

FILED

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STATE BAR COURT
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LOS ANGELES

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

IN BANK*

In the Matter of)	Case No. 14-Q-04249
)	
DONALD ERWIN LEVINSON,)	RECOMMENDATION ON
)	RESIGNATION
A Member of the State Bar, No. 68360.)	
_____)	

On August 6, 2014, Donald Erwin Levinson, 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 Levinson's resignation be accepted because (1) he cooperated in this proceeding by complying with rule 9.20, stipulating as to facts and conclusions of law, and tendering an authorization for public disclosure of pending complaints, investigations and proceedings; (2) he owes no restitution; (3) he has ongoing physical disabilities and emotional difficulties that make him unable to practice law; and (4) he is 66 years old, willing to forfeit his license and is unlikely to return to the practice of law. We see no harm to the public under the circumstances presented here. We conclude that the acceptance of Levinson's resignation would be consistent with the need to protect the public, the courts, and the legal profession.

I. BACKGROUND

A. Prior Records of Discipline (88-C-14990, et al.; 08-O-10493)

Levinson was admitted to practice law in California on April 28, 1976. He has two prior records of discipline.

* Judge Richard A. Honn did not participate.

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

First, on June 17, 1994, the Supreme Court ordered Levinson suspended for two years, execution stayed, and placed on probation for two years subject to conditions, including six months of actual suspension. (*In re Donald Erwin Levinson on Discipline* (S039262) State Bar Court Case Nos. 88-C-14990, et al.) Levinson stipulated that he committed acts of moral turpitude, failed to perform in two client matters, failed to communicate with a client, and failed to maintain disputed funds in his client trust account in violation of Business and Professions Code sections 6068, subdivision (m) and 6106, and Rules of Professional Conduct, rules 3-110(A) and 4-100(A)(2).

Second, on September 28, 2011, the Supreme Court ordered Levinson suspended for one year, execution stayed, and placed on probation subject to conditions, including actual suspension for the first 30 days of probation. (*In re Donald Erwin Levinson on Discipline* (S194984) State Bar Court Case No. 08-O-10493.) Levinson stipulated to commingling personal funds in his client trust account and failing to maintain client funds in the trust account in violation of Rules of Professional Conduct, rule 4-100(A).

B. Pending Discipline (12-O-14980)

On October 16, 2013, a Notice of Disciplinary Charges (NDC) was filed charging Levinson with ten counts of misconduct in one client matter. In October 2014, the parties entered into a Stipulation as to Facts and Conclusions of Law. Levinson stipulated that he: (1) failed to perform with competence while representing a client by failing to substitute into the case, pick up discovery, and appear for a pretrial hearing, (2) obtained compensation from the client's relatives without obtaining the client's informed written consent, (3) failed to refund any portion of an advance fee payment after termination, (4) failed to provide an accounting, (5) failed to deposit or transfer advance fee costs received for the client's benefit in a trust account, (6) misappropriated \$1,546.45 that was to be maintained or used for the client's benefit, (7)

failed to disclose that he was not entitled to practice law based on the September 28, 2011 disciplinary order, (8) failed to promptly pay funds in his possession that the client was entitled to receive, and (9) failed to comply with conditions of probation imposed by the September 28, 2011 disciplinary order in violation of Rules of Professional Conduct, rules 3-110(A), 3-310(F), 3-700(D)(2), 4-100(A), 4-100(B)(3), 4-100(B)(4), and Business and Professions Code sections 6068, subdivisions (a) and (k), 6106, 6125 and 6126.

C. Office of the Chief Trial Counsel's Recommendation

On October 6, 2014, the Office of the Chief Trial Counsel of the State Bar (OCTC) filed a report recommending that the resignation be accepted because Levinson is unable to practice law due to his ongoing physical disabilities and emotional difficulties; has placed himself on inactive status in February 2013 due to his inability to practice law since January 2012; is 66 years old, resides in an assisted living facility, and is likely continue to do so for the foreseeable future; and is unlikely to seek reinstatement. OCTC reports that Levinson has been hospitalized and/or living in some kind of assisted living facility since January 2012 due to various physical disabilities and emotional difficulties. He is receiving treatment for anxiety and major depression. He also is likely to require surgery for his left knee. Based on this information, OCTC has a good faith belief that Levinson is unlikely to live outside of an assisted living facility for the foreseeable future or competently engage in the practice of law.

OCTC initially reported that there were two Client Security Fund claims for reimbursement at the time of Levinson's resignation. However, on December 3, 2014, OCTC filed a "clarification" to the initial report stating, "the two Client Security Fund claims against Levinson have been closed and as of December 2, 2014, there are no pending claims against Levinson."

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

We have considered Levinson'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 testimony is unnecessary since Levinson has entered into a stipulation as to facts and conclusions of law with OCTC. Further, OCTC states that much of the evidence in the pending disciplinary matter is based on documentary evidence, which will remain intact and be part of the State Bar's investigative file.

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

OCTC reports it has no evidence to rebut Levinson's rule 9.20 declaration stating that he has not advertised, or held himself out as entitled to practice law in California since he voluntarily placed himself on inactive status on February 4, 2013.

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

Levinson 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.

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

Levinson's rule 9.20 compliance declaration was submitted on September 15, 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 Levinson's disbarment.

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

Levinson has not previously resigned, reinstated, or been disbarred in California.

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

In October 2014, the parties entered into a Stipulation as to Facts and Conclusions of Law regarding the pending disciplinary matter.

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

We recommend accepting Levinson's resignation. Levinson cooperated with OCTC by entering into a stipulation regarding the facts, conclusions of law and disposition as to the pending disciplinary 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.

Further, Levinson is unable to practice law and is unlikely to practice law in the foreseeable future. He has been undergoing treatment for his physical disabilities and emotional difficulties since 2011, and has been hospitalized or residing in an assisted living facility since 2012. Levinson is 66 years old, continues to struggle with his physical and emotional difficulties, and is unable to live outside an assisted living facility. His ongoing problems not only prevent him from current practice, but make it unlikely that he would seek reinstatement. In addition, as clarified by OCTC, there are no outstanding Client Security Fund claims against Levinson. Under these circumstances, we do not believe that public confidence in the discipline

system will be undermined by accepting Levinson'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 Donald Erwin Levinson, State Bar number 68360. 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.

PURCELL

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 January 26, 2015, I deposited a true copy of the following document(s):

RECOMMENDATION ON RESIGNATION FILED JANUARY 26, 2015

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:

DONALD ERWIN LEVINSON
C/O WILLIAM A KLAPPERMAN
11355 W OLYMPIC BLVD STE 100
LOS ANGELES, CA 90064

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

ANAND KUMAR, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 26, 2015.



Rosalie Ruiz
Case Administrator
State Bar Court