PUBLIC MATTER
FILED
APR 05 2018
STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of	)	Case Nos. 16-O-13940
	)	(16-O-15459)-PEM
ROBERT NORIK KITAY,	)	
	)	DECISION AND ORDER OF
A Member of the State Bar, No. 229966.	)	INVOLUNTARY INACTIVE
	)	ENROLLMENT

Introduction[1]

In this contested disciplinary proceeding, the Office of Chief Trial Counsel of the State Bar of California (State Bar) charges respondent Robert Norik Kitay (respondent) with five counts of professional misconduct in two client matters. The charged misconduct includes: (1) communicating with a represented party; (2) failing to perform with competence; (3) failing to release client files; (4) failing to respond to client inquiries; and (5) failing to return unearned fees. The court finds, by clear and convincing evidence, that respondent is culpable of three counts of misconduct. Based upon the nature and extent of culpability, as well as the applicable mitigating and aggravating circumstances, the court recommends that respondent be disbarred.

Significant Procedural History

The State Bar initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) against respondent on August 23, 2017. Respondent filed a response to the NDC on September

[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.

kwiktag ® 237 301 800

18, 2017. A four-day trial was held on January 2, 3, 4 and February 6, 2018. The State Bar was represented by Senior Trial Counsel Erica L. M. Dennings. Respondent represented himself. On February 16, 2018, following closing briefs, the court took this matter under submission.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on January 29, 2004, and has been a member of the State Bar of California at all times since that date.

Case No. 16-O-13940 – The Lumicon International Matter

Facts

From 2012 through 2015, Deborah Neveux (Neveux) was an owner of, and registered agent of Lumicon International, LLC (Lumicon), a Simi Valley Company that sells astronomy accessories and telescope filters. Maurice Sweiss (Sweiss) was a silent partner at Lumicon. In 2016, Sweiss received a 50% ownership interest in Lumicon. On June 13, 2016, Neveux and Sweiss entered into a formal agreement to reflect that Neveux and Sweiss jointly owned the company.

On July 21, 2015, Optical Structures, Inc. (OSI) filed a breach of contract action against Lumicon and Neveux (*Optical Structures, Inc. v. Lumicon International, LLC*, Sacramento County Superior Court case No: 34-2015-00182045). Lumicon filed a cross complaint for breach of contract against OSI and OSI's CEO, Cary Chleborad (Chleborad). Respondent represented OSI and Chleborad in the lawsuit. Lumicon and Neveux were represented by Michelle Jorden (Jorden), and on August 4, 2015, Jorden wrote respondent a letter informing him about her representation. Jorden requested that all future correspondence be directed to her office.

In January 2016, respondent served notices of depositions on Jorden on Neveux's behalf and the Person Most Knowledgeable (PMK) of Lumicon. On May 17, 2016, Jorden emailed

respondent and requested that Neveux's testimony be taken by written examination and informed respondent that Neveux would be the PMK.[2] One day later, respondent notified Jorden that he would not agree to written deposition questions, and that Jorden needed to make Neveux and Lumicon's PMK available sometime in the first two weeks in June 2016.[3]

On May 19, 2016, early in the morning, Jorden sent respondent an email telling him that she was working on an alternate PMK because Neueux was undergoing chemotherapy, and she did not want to subject Neveux to two days of depositions. After a discussion with Neveux and Sweiss, Jorden determined that Sweiss had the technical knowledge of the categories that would be covered in the deposition and that he would be the PMK. In the late afternoon of May 19, 2016, Jorden informed respondent that the PMK for Lumicon was Sweiss. Aside from having the technical knowledge of categories covered in the deposition, Sweiss had been carbon copied on many of the email exchanges between Lumicon and Neveux. Consequently, Jorden had no doubt as to the appropriateness of her designation of Sweiss as the PMK.

On May 20, 2016, respondent responded to Jorden's email designating Sweiss as the PMK. He wrote, "as for Maurice Sweiss being the PMK I almost fell out of my chair laughing when I read that. It is utterly preposterous. . . . Maurice Sweiss cannot be designated by Lumicon as its PMK that much is certain. . . . ." He also threatened to file a motion to compel. Jorden then responded to respondent's May 20 email asking him to enlighten her regarding the legal basis of his objection to Sweiss being designated the PMK.

On May 21, 2016, unbeknownst to Jorden, respondent called and spoke to Sweiss for 92 minutes where they spent 20 to 25 minutes discussing the *OSI v. Lumicon* matter.

