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STATE BAR COURT
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PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of

DAVID KYLE,

Member No. 55821,

A Member of the State Bar.

) Case No.: 14-O-02080-YDR
)
) DECISION AND ORDER OF
) INVOLUNTARY INACTIVE
) ENROLLMENT
)
)
)

Introduction¹

In this matter, David Kyle ("Respondent") is charged with seven counts of misconduct: engaging in the unauthorized practice of law; three acts of moral turpitude; failing to comply with probation conditions; and two counts of failing to comply with rule 9.20. The Office of the Chief Trial Counsel of the State Bar of California ("State Bar") has the burden of proving these charges by clear and convincing evidence.² This court finds by clear and convincing evidence that Respondent is culpable of four of the seven counts. In light of his continuing disregard for his ethical obligations, this court recommends that Respondent be disbarred from the practice of law in California.

¹ Unless otherwise indicated, all references to rules refer to the California Rules of Court. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

² Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)



Significant Procedural History

The State Bar initiated this proceeding by filing a Notice of Disciplinary Charges (“NDC”) on March 2, 2015. Respondent filed a response to the NDC on March 26, 2015.

The parties filed a Stipulation as to Facts and Admission of Documents on July 15, 2015, (“Stipulation”). Trial took place on August 25, 2015. The State Bar was represented by Deputy Trial Counsel Hugh G. Radigan. Respondent represented himself. The State Bar filed its closing brief on September 3, 2015, and Respondent filed his closing brief on September 8, 2015. The matter was submitted for decision on September 8, 2015.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on the stipulation previously filed by the parties and the documentary and testimonial evidence admitted at trial.

Respondent was admitted to the practice of law in California on June 29, 1973, and has been a member of the State Bar of California at all times since that date.

Case No. 14-O-02080 – The Unauthorized Practice of Law Matter

Facts

In 2012, Respondent was representing Samuel Redd, Jeffrey V. Smith, Regina Jo Smith, and Kim Stanley (“Smith Clients”), who were involved in a personal injury auto accident. On December 27, 2012, Respondent filed a civil action on behalf of his clients in Los Angeles County Superior Court, *Regina J. Smith, et al. v. Clemson Distribution Company, et al.* (“Smith Action”).

During Respondent’s representation of the Smith Clients, the California Supreme Court filed an order in Respondent’s third discipline proceeding, suspending him from the practice of law for two years, stayed, and placing him on probation for two years subject to conditions, including a six-month actual suspension. The order was filed on May 14, 2013, and his

suspension became effective June 13, 2013. One of Respondent's probation conditions required him to submit quarterly reports to the State Bar Office of Probation ("Probation Office"). Additionally, Respondent was ordered to comply with rule 9.20 and perform the acts specified in subdivisions (a) and (c) within thirty and forty calendar days respectively, after the effective date of the Supreme Court order. Pursuant to rule 9.20(a)(4), Respondent was required to provide written notice to his clients about his actual suspension, but he failed to do so.

On July 10, 2013, Respondent filed a rule 9.20 compliance declaration with the State Bar. Respondent declared under penalty of perjury that he notified all opposing counsel, in all matters that were pending on the date Respondent was ordered to comply with the rule, that he was disqualified to act as an attorney after the effective date of his suspension, and that he filed a copy of this notice with the superior court in the Smith Action. Respondent stipulated that this statement was false. Respondent acknowledged that he failed to inform Cinnamon Carr or Sydnee Singer, opposing counsel in the Smith Action, that he was disqualified as an attorney and he failed to file a copy of the required notice with the superior court before he executed his July 10, 2013 declaration.

Due to Respondent's suspension, attorney Paul Ross Overett was associated in as the Smith Clients' counsel. On July 30, 2013, the Smith Clients filed a notice to all parties regarding Overett's association. The notice did not indicate that Respondent was suspended from the practice of law.

Pursuant to Respondent's probation conditions, Respondent filed quarterly reports for the October 2013 and January 2014 compliance periods. On October 2, 2013, and January 6, 2014, Respondent stated in writing under penalty of perjury to the Probation Department that he was not in violation of the State Bar Act or the Rules of Professional Conduct, for the time periods

July 1, 2013, through September 30, 2013 and October 1, 2013, through December 31, 2013.

