

FILED
OCT 28 2014
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

IN BANK

In the Matter of)	Case No. 14-Q-03322
)	
DAVID WINSTON AULT,)	RECOMMENDATION ON
)	RESIGNATION
A Member of the State Bar, No. 44801.)	
_____)	

On June 3, 2014, David Winston Ault, filed his resignation with disciplinary charges pending. In light of the grounds set forth in California Rules of Court, rule 9.21(d),¹ we recommend Ault's resignation be accepted because: (1) he had no prior record of discipline in 44 years of practice and his misconduct was limited to a single matter that did not involve clients or the practice of law; (2) he owes no restitution; (3) he cooperated in this proceeding by complying with rule 9.20, tendering an authorization for public disclosure of pending complaints, investigations and proceedings, and entering into a stipulation as to facts and conclusions of law; (4) he closed his practice in 2009 and is effectively retired; and (5) he is 73 years old, in ill health, and willing to forfeit his license. Under these circumstances, Ault's resignation would pose no harm to the public, the courts, and the legal profession.

¹ All further rule references are to this source unless otherwise noted.

I. BACKGROUND

1. State Bar Investigation (Investigation Case No. 14-O-01533)

Ault was admitted to practice law in California on January 15, 1970, and had no prior record of discipline before his misconduct in 2013. However, on January 16, 2013, he reported to the State Bar under penalty of perjury that he was in compliance with minimum continuing legal education (MCLE) requirements when he was not in compliance. In a Stipulation as to Facts and Conclusions of Law, Ault stipulated to the following facts: (1) in order to remain as an active member of the State Bar, he was required to complete 25 credit hours of MCLE during the compliance period of February 1, 2010, through January 31, 2013; (2) he reported under penalty of perjury his compliance with MCLE requirements on January 16, 2013, although he had not completed all of his MCLE during the compliance period; (3) when he reported to the State Bar that he was in compliance with the MCLE requirements, he mistakenly believed he had completed the required MCLE; (4) after being contacted about an audit of his MCLE compliance, he initially failed to respond, but later completed the required hours. Ault stipulated that he committed a dishonest act, which involved moral turpitude, and a willful violation of Business and Professions Code section 6106 by reporting that he was in compliance with MCLE requirements when he was grossly negligent in not knowing that he was not actually in compliance.

B. OCTC's Recommendation

On August 26, 2014, the State Bar's Office of the Chief Trial Counsel (OCTC) filed a report recommending that the resignation be accepted because Ault is 73 years old, in ill health, closed his practice and effectively retired in 2009, and is unlikely to seek reinstatement. OCTC also states that Ault's single misrepresentation concerning his MCLE in 44 years of discipline-free practice is aberrational. The only pending case against Ault is the current investigation.

There is no Client Security Fund claim pending against Ault and he has signed a Stipulation as to Facts and Conclusions of Law.

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

We have considered Ault's resignation under the grounds set forth in rule 9.21(d). We summarize below the relevant information for each ground:

1. Whether the preservation of testimony is complete.

OCTC reports that preservation of necessary testimony is unnecessary since Ault has entered into a stipulation to facts and conclusions of law that resolves all disciplinary matters. Further, the misconduct in this case is Ault's false report of compliance with the MCLE requirements and the only witness necessary to prove the misconduct is the custodian of records who would be available if Ault seeks reinstatement. OCTC states that its investigation is sufficient to prove misconduct and fully evaluate any reinstatement application.

2. Whether after transfer to inactive status, Ault has practiced law or has advertised or held himself out as entitled to practice law.

OCTC reports it has no evidence that Ault has practiced or held himself out as entitled to practice law after he tendered his resignation.

3. Whether Ault performed the acts specified in rule 9.20(a)-(b).

Ault filed a rule 9.20 declaration stating that he had no clients, no client papers or other property to return, no unearned fees, and no pending client matters. OCTC states that it has no evidence that Ault failed to perform the acts specified by rule 9.2(a)-(b).

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

Ault's rule 9.20 compliance declaration was submitted on June 16, 2014.

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 recommending Ault's disbarment.

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

Ault has not previously resigned or been disbarred in California.

8. Whether Ault entered a stipulation with OCTC as to facts and conclusions of law regarding pending disciplinary matters.

In August 2014, the parties entered into a Stipulation as to Facts and Conclusions of Law. The stipulation included all investigations and proceedings pending against Ault.

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

We recommend accepting Ault's resignation. Ault cooperated with OCTC by entering into a stipulation regarding facts and conclusions as to the current investigation matter, submitting a rule 9.20 compliance declaration, and tendering an authorization for public disclosure of pending complaints, investigations and proceedings. The stipulation provides a complete account of his misconduct and is available to the public and any licensing agency or other jurisdiction.

We recognize that Ault's offense is serious. He committed an act of moral turpitude by misrepresenting his compliance with MCLE requirements. (Rules Proc. of State Bar, tit. IV, Stds. For Atty. Sanctions for Prof. Misconduct, std. 2.7 [disbarment or suspension for acts of moral turpitude, dishonesty and fraud].) However, Ault had 44 years of discipline-free practice and his misconduct did not involve clients or the practice of law. (See *Boehme v. State Bar* (1988) 47 Cal.3d 448, 454 [disbarment found too harsh for single instance of misappropriation of client funds by an attorney with 22 years of discipline-free practice].)

Further, Ault is 73 years old, in ill health, and is prepared to relinquish his license. He does not intend to seek reinstatement should his resignation be accepted. Even if he did, he would be at least 78 years old before he is eligible to seek reinstatement. (Rules Proc. State Bar, rule 5.442(B) [earliest reinstatement petition after resignation with charges pending is five years after filing date of resignation].) Ault has essentially retired when he closed his legal practice in 2009. There are no other unresolved discipline matters or investigations pending against him and there are no outstanding issues concerning clients, restitution or unearned fees. Under these circumstances, we do not believe that public confidence in the discipline system will be undermined by accepting Ault's resignation. Permitting him to resign would be consistent with the need to protect the public, the courts and the legal profession

III. RECOMMENDATION

We recommend that the Supreme Court accept the resignation of David Winston Ault, State Bar number 44801. We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6068.10, and that such costs be enforceable both as provided in section 6140.7 and as a money judgment.



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. 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 October 28, 2014, I deposited a true copy of the following document(s):

RECOMMENDATION ON RESIGNATION FILED OCTOBER 28, 2014

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

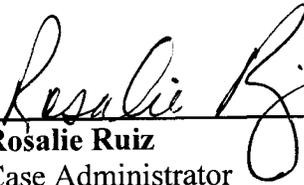
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DAVID WINSTON AULT
29585 NE OWLS LN
NEWBERG, OR 97132

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

CHARLES T. CALIX, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 28, 2014.



Rosalie Ruiz
Case Administrator
State Bar Court