

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No.: 13-O-11137-DFM
)	
DANNY ROBERT TAYLOR,)	
)	DECISION AND ORDER OF
Member No. 91924,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

Introduction¹

In this contested disciplinary proceeding, Respondent Danny Robert Taylor is charged with violating his probation conditions imposed by the California Supreme Court. This court finds by clear and convincing evidence that Respondent is culpable of most of the alleged misconduct. Based on the nature and extent of culpability, as well as his mitigating and aggravating factors, particularly his four prior records of discipline, this court recommends, among other things, that Respondent be disbarred from the practice of law.

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) on June 5, 2014. On July 28, 2014, Respondent filed a response to the NDC.

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.

A trial was held on October 7, 8, and 9, 2014. The State Bar was represented by Deputy Trial Counsel Susan J. Jackson and Drew D. Massey. Respondent represented himself.

Findings of Fact and Conclusions of Law

Jurisdiction

Respondent was admitted to the practice of law in California on June 3, 1980, and has been a member of the State Bar of California at all times since that date.

Case No. 13-O-11137

On December 2, 2009, the California Supreme Court ordered, among other things, in Supreme Court case No. S176780, that Respondent be suspended from the practice of law for two years, that execution of the suspension be stayed, that he be placed on probation for three years, and that he be actually suspended for five months. In addition, the court ordered that Respondent comply, among other things, with the following probation conditions:

- A. During the period of probation, Respondent was required to submit a written report to the Office of Probation on January 10, April 10, July 10 and October 10 of each year, or part thereof, during which the probation is in effect, stating under penalty of perjury that he has complied with provisions of the State Bar Act and Rules of Professional Conduct during said period (quarterly report). In addition to all quarterly reports, a final report, containing the same information, was due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.
- B. Respondent must pay restitution to the following individuals of the amount set forth below, plus 10% interest per annum, accruing from the date specified below, and provide satisfactory proof thereof to the Office of Probation.

<u>Party Owed Restitution</u>	<u>Principal Amount</u>	<u>Interest Accrual Date</u>
James D. Quinn	\$1,400	December 27, 2001
Tsovik Sepedzhyan	\$3,135	July 22, 2002
Tran Dinh	\$ 500	April 30, 2003

If the State Bar's Client Security Fund (CSF) has reimbursed any of the above individuals for all or any portion of the principal amounts, Respondent must also pay restitution to the CSF of the amount paid, plus applicable interest and costs. To the extent the CSF had paid only principal amounts, Respondent would still be liable for interest payments to said individuals.

Respondent was to pay restitution at the rate of \$100 per month, commencing December 10, 2008. Thereafter, monthly restitution would increase by \$50 every six months, until a maximum of \$300 per month was being paid.

Respondent must pay restitution first to all individual parties until said restitution was paid in full. Thereafter, Respondent was to pay restitution to the CSF until said restitution to the CSF was paid in full.

With each written quarterly report required herein, Respondent must provide to the Office of Probation satisfactory proof of all restitution payments made by him during that quarter or period.

- C. Within 90 days after the effective date of the Supreme Court's final disciplinary order in this matter, Respondent must satisfy the \$1,000 sanction imposed upon him by the Los Angeles County Superior Court in *People v. Robert De Valle*, case No. BA228899 and provide satisfactory proof thereof to the Office of Probation.

The Supreme Court order became effective on January 1, 2010, 30 days after it was entered. (Cal. Rules of Court, rule 9.18(a).) It was properly served on Respondent.²

Quarterly Reports

State Bar alleges in the NDC that Respondent willfully failed to timely file the quarterly reports due on April 10, 2011; July 10, 2011; October 10, 2011; January 10, 2012; and April 10, 2012. The court finds as follows:

²Although no proof was offered that the Clerk of the Supreme Court served the Supreme Court's order upon Respondent, California Rules of Court, rule 8.532(a) requires clerks of reviewing courts to immediately transmit a copy of all decisions of those courts to the parties upon filing. It is presumed pursuant to Evidence Code section 664 that official duties have been regularly performed. (*In re Linda D.* (1970) 3 Cal.App.3d 567, 571.) Therefore, in the absence of evidence to the contrary, this court finds that the Clerk of the Supreme Court performed his duty and transmitted a copy of the Supreme Court's order to Respondent immediately after its filing.