Both declarations were false.

During Respondent's suspension imposed on May 14, 2013, Respondent was suspended again from November 4, 2013, through May 14, 2014, for failing to timely pass the professional responsibility examination.

On November 18, 2013, Sydnee Singer, deposed Jeffery Smith and Regina Smith. Overett and Respondent both attended the depositions. They appeared on the record as attorneys for the plaintiffs, Jeffrey and Regina.³ Specifically, the videographer stated, "Counsel will now, please introduce themselves." Respondent stated, "David Kyle, K-y-l-e."

During Jeffrey's deposition, Respondent answered the majority of Singer's questions about the two other plaintiffs' failure to appear at the scheduled deposition. Additionally, on three occasions, Respondent advised Jeffrey about his answers to Singer's questions. Respondent told Jeffrey he should answer with a "yes" or "no"; he instructed Jeffrey that his answer to opposing counsel's question was sufficient; and he told Jeffrey to reiterate his answer. Respondent also answered the majority of Singer's questions about documents and exhibits requested to be produced, the consent to the release of medical records, and whether the plaintiffs had any questions about the deposition. Singer concluded Jeffrey's deposition by asking, "Any questions, counsel?" Kyle responded, "No."

During Regina's deposition, Respondent answered opposing counsel Singer's question about whether Regina intended to file lost earnings claims and responded to Singer's questions about the production of documents and exhibits. He and Singer also discussed the number of pages of documents provided at the deposition.

³ First names are used to avoid confusion, not out of disrespect.

On December 30, 2013, Respondent and Overett attended Redd's deposition where they both appeared on the record as attorneys for the plaintiffs. Specifically, the videographer asked, "Would counsel please introduce themselves for the record?" Respondent responded by giving his name. As Singer deposed Redd, Respondent interjected to advise Redd: 1) that the court reporter could not record hand gestures; 2) not to guess at his answers; 3) that Singer had repeated a question; and 4) to answer by stating "yes" or "no".

Conclusions of Law

Count One – Section 6068, subdivision (a) (Unauthorized Practice of Law)

Count Two – Section 6106 (Moral Turpitude)

Section 6068, subdivision (a), provides that an attorney has a duty to support the Constitution and laws of the United States and California. Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. The State Bar charged Respondent with violating section 6068, subdivision (a), by holding himself out as entitled to practice law and actually practicing law when Respondent was not an active member of the State Bar, by appearing as counsel in three depositions, and advising and guiding his clients during depositions in the Smith Action, in violation of sections 6125 and 6126. The State Bar alleged that these same acts involved moral turpitude, in violation of section 6106.⁴

Respondent committed acts involving moral turpitude, in willful violation of section 6106 as alleged in Count Two. Respondent knew he was suspended from the practice of law from June 13, 2013, through May 14, 2014. Yet, he held himself out as entitled to practice and practiced law during that time. Respondent introduced himself as "counsel" on the record during

⁴ Count One is dismissed with prejudice as duplicative because, as discussed in Count Two, it is based on the same facts that support the section 6106 violation. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1060 [little, if any, purpose is served by duplicative allegations of misconduct in State Bar proceedings].)

three depositions and actively participated in those depositions by advising, guiding and admonishing his clients on the record about pending questions. He had various discussions with opposing counsel that included the waiver of certain claims and the production of documents and exhibits. Respondent failed to advise opposing counsel that he was suspended from the practice of law, presenting a false impression that he was an attorney entitled to practice. Thus, Respondent is culpable of acts of moral turpitude. (*In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 910 [moral turpitude “includes creating a false impression by concealment as well as affirmative misrepresentations [citation]”]; see *Grove v. State Bar* (1965) 63 Cal.2d 312, 315 [for purposes of moral turpitude, no distinction between concealment, half-truth, and false statement of fact].)

