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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. 16-Q-17331
)	
JOSEPH HENRY MARMAN)	RECOMMENDATION ON
)	RESIGNATION
A Member of the State Bar, No. 129517.)	
_____)	

On November 4, 2016, Respondent Joseph Henry Marman filed a resignation with charges pending. On January 5, 2017, the Office of the Chief Trial Counsel of the State Bar (OCTC) filed its report on the resignation and filed the parties' "Stipulation as to Facts and Conclusions of Law" (Stipulation). Respondent did not file a response.

OCTC recommends that the resignation be rejected. We recommend that the Supreme Court reject the resignation based on OCTC's recommendation, and in light of the grounds set forth in California Rules of Court, rule 9.21(d),¹ as detailed below.

I. BACKGROUND

Respondent was admitted to practice law in California on September 15, 1987. He has four prior records of discipline—three of which include a period of actual suspension from the practice of law.

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

A. Four Prior Records of Discipline

First, effective July 14, 1995, the Supreme Court ordered respondent suspended for two years, execution stayed, and placed on probation for four years subject to the conditions of probation, including a 60-day period of actual suspension and payment of \$25,701 in restitution. (*In re Joseph Henry Marman* (S045983), State Bar Court Case No. 92-O-13001.) Respondent stipulated that in three client matters he willfully failed to supervise his law office resulting in his failure to perform services and to deposit client funds in trust (Rules Prof. Conduct, rules 3-110(A), 4-100(A), and he committed acts of moral turpitude through gross negligence (Bus. & Prof. Code, § 6106). He also committed a client trust fund violation in a fourth matter. (Rules Prof. Conduct, rule 4-100(A).) In aggravation, his misconduct involved multiple acts and caused significant harm; in mitigation, he did not have a prior record of discipline, cooperated and demonstrated good character.

Second, effective April 25, 1998, the Supreme Court ordered respondent suspended for 14 days, execution stayed, and placed on probation for one year subject to the conditions of probation. (*In re Joseph Henry Marman* (S067309), State Bar Court Case No. 95-O-15064.) Respondent stipulated that he held himself out as entitled to practice law while on active suspension (Bus. & Prof. Code, §§ 6125, 6126, 6068(a)) and failed to provide satisfactory proof of restitution ordered in his first discipline (Bus. & Prof. Code, § 6068(k)). In aggravation, he had one prior record of discipline; in mitigation, he did not cause harm, cooperated, and suffered from severe financial stress.

Third, effective September 7, 2000, the Supreme Court ordered respondent suspended for 90 days, execution stayed, and placed on probation for one year subject to the conditions of

probation, including a 30-day period of actual suspension and payment of \$1,750 in restitution.² (*In re Jospeh Henry Marman* (S088572), State Bar Court Case No. 98-O-01683.) Respondent stipulated that he failed to make restitution to the client security fund and to two medical clinics in violation of his probation in his first discipline (Bus. & Prof. Code, § 6068, subd. (k)). In aggravation, he had two prior records of discipline; in mitigation, he cooperated, and suffered from severe financial stress.

Fourth, effective March 25, 2016, the Supreme Court ordered respondent suspended for two years, execution stayed, and placed on probation for three years subject to the conditions of probation, including a two-year period of actual suspension to last until respondent proves rehabilitation, fitness to practice and learning and ability in the general law. (*In re Jospeh Henry Marman* (S229881), State Bar Court Case No. 10-C-08329.)

Respondent was convicted of violating Penal Code section 415(1) (fighting in public) and Vehicle Code sections 23152, subdivision (b) (driving with a 0.08% or more blood alcohol level) and 23109, subdivision (c) (speed contest), misdemeanors. Following the filing of disciplinary charges, respondent was accepted to the State Bar's Alternative Discipline Program (ADP) and agreed a to a high-level discipline of a two-year period of actual suspension if he was terminated from the program. As part of his participation in the ADP, respondent stipulated that his criminal conduct involved misconduct warranting discipline. In aggravation, he stipulated he had three prior records of discipline, committed multiple acts, caused significant harm, and demonstrated indifference. No mitigating circumstances were present. After he was terminated from the ADP, the agreed-to discipline was imposed.

² It is not clear from the pleadings filed in this resignation matter whether respondent has satisfied his obligation to pay restitution, including to the client security fund.

B. Pending Charges and an Investigation

Charges and an investigation are currently pending against respondent. On September 26, 2016, OCTC filed an Amended Notice of Disciplinary Charges in State Bar Court case numbers 16-N-15019 and 16-O-15084. In the Stipulation, respondent stipulated that he willfully: failed to file a declaration of compliance with California Rules of Court, rule 9.20(c) as required by Supreme Court Order in his fourth discipline case; and failed to comply with numerous terms of his probation in his fourth discipline. (Bus. & Prof. Code, § 6068(k).) State Bar investigation number 16-O-17994 was initiated on December 20, 2016. Related to that investigation, respondent stipulated that he held himself out as practicing or entitled to practice law while on active suspension. (Bus. & Prof. Code, §§ 6126, 6068(a).) In aggravation, the parties stipulated to respondent's four prior records of discipline and multiple acts, and in mitigation to good character and cooperation.

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

We have considered respondent'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 further perpetuation of evidence is not required.

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

OCTC reports that after respondent filed his resignation it learned that respondent was maintaining an active website advertising his services as an attorney while on active suspension. Upon advisement, respondent took steps to change the website to account for his ineligibility to practice law.

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

OCTC reports that respondent has performed the acts specified in rule 9.20(a)-(b).

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

Respondent filed an affidavit pursuant to rule 9.20 on June 28, 2016.

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 respondent's disbarment.

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

Respondent has not previously resigned or been disbarred in California.

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

The parties entered into a stipulation as to facts and conclusions of law regarding the above described pending charges and investigation on December 20, 2016.

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

Acceptance of respondent's resignation would be inconsistent with the need to protect the public, the courts, and the legal profession. Respondent has four prior records of discipline, and it is not clear from the filings in this matter that respondent has paid restitution as ordered in his third discipline. Further, respondent's serious misconduct spans more than 20 years and includes acts of moral turpitude, failures to perform, repeated probation violations, noncompliance with rule 9.20, criminal misconduct, and the unauthorized practice of law. The parties did not stipulate to "the most compelling mitigating circumstances," thus disbarment would be

appropriate discipline pursuant to standard 1.8(b) of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct in the pending matters.³ We also note OCTC's "significant concern" that respondent's recent unauthorized practice of law "portends the potential for future misrepresentations and subversions of [respondent's] true status." Under these circumstances, we find that respondent should not be allowed the benefit of resigning.

III. RECOMMENDATION

We recommend that the Supreme Court decline to accept the resignation of Joseph Henry Marman, State Bar number 129517.

PURCELL

Presiding Judge

³ Standard 1.8(b) provides for disbarment, under certain circumstances, where an attorney has two or more prior disciplines, 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."

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 February 23, 2017, I deposited a true copy of the following document(s):

ORDER FILED FEBRUARY 23, 2017

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

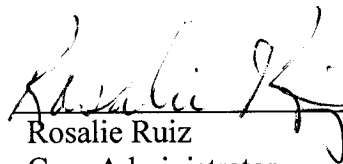
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

JOSEPH H. MARMAN
8421 AUBURN BLVD #145
CITRUS HEIGHTS, CA 95610 - 0394

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

Lauren M. Williams, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on February 23, 2017.



Rosalie Ruiz
Case Administrator
State Bar Court