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STATE BAR COURT
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STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

IN BANK

In the Matter of)	Case No. 15-Q-11117
)	
FERNANDO V. HERNANDEZ,)	RECOMMENDATION ON
)	RESIGNATION
A Member of the State Bar, No. 40498.)	
_____)	

On March 5, 2015, Fernando V. Hernandez, filed his resignation with disciplinary charges pending. Considering the grounds set forth in California Rules of Court, rule 9.21(d),¹ we recommend Hernandez'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; (2) he does not owe any restitution; and (3) he is 75 years old and willing to forfeit his license. We see no harm to the public under the circumstances presented here. We conclude that the acceptance of Hernandez'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 (84-O-13; 09-O-13757; 11-N-15600)

Hernandez was admitted to practice law in California on June 13, 1967. He has three prior records of discipline.

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

First, on May 16, 1985, the Supreme Court ordered Hernandez suspended for two years, execution stayed, and placed on probation for two years subject to conditions, including actual suspension for the first 90 days of probation. (*In re Fernando V. Hernandez on Discipline* (BM4922) State Bar Court case No. 84-O-13.) Hernandez stipulated that he misappropriated and commingled funds in violation of Business and Professions Code section 6106 and Rule 8-101 (now Rule 4-100) of the Rules of Professional Conduct.

Second, on April 13, 2011, the Supreme Court ordered Hernandez suspended for two years, execution stayed, and placed on probation for two years subject to conditions, including actual suspension for the first six months of probation and payment of restitution. (*In re Fernando V. Hernandez on Discipline* (S190168) State Bar Court case No. 09-O-13757.) Hernandez stipulated that he failed to deposit client funds in a client trust account and failed to promptly refund unearned fees in violation of Rule 4-100(A) and Rule 3-700(D)(2) of the Rules of Professional Conduct.

Third, on May 17, 2012, the Supreme Court ordered Hernandez suspended for 30 days. (*In re Fernando V. Hernandez on Discipline* (S198635) State Bar Court case No. 11-N-15600.) Hernandez stipulated that he failed to file proof of compliance with Rule 9.20(c) as was required under the Supreme Court discipline order in his previous case.

B. Pending Discipline (13-O-16798)

On October 27, 2014, a Notice of Disciplinary Charges was filed against Hernandez charging him with two counts of commingling personal funds in a client trust account in violation of Rule 4-100(A) of the Rules of Professional Conduct. Hernandez stipulated to the following facts: (1) Hernandez maintained a client trust account at Bank of America; (2) Beginning on March 22, 2013, and continuing through October 7, 2013, Hernandez made cash deposits from funds belonging to Hernandez into his client trust account; (3) Beginning on

March 25, 2013, and continuing through October 7, 2013, Hernandez issued checks and made cash withdrawals from Hernandez's funds in Hernandez's client trust account; and (4) By depositing funds belonging to Hernandez into Hernandez's client trust account and by commingling funds belonging to Hernandez in Hernandez's client trust account, Hernandez deposited and commingled funds in a bank account in willful violation of Rule 4-100(A) of the Rules of Professional Conduct.

C. Office of the Chief Trial Counsel's Recommendation

On April 21, 2015, the Office of the Chief Trial Counsel of the State Bar (OCTC) filed its report and recommendation on Hernandez's resignation request. OCTC proposed that this Court recommend to the Supreme Court that Hernandez's resignation with charges pending be accepted based on application of the factors listed in rule 9.21(d).

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

We have considered Hernandez'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 all testimony and evidence needed has been obtained since the parties have entered into a full stipulation of facts.

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

OCTC reports that it is not aware that Hernandez has practiced law or held himself out as entitled to practice law since he submitted his resignation with charges pending on March 5, 2015.

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

Hernandez filed a rule 9.20 compliance declaration on April 9, 2015, stating that he had performed the acts specified in rule 9.20(a)-(b).

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

Hernandez's rule 9.20 compliance declaration in this case was submitted on April 9, 2015 under penalty of perjury.

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 Hernandez's disbarment.

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

Hernandez has not previously resigned or been disbarred in California.

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

In April 2015, the parties entered into a Stipulation as to Facts and Conclusions of Law.

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

We recommend accepting Hernandez's resignation. He cooperated with OCTC by entering into a stipulation regarding the facts and conclusions of law and submitting a rule 9.20 compliance declaration. The stipulation provides a complete account of his misconduct and is available to the public and any licensing agency or other jurisdiction.

Further, Hernandez is 75 years old and willing to relinquish his license. He would be at least 80 years old before he is eligible to seek reinstatement. (Rules Proc. of State Bar, rule 5.442(B) [earliest reinstatement petition after resignation with charges pending is five years after filing date of resignation].) No other unresolved discipline matters or investigations are 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 Hernandez'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 Fernando V. Hernandez, State Bar number 40498. 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.



Acting 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 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 June 8, 2015, I deposited a true copy of the following document(s):

RECOMMENDATION ON RESIGNATION FILED JUNE 8, 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:

FERNANDO V. HERNANDEZ
HERNANDEZ LAW FIRM
300 S 1ST ST STE 230
SAN JOSE, CA 95113

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

SUSAN IKAGAN, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 8, 2015.



Rosalie Ruiz
Case Administrator
State Bar Court