April 10, 2011 Quarterly Report

The evidence is not clear and convincing that Respondent failed to timely file a quarterly report due April 10, 2011. He appeared at the State Bar office on Friday, April 8, 2011, and sought to file his quarterly report due April 10, 2011. The receptionist refused to accept the original report, based on her belief that it was the copy of the original. Instead, she accepted a copy of the report. This report is included in the Office of Probation's records. On Monday, April 11, 2011, Respondent emailed the report to the Office of Probation, with an explanation of his problems with the receptionist. He also mailed an original report to the Office of Probation. The original was received and "filed" on April 14, 2011. The Office of Probation had received from Respondent the information that was required by the Supreme Court order prior to the April 10 deadline. To the extent it had not received an "original" report, that failure resulted not from Respondent's lack of effort but instead from the actions of State Bar staff.

July 10, 2011 Quarterly Report

The evidence is also not clear and convincing that Respondent willfully failed to timely file the quarterly report due July 10, 2011. Respondent emailed his July 10, 2011 quarterly report on July 10, 2011, a Sunday. The report contained an electronic signature. After he was told that an "original" signature was required, Respondent submitted a report with an original signature on July 12, 2011, which was filed that same day.

October 10, 2011 Quarterly Report

Respondent's report of October 10, 2011, was filed late, albeit by only a day. October 10, 2011 fell on the State Bar's Columbus Day holiday. As such the due date for the report was extended by operation of Civil Code section 11 for an additional day, to October 11, 2011. This section provides, "Whenever any act of a secular nature, other than a work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, which day falls upon a holiday, it may be performed upon the next business day, with the same effect as if it had been

performed upon the day appointed.” (See also Cal. Rules of Court, rule 1.10(b).) On October 11, 2011, Respondent sent an email to the Office of Probation, saying that he was attaching his quarterly report. The report, however, was not attached. That same day the assigned probation deputy of the Office Probation sent a reply email to Respondent, pointing out that the quarterly report was not attached. Respondent did not respond by forwarding the report until the following day, October 12, 2011. As such, the report was submitted untimely.

January 10, 2012 Quarterly Report

Respondent’s report due Tuesday, January 10, 2012, was also untimely. On Wednesday, January 11, 2012, Respondent sent an email, attaching a copy of the report and stating that he would be mailing it the following day. When the original report was subsequently received, it was deemed previously filed on January 11, 2012, still one day late.³

April 10, 2012 Quarterly Report

Respondent’s report due Tuesday, April 10, 2012, was also late. It was filed on April 12, 2012. On Thursday, April 12, 2012, Respondent sent the Office of Probation an email, stating that he had planned on the quarterly report being filed the prior day, but blamed the failure on his messenger service failing to pick it up that day. That explanation failed to provide any explanation for the late compliance. Moreover, even if the messenger service had picked up and filed the report on the prior day, April 11, 2012, the report would have been late.

January 10, 2013 Final Quarterly Report

This court declines to find that Respondent failed to timely file the final report, due January 10, 2013. Respondent mailed this report to the Office of Probation on January 8, 2013, as reflected by the Post Office cancellation date on the envelope received by the Office of Probation. That it was not received by the State Bar from the postal service until January 11,

³ At trial, a representative of the Office of Probation testified that if the quarterly report was faxed or e-mailed to the office on or before the due date and subsequently received by the office after the due date, it would be deemed “filed” as of the earlier date.

2013, does not reflect any willful failure by Respondent to comply with this condition of probation.

Monthly Restitution Payments

As previously noted, Respondent was obligated as a condition of probation to make restitution payments to three former clients. In the NDC, the State Bar alleges that Respondent failed to comply with that condition of probation. This court agrees.

After Respondent's probation began, this court granted three requests by Respondent to modify this restitution obligation, postponing the commencement date of his obligation to make restitution payments and reducing the monthly payments from \$100 to \$50. Accordingly, Respondent was ordered to begin monthly restitution payments of \$50 on August 1, 2012, increasing to \$100 per month on February 1, 2013.⁴ Despite the prior grants of relief by this court, Respondent paid neither the required monthly installment payments nor the full amount of the restitution amounts prior to the expiration of his probation. Indeed, before May 2014, the only money that Respondent had paid toward his restitution obligation was the \$500 owed to Tran Dinh (but not the interest accrued on that amount). It was not until shortly before the instant charges were filed that Respondent paid any money whatsoever to Sepedzhyan or Quinn, and that was only money toward the interest accrued on the funds owed to them (the balance having already been paid by the Client Security Fund in May 2007).

Sanctions

Respondent was disciplined by the Supreme Court in 2009 for his failure to pay a \$1,000 sanction order issued by the Los Angeles County Superior Court in *People v. Robert De Valle*, and he was ordered, as a condition of probation, to pay those sanctions on or before February 1,

⁴ A subsequent request by Respondent for further relief from his restitution obligation was denied by this court as being without good cause.

2011, as modified by a State Bar Court order filed August 6, 2009. In the NDC, the State Bar alleges that Respondent failed to comply with this requirement. Once again, this court agrees.