Respondent argues that he accompanied Overett to the Smith Client depositions in order to provide documents, offer information, and to serve in a paralegal capacity, not as an attorney. He purposely sat at the end of the counsel table with the clients’ medical records believing this would denote he was not representing the deponents. However, the record reveals that Respondent did more than provide clerical or paralegal assistance at the depositions. He interjected on the record to advise and guide his clients, specifically introduced himself as “counsel,” and responded to questions directed at “counsel,” creating a false impression that he was entitled to practice law and did, in fact, practice law. Accordingly, his “conduct in holding himself out as practicing law while under suspension involved moral turpitude.” (*Caldwell v. State Bar* (1975) 15 Cal.3d 762, 771-772 “[a] member of the bar should not under any circumstances attempt to deceive another”].)

Count Three – Section 6068, subdivision (k) [Failure to Comply with Probation Conditions]

Section 6068, subdivision (k), provides that an attorney has a duty to comply with all conditions attached to any disciplinary probation. The State Bar charged Respondent with

violating section 6068, subdivision (k), by failing to comply with rule 9.20, as ordered by the Supreme Court in case No. 12-N-16646. Count Three is dismissed with prejudice as duplicative because, as discussed in Count Six below, it is based on the same facts that support the rule 9.20 violations in Counts Six and Seven. (*Bates, supra* 51 Cal.3d at p. 1060.)

Count Four – Section 6106 (Moral Turpitude – Misrepresentation)

The State Bar charged Respondent with willfully violating section 6106, alleging that on July 10, 2013, Respondent falsely stated in writing under penalty of perjury that he had complied with rule 9.20. Respondent is culpable of willfully violating section 6106.

Respondent declared under penalty of perjury that he notified all opposing counsel, in all matters pending the date he was ordered to comply with rule 9.20, that he was disqualified to act as an attorney after the effective date of his suspension, and he had filed a copy of the notice with the superior court in the Smith Action. Respondent acknowledged that this was a false statement. Although Respondent thought his declaration was accurate at the time he signed it because he believed he had notified opposing counsel, he was grossly negligent in failing to ensure his declaration contained true statements before filing it. Respondent's gross negligence amounts to moral turpitude. (See, e.g., *In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 155 [gross negligence amounting to moral turpitude where attorney filed verification his clients were out of county without first confirming that fact].)

Count Five - Section 6106 (Moral Turpitude – Misrepresentation)

The State Bar charged Respondent with willfully violating section 6106, alleging that on October 2, 2013, and January 6, 2014, Respondent falsely stated in writing under penalty of perjury to the Probation Office that he was not in violation of the State Bar Act or the Rules of Professional Conduct. Respondent is culpable of willfully violating section 6106.

Respondent's statements under penalty of perjury were false. He violated the State Bar Act by: 1) disobeying the Supreme Court order in case No. 12-N-16646 when he failed to comply with California Rules of Court, rule 9.20; 2) misrepresenting under oath that he provided notice to opposing counsel and filed notice with the superior court in the Smith Action that he was suspended; and 3) engaging in UPL by appearing as counsel of record in three depositions while he was suspended. The State Bar has not proved that Respondent acted with malice or dishonesty when he made the false report to the Probation Office, but he is culpable of violating section 6106 because his failure to ensure the accuracy of his statement made under penalty of perjury was grossly negligent amounting to moral turpitude.

Count Six – Failure to Comply with rule 9.20

Count Seven - Failure to Comply with rule 9.20

Rule 9.20 requires that a suspended member must, within the time prescribed by the California Supreme Court, file an affidavit showing full compliance with the requirements of the rule. These requirements include providing notice of the suspension to clients, co-counsel, opposing counsel, adverse parties and the court where current litigation is pending, delivering legal papers to clients and co-counsel and refunding any unearned fees to clients.

Respondent has acknowledged that he: 1) failed to inform his opposing counsel in the Smith Action that he was suspended from the practice of law; 2) failed to file a copy of his suspension notice with the superior court; and 3) failed to provide written notice to the Smith Clients. Thus, Respondent willfully violated rule 9.20.

