

PUBLIC MATTER

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STATE BAR COURT
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LOS ANGELES

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 17-O-04960; 18-O-10644
)	(Consolidated)-CV
JAMES ANDRE BOLES,)	
)	DECISION AND ORDER OF
State Bar No. 141639.)	INVOLUNTARY INACTIVE
_____)	ENROLLMENT

Introduction¹

In this contested disciplinary matter, respondent James Andre Boles (Respondent) is charged with failing to comply with disciplinary probation conditions in two separate disciplinary probation matters. Having considered the facts and the law, as well as the mitigation and aggravation, the court finds Respondent culpable of the alleged misconduct and recommends that he be disbarred.

Significant Procedural History

The Office of Chief Trial Counsel of the State Bar of California (OCTC) initiated this proceeding by filing a notice of disciplinary charges against Respondent in case No. 17-O-04960 on November 13, 2017 (NDC #1). Respondent filed an answer to NDC #1 on November 30, 2017.

On March 23, 2018, the parties filed a Stipulation as to Facts and Admission of Documents relating to NDC #1. The matter then proceeded to a hearing before the Honorable

¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.



Donald F. Miles (Judge Miles). Judge Miles, however, did not complete the hearing. Instead, he ordered case No. 17-O-04960 abated pending the filing of new charges in case No. 18-O-10644.

On April 6, 2018, the OCTC filed a notice of disciplinary charges in case No. 18-O-10644 (NDC #2). Respondent filed an answer to NDC #2 on April 19, 2018.

On May 14, 2018, case No. 17-O-04960 was taken out of abatement and consolidated with case No. 18-O-10644. On July 18, 2018, the OCTC filed a motion to amend NDC #2. On July 20, 2018, Respondent filed a motion seeking a two-month continuance to recover from an injury.

On July 23, 2018, Judge Miles issued an order granting the motion to amend NDC #2 and the motion to continue. On July 24, 2018, these matters were transferred to the undersigned judge.

The OCTC filed its amended NDC #2 on September 10, 2018. On October 9, 2018, Respondent filed an answer to the amended NDC #2.

On January 3, 2019, the parties filed a Stipulation as to Facts and Admission of Documents relating to the amended NDC #2. On January 4, 2019, a one-day trial was held. The matter was submitted for decision at the conclusion of the trial. Respondent submitted a post-trial closing brief on January 14, 2019, and the OCTC filed its closing brief on January 18, 2019.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on August 21, 1989, and has been an attorney of the State Bar of California at all times since that date.

Facts

Case No. 17-O-04960

On October 19, 2015, the California Supreme Court issued an order, in case No. S228331 (State Bar Court case No. 13-J-13500), suspending Respondent for one-year, stayed, with two

years' probation, including a 30-day actual suspension. This order became effective on November 18, 2015.

Pursuant to this order, Respondent was required to comply with the following relevant terms and conditions of probation:

- a. Submit written quarterly reports to the Office of Probation of the State Bar of California (Office of Probation) on each January 10, April 10, July 10 and October 10 of the period of probation, stating under penalty of perjury whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter; and
- b. Provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar's Ethics School (Ethics School) and passage of the test given at the end of that session within one year of the effective date of the discipline.

On December 2, 2015, the Office of Probation mailed a letter to Respondent at his official State Bar records address, reminding him of his probation conditions. Thereafter, on December 15, 2013, Respondent met telephonically with his probation deputy.

On December 16, 2015, Respondent's probation deputy mailed a letter to him at his official State Bar records address, reminding him of his probation conditions, with the correction that Respondent was required to submit proof of Ethics School attendance by November 18, 2016. This letter was not returned as undeliverable.²

On October 13, 2016, the Office of Probation emailed Respondent at his official State Bar email address. In this email, Respondent was again reminded that he was required to comply with his Ethics School condition by November 18, 2016. Thereafter, Respondent attended Ethics School on October 20, 2016, but did not submit proof of completion to the Office of Probation.

On January 5, 2017, Respondent submitted a quarterly report. In this report, however, Respondent did not check the box stating whether or not he had complied with all provisions of the State Bar Act, Rules of Professional Conduct, and conditions of probation. On January 6,

² The Office of Probation also emailed a copy of this letter to Respondent at his official email address on December 16, 2015.

2017, the Office of Probation sent an email to Respondent at his official State Bar email address notifying him that his January 5, 2017 quarterly report was not compliant. Respondent was also reminded that he had been required to provide proof of Ethics School attendance by November 18, 2016.