He did not pay the sanctions, or any part thereof, before the February 1, 2011 deadline imposed by the Superior Court.

On May 28, 2014, after Respondent's probation pursuant to case No. 02-O-13978 had terminated and more than three years after the deadline for making payment had passed, Respondent filed a motion seeking to have his obligation to pay these sanctions delayed until December 31, 2014, claiming financial hardship.⁵ On the following day, May 29, 2014, Respondent, aware that the instant disciplinary proceeding was going to be filed, finally paid the sanctions.

This conduct by Respondent constituted a willful violation by him of this condition of probation.

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

Business and Professions Code section 6068, subsection (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 a willful violation by him of this obligation.

Respondent seeks to justify his failure to make restitution by virtue of an intervening Supreme Court disciplinary decision rendered against him on January 10, 2012, in case No. S197211. That proceeding resulted from Respondent's earlier failures to comply with the conditions of this same probation and resulted in Respondent being actually suspended by the Supreme Court for a minimum of two years and until he paid all restitution owed to the three

⁵ Respondent's motion was subsequently denied based on the fact that his probation had already expired.

individuals (or CSF). That decision, however, did not revoke Respondent's prior probation or terminate Respondent's obligations created by the prior Supreme Court order. That Respondent was well aware of that fact is made clear by his successfully seeking to have the restitution obligations imposed in that prior probation modified in 2012, after the 2012 Supreme Court order had been filed, and in his unsuccessful efforts to modify his probation in November 2012 and May 2014. Therefore, the court finds Respondent's arguments without merit.

In conclusion, there is clear and convincing evidence that Respondent failed to comply with certain terms of his probation, in willful violation of section 6068, subdivision (k), as ordered by the Supreme Court in S176780: (1) by failing to timely file the October 10, 2011, January 10, 2012, and April 10, 2012 quarterly reports; (2) by failing to timely make monthly restitution payments to Dinh, Quinn and Sepedzhyan; (3) by failing to pay full restitution with interest to Dinh, Quinn and Sepedzhya; and (4) by failing to pay the court sanctions by February 1, 2011.

Aggravation⁶

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

Respondent has a record of four prior disciplinary actions.

First Disciplinary Action

On July 12, 2000, the State Bar Court of California filed an order in State Bar Court case No. 99-C-11462 imposing a public reproof, following Respondent's conviction for violating Penal Code section 242 (battery), a misdemeanor, and Los Angeles Municipal Code section 41.24(a) (trespass).

Second Disciplinary Action

⁶ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

On October 3, 2001, the Supreme Court filed an order in case No. S099264 (State Bar Court case Nos. 99-O-12424 et al.), suspending Respondent from the practice of law for one year, stayed, with a three-year period of probation, including a 30-day actual suspension. Respondent was found culpable of nine counts of misconduct in four separate matters. In mitigation, Respondent suffered from severe emotional and economic hardship, he did not harm any clients, and he cooperated with the victims of his misconduct and the State Bar during disciplinary investigation and proceedings. In aggravation, Respondent had a prior record of discipline, his misconduct was surrounded by or followed by bad faith or dishonesty, and his misconduct evidenced multiple acts of wrongdoing.

Third Disciplinary Action

On December 2, 2009, the Supreme Court filed an order in case No. S176780 (State Bar Court case Nos. 02-O-13978 et al.), the underlying matter, suspending Respondent from the practice of law in California for two years, stayed, with a three-year period of probation, including a five-month actual suspension. Respondent was found culpable on multiple counts of misconduct in seven matters, including failing to perform legal services with competence, failing to cooperate in disciplinary investigations, issuing checks against insufficient funds, misappropriating \$3,135 in settlement funds, failing to comply with the terms and conditions of his disciplinary probation, improperly withdrawing from employment, failing to maintain client funds in trust, failing to promptly pay out client funds, and engaging in the unauthorized practice of law. In mitigation, Respondent successfully completed the Alternative Discipline Program and Lawyer Assistance Program, which qualified as clear and convincing evidence that Respondent no longer suffered from the substance abuse issue which led to the conduct. In aggravation, Respondent had a prior record of discipline and his misconduct evidenced multiple acts of wrongdoing.

Fourth Disciplinary Action

On January 10, 2012, pursuant to Supreme Court case No. S197211 (State Bar Court case No. 10-O-07402), Respondent was suspended from the practice of law for five years, stayed, placed on probation for three years, and actually suspended for a minimum of two years and until he makes restitution and provides proof of his rehabilitation. Respondent was found culpable of violating his probation conditions, including failing to make restitution payments and failing to timely file his quarterly reports.