In Count Six, the State Bar charged Respondent with willfully rule 9.20 by failing to provide written notice of his suspension to opposing counsel and failing to file that notice with the superior court in the Smith Action (rule 9.20(a)(4)), as required by the Supreme Court order in case No. 12-N-16646. In Count Seven, the State Bar alleged Respondent willfully violated

rule 9.20 by failing to provide written notice of his suspension to the Smith Clients (rule 9.20(a)(1)). It was not necessary to separate a violation of subdivision (a)(1) from subdivision (a)(4) and find Respondent culpable of both since all of the facts encompass a rule 9.20(a) violation. The appropriate resolution of this case does not depend on how many rules of professional conduct or statutes proscribe the same misconduct. (*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 148.) Thus, Count Seven is dismissed with prejudice.

Aggravation⁵

The State Bar bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.5.) The court finds the following with regard to aggravating circumstances.

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

Respondent has three prior discipline records, which is a significant aggravating factor.

Kyle I (Case No. 95-O-11454)

In his first disciplinary proceeding, Respondent stipulated to two ethical violations in a single client matter. In 1993, Respondent obtained a \$300,000 settlement on behalf of his client. The client instructed Respondent not to make any disbursements without his express authorization, and subsequently, the client obtained new counsel. In 1994, the client's new counsel, and the client's bankruptcy attorney requested an accounting, but Respondent failed to provide one. In March 1995, the client sued Respondent for an accounting. Respondent provided a written accounting one month later, itemizing disbursements and providing the balance of funds remaining. The client's lawsuit resulted in a judgment against Respondent in

⁵ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

the amount of \$25,000 plus interest. Respondent fully satisfied the judgment in August 2000.

Respondent stipulated to being culpable of willfully delaying the written accounting to his client for over a year; and failing to promptly pay funds in his possession as requested by his client. There were no aggravating circumstances. No prior discipline, cooperation, and restitution constituted the mitigating factors. On January 22, 2001, Respondent received a private reproof with conditions for his misconduct.

Kyle II (Case No. 10-O-04546)

In his second disciplinary proceeding, Respondent stipulated to three ethical violations in one client matter. In 2008, Respondent obtained an order granting minor's compromise on behalf of a client. He received \$400,000 on behalf of the client with \$200,000 in attorney's fees plus actual costs expended to be deducted from the settlement amount. Respondent did not maintain a written client ledger on behalf of his client and failed to maintain complete records of all client funds that came into his possession. After making disbursements, from June 2 through July 17, 2008, Respondent failed to maintain the \$104,525.40 he was required to maintain in his client trust account ("CTA") on behalf of his client. Additionally, on July 17, 2008, he failed to maintain the \$97,007.78 he was required to maintain in his CTA on behalf of his client.

Respondent stipulated that he was culpable of two counts of failing to maintain his client's funds in trust and failing to maintain client records. Respondent's misconduct was aggravated by his prior discipline record but tempered by his cooperation. On May 23, 2012, the Supreme Court issued Order S200333, suspending Respondent for one year, stayed, and placing him on probation for two years subject to conditions, including a 90-day actual suspension.

Kyle III (Case No. 12-N-16646)

In Respondent's third disciplinary proceeding, Respondent stipulated to willfully violating rule 9.20. He was required to file a rule 9.20 compliance declaration pursuant to Supreme Court Order No. S20033, which was filed in *Kyle II*. But, his properly prepared declaration was filed over one month late. Respondent's misconduct was aggravated by his two prior discipline records and uncharged misconduct of filing untimely quarterly reports, in violation of section 6068, subdivision (k). He received mitigating credit for his candor and cooperation with the State Bar. On May 14, 2013, the Supreme Court issued Order S209213, in State Bar Court case No. 12-N-16646, suspending Respondent for two years, stayed, and placing him on probation for two years subject to conditions, including a six-month actual suspension.

Multiple Acts (Std. 1.5(b).)

Respondent committed multiple acts of misconduct while he was suspended. He engaged in the unauthorized practice of law ("UPL"), made false misrepresentations under penalty of perjury and failed to comply with California Rules of Court, rule 9.20.

Mitigation

It is Respondent's burden to prove mitigating circumstances by clear and convincing evidence. (Std. 1.6.) The court finds the following with regard to mitigating factors.