On January 24, 2017, Respondent emailed the Office of Probation stating that he thought he had mailed proof of Ethics School within three days of his completion. Respondent asked the Office of Probation to excuse the amount of time that had passed, as he had been out of the country for nearly three weeks.

On January 27, 2017, the Office of Probation emailed Respondent advising him that it was Respondent's duty to submit proof of Ethics School attendance to the Office of Probation. Respondent was reminded that non-compliance with conditions of probation could lead to additional discipline and attendant costs. On January 30, 2017, Respondent emailed the Office of Probation representing that he would send another copy of his Ethics School certificate.

On February 2, 2017, Respondent submitted his belated proof of attendance and satisfactory completion of the October 20, 2016 Ethics School. Respondent also submitted an amendment to the quarterly report he submitted on January 5, 2017. This amendment, which indicated that it was made under penalty of perjury, did not contain Respondent's actual signature. Instead, it was signed electronically with an "/s/."

On February 10, 2017, the Office of Probation emailed Respondent notifying him that his February 2, 2017 quarterly report amendment was not compliant because, among other reasons, Respondent had "not signed under penalty of perjury." On February 14, 2017, Respondent emailed the Office of Probation stating that he would follow up with the Office of Probation with further correspondence.

There is no indication that Respondent subsequently followed up with the Office of Probation. Moreover, he subsequently failed to submit quarterly reports that were due on April 10, 2017; July 10, 2017; and October 10, 2017.

Case No. 18-O-10644

On October 12, 2017, the California Supreme Court issued an order, in case No. S243907 (State Bar Court case No. 14-J-03438), suspending Respondent from the practice of law for one year, stayed, with two years' probation, including a 60-day period of actual suspension. Respondent received this order shortly after it was issued. The order became effective on November 11, 2017.

Pursuant to this order, Respondent was required to comply with the following relevant terms and conditions of probation:

- a. Contact the Office of Probation within 30 days from the effective date of discipline, and schedule a meeting with Respondent's assigned probation deputy to discuss the terms and conditions of the discipline. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of the probation, Respondent must promptly meet with the probation deputy as directed and upon request; and
- b. Submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation, stating under penalty of perjury whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter.

On or about October 27, 2017, the Office of Probation uploaded a letter to Respondent's private profile on the State Bar of California's website. This letter reminded Respondent of his probation conditions pursuant to Supreme Court Order S243907, including the requirement that he schedule and participate in a meeting with the Office of Probation. The Office of Probation also emailed a copy of this letter to Respondent at his official email address. Respondent received this email.

Respondent did not schedule or participate in the required meeting with his probation deputy by December 11, 2017. On or about December 21, 2017, the Office of Probation mailed and emailed a letter to Respondent stating that he was out of compliance with the conditions of his probation. The letter was mailed to Respondent's official State Bar records address and emailed to his official State Bar email address. Respondent received the letter shortly thereafter.

Despite receiving the December 21, 2017 letter, Respondent did not meet with his probation deputy. Moreover, Respondent subsequently failed to submit his January 10, April 10, and July 10, 2018 quarterly reports.

Respondent's Trial Testimony

Although Respondent initially complied with the probation conditions in case No. 13-J-13500, at some point, however, he "didn't feel it was something [he] could do anymore." Respondent did not deny non-compliance with the remainder of conditions in the 13-J-13500 probation, nor did he deny non-compliance with the conditions in the 14-J-03438 probation. Rather, he argued that he had a disability from brain injuries "that cannot be conclusively diagnosed." Respondent asserted that his undiagnosed brain injury, in addition to Attention-Deficit/Hyperactivity Disorder and Posttraumatic Stress Disorder, interfered with his recollection and speech patterns. Respondent, however, did not offer any medical records to support his position. (See *Barnum v. State Bar* (1990) 52 Cal.3d 104, 113 [reliable extrinsic evidence needed to assess extent and nature of attorney's alleged mental condition].)

Similarly, Respondent did not provide any medical records to the Office of Probation. He asserted that he wanted to provide the medical records to his probation deputy in person, but she would not agree to anything other than a telephonic meeting. Nonetheless, Respondent chose not to send medical documents to the Office of Probation. Moreover, Respondent never

filed a motion with the State Bar Court seeking modification of probation conditions based upon disability or any other grounds.

Respondent further argued that his financial situation precluded him from complying with probation conditions such as the cost of taking Ethics School. However, he actually completed Ethics School. What Respondent failed to do was timely submit proof of such to the Office of Probation. Thus, his failure to timely submit proof of attending Ethics School had nothing to do with his financial situation. And the same can be said for Respondent's repeated failures to submit quarterly reports.