[2] The request for written examination was based on the fact that Neveux was suffering from a severe health condition and was undergoing chemotherapy.

[3] On May 18, 2016, respondent sent Jorden a second email explaining that written deposition questions were unacceptable, and that he wanted an in-person deposition with Neveux and the PMK.

On June 6, 2016, respondent filed a Motion to Compel Depositions and Request for Sanctions to compel the deposition of Neveux in her personal capacity and as Lumicon's PMK. In his attached declaration, respondent admitted that he telephoned and talked to Sweiss on May 21, 2016, discussed the substance of the *OSI v. Lumicon* lawsuit, and spoke about whether Jorden or Neveux had talked to him about testifying as Lumicon's PMK.

On July 1, 2016, the court denied respondent's motion to compel Neveux as the PMK. The court determined that respondent was not entitled to select the PMK. Specifically, the court held, "Plaintiff is not entitled to select who appears as Lumicon's PMK. Rather, in response to a deposition notice served on an entity, the 'deponent shall designate and produce at the deposition those of its officers, directors, managing agents, employees, or agents most qualified to testify on its behalf as to those matters to the extent of any information known or reasonably available to the deponent.' (CCP. § 2023.230.) The designation is made by the deponent, not the person noticing the deposition." In short, respondent was not entitled to select the PMK.

On July 18, 2016, Jorden filed a motion to disqualify respondent from representing OSI and Chleborad in the litigation. Jorden argued that respondent intentionally contacted her PMK, Sweiss, without her consent to discuss matters directly related to the litigation.[4]

On October 18, 2016, the court issued an order disqualifying respondent as OSI's counsel. The court found that respondent's violation of rule 2-100 had and would continue to have detrimental effects upon the proceedings. The court noted that respondent's violation of the Rules of Professional Conduct resulted in his admission to receiving information that created a factual dispute as to whether the PMK of a party is qualified to testify on behalf of the LLC, and has further created the issue of Sweiss's credibility.

---

[4] Respondent admitted to his conversations with Sweiss in his June 6, 2016 declaration.

Conclusions

Count 1 - (Rule 2-100(A) [Communication with a Represented Party])

Rule 2-100(A) provides that an attorney, while representing a client, must not directly or indirectly communicate about the subject of the representation with a party the attorney knows is represented by another attorney, unless the attorney has the consent of the other attorney. On May 21, 2016, respondent represented OSI in a lawsuit against Lumicon. On May 19, 2016, he knew that Jorden had designated Sweiss as the PMK for Lumicon. Despite having the knowledge of Jorden's representation, on May 21, 2016, respondent communicated with Sweiss about the subject of that representation without the consent of Jorden. The court finds clear and convincing evidence that respondent willfully violated rule 2-100(A).

Case No. 16-O-15459 – The Incerty Matter

Facts

In late fall, Pamela Incerty (Incerty) decided to get a divorce because her husband was living with his mistress. She chose respondent based upon a positive review on a website. On December 12, 2012, she met with respondent and agreed to hire respondent to represent her in her dissolution matter. Respondent charged her a flat fee of $2,500 pursuant to a fee agreement. The agreement stated that the client "understands that the failure to keep at least a $500 positive balance at all times is a material breach of the agreement and as such [respondent] may elect at his option, to terminate the ATTORNEY and CLIENT relationship and withdraw from representation."[5] After signing the fee agreement on December 12, 2012, Incerty made a down payment of $1,000.

---

[5] During his representation of Incerty, respondent chose not to enforce this provision of the agreement because the case was never going to be lucrative.

On December 14, 2012, respondent filed and served a petition for dissolution (*Pamela Incerty v. Stephen Incerty*, Sacramento County Superior Court case number 12FL07256). Respondent served the petition on Stephen Incerty on February 26, 2013.

Incerty paid respondent $250 on January 22, 2013, February 4, 2013, and February 21, 2013. By the end of February 2013, Incerty had paid respondent $1,750 pursuant to their agreement.

Incerty decided she did not want to proceed with the divorce and signed a substitution of attorney form on March 8, 2013, indicating she was representing herself. On March 11, 2013, Stephen Incerty filed his response. On April 11, 2013, respondent became Incerty's counsel of record again after he filed a substitution of attorney form in the *Incerty* dissolution matter. On April 12, 2013, respondent filed a request for dismissal of the case, but on April 12, 2013, the dismissal was denied because a substitution of attorney on file indicated that Incerty represented herself.[6]

On June 13, 2013, Incerty met with respondent to discuss the next step in the dissolution process. In the meeting, respondent never mentioned to her that she was in default for nonpayment of the full $2,500 legal fee. Moreover, he never discussed that under the retainer agreement, he was not obligated to work on her case or that he would no longer work on her case because she failed to maintain a $500 balance.