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

Standard 1.6(d) provides mitigation credit for "extreme emotional difficulties or physical or mental disabilities suffered by the member at the time of the misconduct and established by expert testimony as directly responsible for the misconduct, provided that such difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the member established by clear and convincing evidence that the difficulties or disabilities no longer pose a risk that the member will commit misconduct."

Respondent urges that his misconduct stemmed from his excessive alcohol and marijuana use, which impaired his thinking and judgment. Respondent has been abusing alcohol and using marijuana for 50 years, beginning at age 17. His drinking increased in 2012 due to a number of stressors: 1) marital strife, which led to a divorce; 2) serving as conservator for his ill brother who later passed away; 3) selling his Costa Mesa home due to financial difficulties; and 4) losing \$1 million while involved in a case that did not have a favorable outcome. Respondent began to drink four cocktails per day with each cocktail containing two to three shots of hard alcohol. He would also smoke marijuana daily, sometimes twice per day.

Respondent presented the testimony of Larissa Mooney, M.D. to support his alcohol and marijuana abuse claims. Respondent was referred to Dr. Mooney by the Lawyer Assistance Program ("LAP") for an addiction/mental health assessment and treatment recommendation. Dr. Mooney evaluated Respondent on February 24, 2015. The evaluation was a standard initial consultation visit based on the history Respondent provided and confirmed by LAP. Dr. Mooney saw Respondent for 90 minutes and prepared a report. Based on the information Respondent provided, as well as information from his LAP case manager, Dr. Mooney found that Respondent is an alcoholic and possibly has a cannabis use disorder. She testified that generally, when in the throes of addiction, an individual's judgment is impaired.

At the time of Dr. Mooney's evaluation, Respondent had decreased his alcohol and marijuana use. He would begin drinking in the afternoon, having two to three cocktails per day (instead of four) and each drink consisting of two to three shots of hard alcohol. He also smoked a small quantity of marijuana every other day. At the time of his evaluation, Respondent having depleted his supply, abstained from marijuana for two to three days. He indicated that he did not intend to resume using the substance. Respondent was "gradually tapering off his alcohol on his own and was encouraged to pursue AA meetings."

Respondent testified that his condition improved after attending LAP and listening to advice from others. He graduated from an outpatient cognitive group setting and receives random testing through LAP. He indicated he had been sober for six months.

In order to consider alcoholism and recovery as a mitigating factor, the attorney must have undergone “a meaningful and sustained period of rehabilitation.” (*Harford v. State Bar* (1990) 52 Cal.3d 93, 101.) At the time of Dr. Mooney’s evaluation, Respondent indicated he was “happier and more relaxed,” and also “motivated to obtain sobriety via his own willpower.” He began an exercise program and had the “ability to focus and follow through with tasks.” He was also gradually tapering off his drinking. Although Respondent testified he had been sober for six months at the time of trial in August 2015, his testimony is at odds with the information he provided Dr. Mooney. He could not have been sober for six months as of August 2015 because in February 2015 he was drinking two to three cocktails per day and was gradually lessening his alcohol consumption. Moreover, even six months of sobriety is insufficient to constitute a “sustained period of rehabilitation” as required to justify “significant mitigation.” (*Harford v. State Bar, supra*, 52 Cal.3d at 101; see also, e.g., *In re Billings* (1990) 50 Cal.3d 358, 367 [eight months’ sobriety was not meaningful and sustained period of rehabilitation].) Thus, without a showing of meaningful rehabilitation, the court is unable to afford any mitigation for Respondent’s alcoholism.

Candor/Cooperation to Victims/State Bar (Std. 1.6(e).)

The court assigns significant mitigation credit for Respondent’s cooperation because he stipulated to relevant facts establishing his culpability and admitted he was culpable of failing to provide written notice of his suspension to his clients. (Std. 1.6(e); see *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive weight in mitigation accorded those who admit culpability as well as facts].)

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). Standard 1.8(b) is the most applicable, and it provides, inter alia, that when a member has two or more prior records of discipline, disbarment is appropriate if actual suspension was ordered in any of the prior matters, or if the prior disciplines coupled with the current misconduct demonstrate the member's unwillingness or inability to conform to ethical responsibilities.