While the court observed Respondent to be bright, well-spoken, and articulate, he repeatedly attempted to use the hearing in this matter to collaterally attack his prior disciplinary matters in Nevada and California, and as a vehicle to press the First Amendment and Americans with Disabilities Act (ADA) claims that he argues were ignored by the Nevada and California courts. Moreover, Respondent gave no assurances that he could ever comply with conditions of disciplinary probation. In response to the OCTC's question regarding whether he could comply with probation conditions if he were placed on probation for a third time, Respondent replied "no."

Conclusions of Law

Case No. 17-O-04960

Count One – § 6068, Subd. (k) [Failure to Comply with Probation]

Section 6068, subdivision (k), provides that an attorney has a duty to comply with all conditions attached to any disciplinary probation. By willfully failing to: (1) timely submit a compliant quarterly report on January 10, 2017; (2) submit quarterly reports on April 10, July 10, and October 10, 2017; and (3) timely submit proof of completion of the Ethics School to the Office of Probation (due by November 18, 2016), Respondent failed to comply with conditions

attached to his disciplinary probation in case No. 13-J-13500, in willful violation of section 6068, subdivision (k).

Case No. 18-O-10644

Count One – § 6068, Subd. (k) [Failure to Comply with Probation]

By willfully failing to: (1) timely contact the Office of Probation to schedule a meeting with the assigned probation deputy; (2) hold a meeting with that deputy; (3) submit quarterly reports on January 10, April 10, and July 10, 2018, Respondent failed to comply with conditions attached to his disciplinary probation in case No. 14-J-03438, in willful violation of section 6068, subdivision (k).

Aggravation³

The OCTC bears the burden of proving aggravating circumstances by clear and convincing evidence. (Std. 1.5.) The court finds the following with respect to aggravating circumstances.

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

Respondent has been previously disciplined on two occasions. The court assigns substantial weight in aggravation for Respondent's prior record of discipline.

On October 19, 2015, the Supreme Court issued order no. S228331 (State Bar Court case No. 13-J-13500) suspending Respondent from the practice of law for one year, stayed, with two years' probation, including a 30-day actual suspension. In this reciprocal disciplinary matter, Respondent was suspended by the Supreme Court of Nevada for one year for failing to act with reasonable diligence and failing to communicate with two clients.⁴ The Review Department considered and rejected Respondent's arguments that the Nevada proceedings were biased and

³ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

⁴ Said misconduct occurred in approximately 2010 and 2011.

violated his rights under the ADA. The Review Department found that Respondent's conduct in Nevada constituted a failure to communicate and failure to perform in both client matters. In mitigation, Respondent had no prior record of discipline, demonstrated recognition of his limitations, and implemented ameliorative actions. In aggravation, Respondent committed multiple acts of misconduct.

On October 12, 2017, the Supreme Court issued order No. S243907 (State Bar Court case No. 14-J-03438) suspending Respondent from the practice of law for one year, stayed, with two years' probation, including a 60-day actual suspension. In this second reciprocal disciplinary matter, Respondent was suspended by the Supreme Court of Nevada for two years (consecutive to his prior one-year suspension) for abandonment of two clients.⁵ The Hearing Department found that Respondent's conduct in Nevada constituted a failure to perform, improper withdrawal, failure to communicate, and failure to return client papers/property in both client matters.⁶ The Hearing Department rejected many of the same arguments Respondent made before the Review Department approximately two years earlier in case No. 13-J-13500, including assertions that the Nevada proceedings violated his rights under the ADA, as well as his First Amendment rights. In mitigation, Respondent was experiencing extreme physical difficulties at the time of the misconduct. In aggravation, Respondent had a prior record of discipline and committed multiple acts of misconduct.

Lack of Insight

Respondent demonstrated a lack of insight toward the present misconduct. Rather than focusing on the alleged probation violations, Respondent continues to argue the validity of the

⁵ Said misconduct also occurred in approximately 2010 and 2011.

⁶ Respondent was also found culpable of failing to update his Nevada Bar records address.

underlying Nevada Supreme Court and California State Bar Court decisions. For instance, the first paragraph of Respondent's present closing brief reads as follows:

INTRODUCTION: The story told in the matters of State Bar of California and State Bar of Nevada v. [Respondent] is one of corruption, incompetence and slipshod antics inside two state bar associations, or why lawyers don't need jokes to make them look bad. Beginning in 2010, the State Bar of Nevada set out on a campaign to impugn the integrity of a solo practitioner who had successfully prosecuted numerous corrupt government officials for civil rights violations. He also successfully defended many criminal defendants who the state unfairly prosecuted. Nevada, known in the minority communities as the "Mississippi of the west" produced many targets for an aggressive civil rights lawyer. For many years, he dodged the slings and arrows of those politicians wounded in his war against injustice but in 2011 he faced health issues. He withdrew from the practice of law entirely in 2016 and now works as an author. He is before this court seeking complete exoneration.

