past performance in the legal profession, the court concludes that there is reason to believe he can climb back out of that hole.

Accordingly, the court finds that a two-year minimum period of actual suspension and/until respondent provides proof to the State Bar Court of his rehabilitation, fitness to

practice, and learning and ability in the general law is adequate to achieve the primary purposes of attorney discipline, most notably public protection.

Recommendations

The court recommends that respondent **Edward Griffin Duree** be suspended from the practice of law for three years, that execution of the suspension be stayed, and that he be placed on probation for a period of four years subject to the following conditions:

1. Respondent is suspended from the practice of law for a minimum of the first two years of probation, and he will remain suspended until he provides proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(i).)
2. Respondent must also comply with the following additional conditions of probation:
 - i. During the period of probation, respondent must comply with the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
 - ii. Respondent must submit written quarterly reports to the State Bar's Office of Probation (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 he has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. If the first report will cover less than 30 days, the report must be submitted on the next following quarter date, and cover the extended period.

In addition to all the quarterly reports, a final report, containing the same information is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probationary period;
 - iii. 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 him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein;
 - iv. 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, the address to be used for State Bar purposes, respondent must report such

change in writing to the Membership Records Office and the State Bar's Office of Probation; and

- v. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent 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.¹²
- 3. 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 three years will be satisfied and that suspension will be terminated.

California Rules of Court, Rule 9.20

It is 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. Failure to do so may result in disbarment or suspension.

Multi-State Professional Responsibility Examination

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination, as he was recently ordered to do so, on June 28, 2012, by the Supreme Court in case no. S200688.

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¹² It is not recommended that respondent be ordered to attend the State Bar's Ethics School, as he has recently been ordered to do so, on June 28, 2012, by the Supreme Court in case no. S200688.

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.

Dated: August _____, 2014

LUCY ARMENDARIZ
Judge of the State Bar Court