Respondent's current misconduct is similar to the misconduct involved in this fourth prior disciplinary matter – failure to comply with probation conditions. Because of that prior discipline, he should have had a heightened awareness of his need for strict compliance with his probation conditions. Although he was disciplined in 2012 for violating these same conditions, he did not learn from that experience.

Moreover, Respondent's misconduct in this proceeding occurred during the probationary period of his fourth prior record of discipline. Aggravating circumstance of prior misconduct was magnified by the fact that Respondent committed the current misconduct while on probation in prior disciplinary proceeding. (*In the Matter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430.)

Multiple Acts (Std. 1.5(b).)

Respondent committed multiple acts of wrongdoing, including failing to timely file three quarterly reports, failing to pay restitution, and failing to timely pay court sanctions.

Indifference Toward Rectification/Atonement (Std. 1.5(g).)

Respondent demonstrated lack of insight into his wrongdoing. In his fourth disciplinary matter, the hearing judge was quite clear in warning Respondent that he needed to strictly comply with the terms of his probation, stating: “Respondent did not satisfy any of his probation

conditions in a timely manner. Respondent has three prior records of discipline and at this point he should be aware of his need for strict compliance with his reporting and payments obligations.” Despite this language and yet another discipline, he has repeatedly failed to strictly comply.

Mitigation

Good Character (Std. 1.6(f).)

Respondent submitted declarations from seven individuals, including five attorneys regarding his good character. While Respondent is entitled to some modest mitigation credit for this evidence, it is substantially reduced by the declarants’ lack of any apparent knowledge regarding the pending charges or alleged misconduct.

Financial Difficulties

Respondent's financial difficulties is not a significant mitigating factor. Respondent, throughout his probation, has repeatedly sought to delay making any payments for costs or restitution based on claims of financial hardship. Some modifications have been made, but more recently the court has noted, in its February 2013 order, the absence of any actual supporting evidence regarding his actual finances and Respondent’s lack of any apparent effort to pay his restitution obligations. This is precisely this court’s view regarding the evidence presented at trial, especially given the recent payments made just before the NDC was filed.

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. 1.1; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Standard 1.8(b) provides that, unless the most compelling mitigating circumstances clearly predominate or the prior misconduct occurred in the same time period as the current misconduct, if an attorney has two or more prior records of discipline, disbarment is appropriate if: (1) an actual suspension was ordered in one of the prior matters; (2) the prior and current matters together demonstrate a pattern of misconduct; or, (3) the prior disciplinary matters coupled with the current record demonstrate the member’s unwillingness or inability to conform to ethical responsibilities.

Standard 2.10 provides that an actual suspension is appropriate for failing to comply with a condition of discipline. The degree of sanction depends on the nature of the condition violated and Respondent's unwillingness or inability to comply with disciplinary orders.

The State Bar urges Respondent be disbarred, in light of his four prior records of discipline under standard 1.8(b). In support of its recommendation, the State Bar cited *In the Matter of Thomson* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966 and *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829 (disbarment for attorneys with four prior records of discipline).

Respondent argues that a one year's stayed suspension and two years' probation would be sufficient, asserting that his mitigating factors substantially outweigh any aggravating factors.

The extent of the discipline to recommend is dependent, in part, on the seriousness of the probation violation and Respondent's recognition of his misconduct and his efforts to comply with the conditions. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.) Here, Respondent has repeatedly failed to comply with his probation conditions, as evidenced in his fourth disciplinary matter and in this current proceeding.

In *Morgan v. State Bar* (1990) 51 Cal.3d 598, the Supreme Court held that disbarment was the appropriate level of discipline, noting that the attorney had been found culpable in four disciplinary proceedings, had been under suspension for an accumulated period of two years and on probation for an accumulated period of 11 years during his 31 years as an attorney, and holding that he did not demonstrate that compelling mitigating circumstances predominated in the case.

Similarly, Respondent has no compelling mitigating factors and has four prior records of discipline. He was actually suspended in three of those prior disciplinary matters. His behavior demonstrates an indifference to the Supreme Court's disciplinary orders; this is the second time that petitioner has been found culpable of violating his probation conditions.

Therefore, it would undermine the integrity of the disciplinary system and damage public confidence in the legal profession if Respondent were not disbarred for his willful violations of his probation conditions under standard 1.8(b) and case law. Disbarment is necessary to protect the public. Accordingly, the court so recommends.

Recommendations

It is recommended that Respondent **Danny Robert Taylor**, State Bar Number 91924, be disbarred from the practice of law in California and his 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 **Danny Robert Taylor**, State Bar Number 91924, 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 30 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.

Dated: January _____, 2015

DONALD F. MILES
Judge of the State Bar Court