By attempting to use the present proceedings as a vehicle to relitigate previously adjudicated matters, Respondent demonstrated a lack of insight and understanding with regard to the severity of the present probation violations. His lack of insight suggests that Respondent's disregard for his legal and professional obligations may recur and, therefore, warrants significant consideration in aggravation. (See *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 595.)

Multiple Acts (Std. 1.5(b).)

Respondent's multiple acts of misconduct constitute significant weight in aggravation.

Mitigation

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6.) The court finds the following with regard to mitigating circumstances.

Cooperation with the State Bar (Std. 1.6(e).)

Respondent entered into two comprehensive stipulations with regard to facts and the admissibility of evidence. While Respondent did not specifically stipulate to culpability, he

admitted that he failed to satisfy multiple probationary conditions. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive weight in mitigation given to those who admit culpability and facts].) The stipulated facts would not have been difficult to prove; but, nonetheless, Respondent's cooperation preserved court time and resources. (*In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308, 318 [limited weight for non-extensive stipulation to easy-to-prove facts].) Considering these factors collectively, Respondent's cooperation with the OCTC warrants moderate consideration in mitigation.

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). Second, the court looks to decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.7 provides that if aggravating or mitigating circumstances are found, they should be considered alone and in balance with any other aggravating or mitigating factors. In this case, the standards call for actual suspension as the presumed sanction. (Standard 2.14.)

Due to Respondent's prior record of discipline, the court also looks to standard 1.8(b) for guidance. Standard 1.8(b) states, in part, that unless the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred

during the same time period as the current misconduct, disbarment is appropriate when an attorney has two prior records of discipline and: (1) has been previously ordered to serve a period of actual suspension; or (2) the prior disciplinary matters coupled with the current record demonstrate the attorney's unwillingness or inability to conform to ethical responsibilities.

The standards, however, "do not mandate a specific discipline." (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has long been held that the court is "not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender." (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silvertown* (2005) 36 Cal.4th 81, 92.)

In its pretrial statement, the OCTC recommended that Respondent be disbarred from the practice of law. Respondent, on the other hand, seeks "complete exoneration."

The Supreme Court and Review Department have not historically applied standard 1.8(b) in a rigid fashion.⁷ As the standard provides, the critical issue is whether the most compelling mitigating circumstances clearly predominate to warrant an exception to the severe penalty of disbarment. (See *Barnum v. State Bar, supra*, 52 Cal.3d at p. 113 [disbarment under former std. 1.7(b) imposed where no compelling mitigation]; compare *Arm v. State Bar* (1990) 50 Cal.3d 763, 778-779, 781 [disbarment under former std. 1.7(b) not imposed where compelling mitigation included lack of harm and no bad faith].)

Here, by his own admission, Respondent is unwilling or unable to conform to his ethical responsibilities. Consequently, it makes little sense to recommend a third installment of disciplinary probation. (See *Barnum v. State Bar, supra*, 52 Cal.3d at pp. 112-113 [disbarment

⁷ Standard 1.8(b) was previously identified as former standard 1.7(b).

imposed where attorney's probation violations left court no reason to believe he would comply with lesser discipline.]) Moreover, while Respondent has demonstrated modest mitigation, this showing does not come close to the level of "compelling mitigating circumstances" called for by standard 1.8(b). Accordingly, this court sees no reason to recommend a level of discipline short of disbarment.

Therefore, having considered the nature and extent of the misconduct, the aggravating and mitigating circumstances, as well as the case law and standards, the court finds that Respondent's disbarment is necessary to protect the public, the courts, and the legal profession; to maintain high professional standards; and to preserve public confidence in the legal profession.

Recommendations

It is recommended that respondent James Andre Boles, State Bar Number 141639, 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 California Rules of Court, rule 9.20, 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 imposing discipline in this matter.⁸

⁸ For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

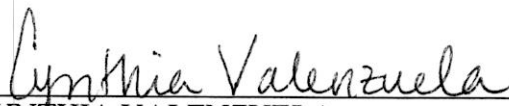
Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against an attorney who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

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: April 2, 2019



CYNTHIA VALENZUELA
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 Court Specialist 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 April 2, 2019, 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:

James Andre Boles
Law Ofc James Andre Boles
475 Old Ventura Ave
Oak View, CA 93022-9725

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

Trinidad Ocampo, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 2, 2019.



Paul Songco
Court Specialist
State Bar Court