In February 2014, respondent prepared an income and expense declaration regarding a schedule of assets and debts. However, he never filed the income and expense declaration. In fact, after February 24, 2014, respondent took no further steps to complete the dissolution. Since Incerty's balance fell below $500, respondent chose not to perform any additional work on her

[6] The record indicates; however, that respondent and Incerty signed another substitution of attorney form in April 2013. The form was filed in superior court on April 11, 2013.

case. From March 27, 2014, through October 2014, Incerty never heard from respondent. As a consequence, she believed her case was on hold.

Effective November 28, 2014, respondent was actually suspended from the practice of law in Supreme Court case No. S202084. On December 14, 2014, respondent filed a substitution of attorney form in the *Incerty* dissolution matter that Incerty and respondent signed. The form indicated that Incerty was representing herself. On December 17, 2014, respondent sent Incerty a letter notifying her of his suspension. In the letter, respondent suggested that Incerty contact Lara Grevious (Grevious), a local attorney who had agreed to represent her and a number of his clients while he was suspended. He also told her that she had a positive balance of $335, and that if she hired Grevious, he would facilitate a meeting with her and forward her file to Grevious along with the unused balance of her retainer.

In May 2015, Incerty met with Grevious, but Grevious did not have her file. And after the meeting, Incerty determined that Grevious was too expensive and she could not hire her.

Respondent acknowledges that he did not give Grevious Incerty's file. After his suspension ended on May 21, 2015, respondent did not contact Incerty to determine if she hired another attorney, nor did he return her file or $335 in unearned fees. Respondent performed no work on Incerty's case between May 2015 (when he returned to active status) and June 2016 because he was no longer her attorney of record.

Incerty called respondent and left messages to return her calls regarding the status of her case on four occasions between June 24, 2016 and July 22, 2016. Respondent did not return her calls until July 28, 2016. On July 28, 2016, Incerty spoke to respondent on his cell phone and asked for her file and a refund of her retainer balance of $335. On August 5, 2016, respondent met with Incerty to return her file and $335 in unearned fees.

Conclusions

Count 2 - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

The State Bar charged respondent with willfully violating rule 3-110(A) by failing to perform any work after filing the dissolution petition, and failing to finalize or file an income and expense declaration on Incerty's behalf. Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. Respondent is culpable of willfully violating rule 3-110(A) by failing to perform any legal services on Incerty's behalf for nine months.

For purposes of rule 3-110(A), " 'competence' in any legal service shall mean to apply the 1) diligence, 2) learning and skill, and 3) mental, emotional, and physical ability reasonably necessary for the performance of such service." (Rules of Prof. Conduct, rule 3-110(B).) In February 2014, respondent prepared an income and expense declaration, but he never filed it. Respondent took no additional steps to complete Incerty's dissolution. He was suspended from the practice of law effective November 28, 2014, and was no longer Incerty's counsel of record by December 14, 2014. Respondent sent Incerty a letter notifying her about his suspension on December 17, 2014. Respondent took no action on Incerty's behalf after February 2014, and although his failure to perform was neither reckless nor repeated, the court finds it was intentional.

Respondent acknowledged at trial and in his closing brief that he ceased working on Incerty's matter because Incerty failed to maintain a balance of $500 as required by the fee agreement. He said the case "stalled" as he waited for additional payments. However, respondent never informed Incerty that he would no longer work on her case because her balance fell below $500, and he acknowledged that he chose not to enforce that provision of the fee agreement. Respondent intentionally failed to take any steps to advance Incerty's dissolution for

nine months because Incerty failed to make additional fee payments, but respondent never informed Incerty that her case would not proceed until she paid him additional funds.

Respondent also claimed that Incerty was indecisive about whether to finalize the dissolution. However, there is no evidence that Incerty wanted respondent to cease working on her matter after he met with her in June 2013 and drafted the income and expense declaration in February 2014. Under these circumstances, respondent is culpable of willfully violating rule 3-110(A).