A departure from the presumptive recommendation of disbarment is permitted if the most compelling mitigating circumstances clearly predominate or if the misconduct underlying the prior discipline occurred during the same period as the current misconduct.⁶ Such is not the case here. Respondent's former and current misconduct did not overlap. Additionally, Respondent's mitigation for cooperation is not compelling and does not clearly predominate over his serious misconduct and multiple aggravating factors, including his extensive prior record of discipline.

Disbarment is not mandatory, however, even where compelling mitigating circumstances do not clearly predominate. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 506-507 [disbarment not mandatory in every case of two or more prior disciplines, even where no compelling mitigating circumstances clearly predominate].) Nevertheless, in this case, the court can find no reason to

⁶ Also applicable, standard 2.11 provides that disbarment or actual suspension is appropriate for an act of moral turpitude.

depart from the standards. Respondent has been involved with the disciplinary system three times, yet he continues to commit misconduct, even while on suspension. Additionally, the gravity of his misconduct has increased and includes deception.

In addition to the standards, the court considers decisional law to determine the appropriate level of discipline. The court is guided by *Barnum v. State Bar* (1990) 52 Cal.3d 104. In the *Barnum* case, the Supreme Court disbarred an attorney, finding that the risk of recurrence of professional misconduct was high and the attorney was not a good candidate for suspension and/or probation after he collected an unconscionable fee, disobeyed court orders compelling him to return the fee, and failed to cooperate with the State Bar's investigation. The attorney had three prior discipline records. He was previously disciplined for failing to perform competently and failing to return unearned fees. He was then suspended for failing to timely pass the Professional Responsibility Examination. Thereafter, his probation was revoked and he was actually suspended for one year after failing to file probation reports. No mitigating circumstances were found. The Supreme Court observed that the attorney appeared unwilling or unable to learn from past professional mistakes because he repeated the same misconduct that gave rise to the prior disciplinary proceeding and because no compelling mitigating circumstances existed to preclude application of former standard 1.7(b). Here, as in *Barnum*, the risk of recurrence of professional misconduct is high and therefore the court concludes that Respondent is not a good candidate for probation or suspension.⁷

⁷ In reaching the disbarment recommendation, in addition to *Barnum, supra*, 52 Cal.3d 104, the court considered *Arden v. State Bar* (1987) 43 Cal.3d 713, 728 (disbarment imposed on attorney with three priors that indicated unwillingness to conform conduct to ethical strictures); and *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 80 (disbarment recommended where attorney had two priors and was unable to conform conduct to ethical norms).

In this current proceeding, in addition to engaging in UPL, Respondent committed similar misconduct as in *Kyle III* by failing to comply with rule 9.20, a condition attached to his prior discipline. In that most recent discipline, Respondent was given a six-month suspension but was unable to conform his conduct to the ethical requirements of the legal profession during that period of suspension. Disbarment is both necessary and appropriate since Respondent's prior misconduct, when considered with his current violations, evidences a continuing disregard for his ethical responsibilities. As such, the court cannot justify a departure from disbarment as provided by standard 1.8(b). (*Blair v. State Bar* (1989) 49 Cal.3d 762 [clear reasons for departure from standards should be shown].)

Recommendations

It is recommended that Respondent David Kyle, State Bar Number 55821, be disbarred from the practice of law in California and Respondent's 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 also recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and such costs are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Order of Involuntary Inactive Enrollment

Respondent 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 three 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: December 7, 2015



YVETTE D. ROLAND
Judge of the State Bar Court

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, 2015, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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

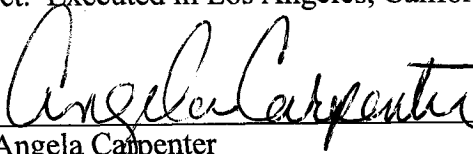
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DAVID KYLE
LAW OFFICES OF DAVID KYLE
8327 S 2ND AVE
INGLEWOOD, CA 90305

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

Hugh Gerard Radigan, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 7, 2015.



Angela Carpenter
Case Administrator
State Bar Court