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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-12836
)	
DONALD EDWARD FERGUS, JR.,)	ORDER
)	
A Member of the State Bar, No. 87334.)	
_____)	

On June 1, 2015, Respondent Donald Edward Fergus, Jr., filed his resignation with disciplinary charges pending. On July 31 and September 25, 2015, the Office of the Chief Trial Counsel of the State Bar (OCTC) filed its report and supplemental report on the resignation. OCTC recommends that Fergus's resignation be accepted. Based on OCTC's recommendation and in light of the grounds set forth in California Rules of Court, rule 9.21(d),[†] as detailed below, we recommend that the Supreme Court accept the resignation.

I. BACKGROUND

A. Prior Record of Discipline

Fergus was admitted to practice law in California on August 1, 1979. He has one prior record of discipline. On October 19, 2011 (effective November 18, 2011), the Supreme Court ordered Fergus suspended for four years, execution stayed, and placed on probation for four years subject to conditions, including his actual suspension from the practice of law for a minimum of the first two years of probation and until he provides proof of his rehabilitation,

* Judge Richard A. Honn did not participate.

[†] All further references to rules are to this source unless otherwise noted.

fitness to practice, and learning and ability in the general law. (*In re Donald Edward Fergus, Jr. on Discipline* (S195363), State Bar Court case no. 11-J-11428.) In the matter, Fergus stipulated that his conduct in another jurisdiction, Arizona, warranted the imposition of discipline in California. Fergus also stipulated that he violated rule 3-210 of the Rules of Professional Conduct (advising the violation of law) when, after Fergus's client died, Fergus instructed his client's son to sign his client's name on the power of attorney and to use the power of attorney to execute a separate property trust affecting the client's property. Further, he stipulated he committed an act involving moral turpitude, in violation of Business and Professions Code section 6106, by signing as a witness to the false signature of his client on the power of attorney and instructing his secretary to notarize the false signature. No aggravating circumstances were involved, and his lack of prior discipline and cooperation were considered in mitigation.

B. Pending Matters

Two disciplinary matters are pending against Fergus. OCTC and Fergus have entered into a stipulation as to facts and conclusions of law for each. First, in State Bar Court Case no. 14-O-06098, Fergus stipulated that at the time he filed his resignation, he remained subject to disciplinary probation. He stipulated that he was out of compliance with its conditions in violation of Business and Professions Code section 6068(k) because he failed to timely file a quarterly report and had not completed Ethics School. He stipulated that he committed an act of moral turpitude in violation of Business and Professions Code section 6106 because he filed a quarterly report with the Office of Probation of the State Bar falsely stating that he had complied with all the conditions of his probation.

Second, OCTC opened State Bar Case no. 14-J-05962 after Fergus was disbarred in Arizona in 2014. Fergus stipulated that he committed professional misconduct in Arizona warranting discipline in California as follows: (1) by knowingly and falsely stating in a written

response to an Arizona disciplinary investigation that he did not practice law while suspended and did paralegal work under the supervision of another attorney, he committed an act involving moral turpitude in violation of Business and Professions Code section 6106; (2) by rendering legal services while he was suspended from the practice of law in Arizona, he disobeyed a court order establishing a violation of Business and Professions Code section 6103; and (3) engaged in the unauthorized practice of law in Arizona in violation of rule 1-300(B) of the Rules of Professional Conduct.

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

We have considered Fergus'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 there is no need for perpetuation of the evidence.

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

OCTC reports that it has no evidence that Fergus has practiced law or held himself out as entitled to practice law since he tendered his resignation on June 1, 2015.

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

Fergus filed a rule 9.20 compliance declaration on June 1, 2015, stating that he had no clients, no client papers or other property to return, no unearned fees, and no pending client matters. OCTC notes that it appears that there were no acts that Fergus was required to perform pursuant to rule 9.20.

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

Fergus's rule 9.20 compliance declaration in this case was submitted on June 1, 2015.

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 Fergus's disbarment.

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

Fergus has not previously resigned or been disbarred in California. Fergus has been disbarred from the State Bar of Arizona.

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

OCTC reports that it reached agreement on a written stipulation as to facts and conclusions of law in both disciplinary matters that are pending against Fergus. The stipulation was filed with OCTC's report on July 31, 2015.

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

We recommend accepting the resignation for the reasons stated by OCTC in the report and supplemental report. Fergus: (1) filed a rule 9.20 compliance declaration; (2) entered into a stipulation as to facts and conclusions of law regarding all pending disciplinary matters against him, which OCTC reports represents a complete account of his misconduct in the pending matters and are publicly available; and (3) has no pending Client Security Fund claims.

Further, though Fergus has stipulated to misconduct involving two acts of moral turpitude, OCTC recommends acceptance of his resignation. OCTC explains that the misconduct took place in Arizona, where Fergus has resided since 1998. Fergus also has represented to OCTC that he has no intention of returning to California. Further, he is 64 years old and willing to forfeit his license. If Fergus returns to the practice of law, he will be at least

68 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].) OCTC states that though Fergus's conduct was serious, further discipline and monitoring in California would not provide any greater protection to the public or membership than accepting his resignation. Under these circumstances, we do not believe that public confidence in the discipline system will be undermined by accepting the resignation and that acceptance 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 Edward Fergus, Jr., State Bar number 87334. 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.

HONN

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 November 2, 2015, I deposited a true copy of the following document(s):

ORDER FILED NOVEMBER 2, 2015

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

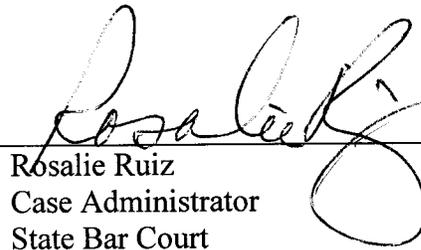
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DONALD E. FERGUS, JR.
425 W BEECH ST # 805
SAN DIEGO, CA 92101

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

Jamie J. Kim, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 2, 2015.



Rosalie Ruiz
Case Administrator
State Bar Court