Count 3 - (§ 6068, subd. (m) [Failure to Communicate])

The State Bar charged respondent with willfully violating section 6068, subdivision (m), by failing to promptly respond to four telephonic reasonable status inquiries that Incerty made between June 24, 2016 and July 22, 2016. Section 6068, subdivision (m), provides that an attorney has a duty to promptly respond to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services. Incerty was no longer respondent's client after December 2014. Thus, Respondent is not culpable of willfully violating section 6068, subdivision (m), by failing to promptly respond to Incerty's status inquires in 2016. Count 3 is dismissed with prejudice.

Count 4 - (Rule 3-700(D)(1) [Failure to Return Client Papers/Property])

The NDC alleges that respondent willfully violated rule 3-700(D)(1) by failing to promptly release Incerty's file upon termination of his employment on or about December 29, 2014. Rule 3-700(D)(1) requires an attorney, upon termination of employment, to promptly release to the client, at the client's request, all client papers and property, subject to any protective order or non-disclosure agreement. This includes pleadings, correspondence, exhibits, deposition transcripts, physical evidence, expert's reports and other items reasonably necessary

to the client's representation, whether the client has paid for them or not. Respondent is not culpable of willfully violating rule 3-700(D)(1) because Incerty first requested her file on July 28, 2016, and Respondent returned it to her on August 5, 2016. Count 4 is dismissed with prejudice.

Count 5 - (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

The State Bar charged respondent with willfully violating rule 3-700(D)(3) by failing to promptly return to Incerty, upon termination of his employment, any part of the advanced fee that had not been earned. Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned. Respondent knew that he owed Incerty $335 in unearned fees when he sent her a letter advising her about his suspension on December 17, 2014, yet he did not refund those unearned fees to Incerty until August 5, 2016. As such, respondent is culpable of willfully violating rule 3-700(D)(3).

Aggravation[7]

The State Bar must establish aggravating circumstances by clear and convincing evidence. (Std. 1.5.) The court finds three aggravating circumstances.

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

Kitay I

On October 29, 2014, the Supreme Court ordered that respondent be suspended from the practice of law for two years, stayed, placed on probation for two years, and actually suspended for six months (Supreme Court case No. S202084). Respondent stipulated to misconduct in two matters that took place from May 2010 through May 2011. In the first matter, Respondent willfully violated section 6106 by making false representations and failing to transfer assigned

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

settlement funds to a third party. In the second matter, respondent willfully violated rule 3-110(A) by failing to satisfy a client's third-party claim, failing to communicate with his clients, and failing to provide his clients with an accurate accounting. Multiple acts of misconduct and significant harm constituted the aggravating factors. Respondent's misconduct was tempered by the lack of a prior record, cooperation, good character, financial difficulties, and remorse.

Kitay II

On May 25, 2017, in State Bar Court case No. 15-O-10294, et al., the Hearing Department recommended that respondent be suspended from the practice of law for two years, stayed, that he be placed on probation for two years, and that he be actually suspended for 18 months. Respondent was found culpable of 10 counts of misconduct in five matters. His willful violations included the following: (1) section 4-100(A) by commingling his personal funds with client funds in his client trust account in February 2015; (2) section 6068, subdivision (a) (three counts), by holding himself out as entitled to practice law on three different instances from November 2014 through May 2015; (3) section 6068, subdivision (o)(1), by failing to report to the State Bar the filing of three malpractice lawsuits against him in February 2012 and October 2012; (4) section 6068, subdivision (o)(3), by failing to report court-ordered sanctions in March 2011; (5) section 6103 by failing to obey a court order to pay sanctions in March 2011; (6) section 6106 (two counts) by making a false statement to the State Bar in January 2015 and by making a false representation to the Clerk of the State Bar Court regarding his compliance with California Rules of Court, rule 9.20(b); and (7) California Rules of Court, rule 9.20(c) by failing to timely file his rule 9.20 compliance declaration in January 2015. Respondent's misconduct was aggravated by his prior record of discipline and multiple acts, but tempered by good faith and extreme emotional difficulties due to his father's stage IV lung cancer and subsequent death and the closing of his law office.

The misconduct in *Kitay I* occurred from 2010 through 2011, while the misconduct in *Kitay II* occurred from 2011 through 2012 and 2014 through 2015. Respondent's current misconduct took place from 2014 through 2016. Normally a prior disciplinary record would be diminished if the wrongdoing in the current matter occurred during the same time period as the wrongdoing underlying his prior disciplinary proceedings. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618-619.) However, respondent's current misconduct occurred during and subsequent to *Kitay II.* In addition, respondent committed the misconduct in the Lumicon matter while he was on probation in *Kitay I.* Respondent's current misconduct is similar to the misconduct in *Kitay I* – failing to perform with competence. Such similarities between prior and current misconduct render previous discipline more serious as they indicate the prior discipline did not rehabilitate the attorney. (*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443-444.) Here, Respondent had the opportunity to "heed the import of that discipline" prior to the misconduct committed in the present disciplinary proceeding. (*In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, 136.) Respondent's prior discipline record is a significant aggravating factor.

Multiple Acts (Std. 1.5(b).)

Respondent's misconduct involved multiple acts of misconduct – he communicated with a represented party without authorization, failed to perform with competence, failed to promptly return Incerty's file, and failed to refund unearned fees to Incerty. Respondent's multiple acts of misconduct involving two matters warrants moderate aggravation.

Significant Harm to Client/Public/Administration of Justice (Std. 1.5(j).)

Respondent's misconduct significantly harmed the administration of justice. The Sacramento County Superior Court found that respondent's violation of rule 2-100 "created and will continue to have detrimental effects on the proceedings." In addition to creating a factual

dispute as to whether Sweiss was qualified to testify, respondent's misconduct created an issue about Sweiss's credibility. Moreover, respondent had to be relieved as counsel for OSI. The harm to the administration of justice is a significant aggravating factor.

Mitigation

It is respondent's burden to prove mitigating circumstances by clear and convincing evidence. (Std. 1.6.) Respondent has presented evidence of one mitigating circumstance.

Good Faith (Std. 1.6(b).)

An attorney's good faith belief that is "honestly held and objectively reasonable" is a mitigating factor. (Std. 1.6(b).) Respondent held an honest belief that Sweiss could not be designated as the PMK, and therefore, Sweiss was not Jorden's client. If respondent's belief was not honest, he would not have included in a declaration filed with the court that he had a conversation with Sweiss about *OSI v. Lumicon*. However, even though respondent's belief was honest, it was not objectively reasonable. A reasonable attorney would have sought relief from the superior court before contacting Sweiss to discuss the case. Thus, respondent is not entitled to mitigation for good faith.

Extreme Emotional/Physical/Mental Disabilities (Std. 1.6(d).)

At the time respondent received his notice of suspension in *Kitay I*, his father was in the intensive care unit suffering from stage IV lung cancer. Respondent's father died on November 29, 2014, one day after his suspension began. He became overwhelmed with grief toward the end of December 2014, and at the same time, respondent was closing his law practice. The court affords minimal weight to Respondent's emotional difficulties, as no expert testimony was provided on this issue, (*In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47, 60 [personal stress factors given less weight than would otherwise be appropriate where no

expert testimony given]); respondent was afforded mitigation for this factor in *Kitay II*; and his emotional difficulties only affected his misconduct in the Incerty matter.

Overall, the aggravating circumstances greatly outweigh the single mitigating factor.

Discussion

The State Bar argues that the appropriate level of discipline for respondent's misconduct is disbarment. Respondent argues he is not culpable of any misconduct and does not offer a discipline recommendation. The court finds that disbarment is the appropriate sanction for this case.

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys. (Std. 1.1.) The discipline analysis begins with the standards, which promote the consistent and uniform application of disciplinary measures and are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 91 [Supreme Court will not reject recommendation arising from standards unless grave doubts as to propriety of recommended discipline].) There are three standards that are most applicable to respondent's misconduct, standards 2.19, 2.7(c), and 1.8(b).

Standard 2.19 provides for suspension not to exceed three years or reproval for violations of rules 2-100(A) and 3-700(D)(2). Standard 2.7(c) provides, "Suspension or reproval is the presumed sanction for performance, communication, or withdrawal violations, which are limited in scope or time. The degree of sanction depends on the extent of the misconduct and the degree of harm to the client or clients." Respondent intentionally failed to perform legal services for Incerty over a nine month period, but no significant client harm resulted.

Standard 1.8(b) provides for disbarment as the appropriate discipline when a member has two or more prior records of discipline, provided: (1) an actual suspension was ordered in any of

the prior disciplinary matters; (2) the prior and current disciplinary matters demonstrate a pattern of misconduct; or (3) the prior and current disciplinary matters demonstrate the attorney's unwillingness or inability to conform to ethical norms. Respondent's case meets two criteria: a prior actual suspension and an inability to conform to ethical duties. Respondent was suspended for six months in *Kitay I*, and suspended 18 months in *Kitay II*. Respondent failed to learn from his first prior where his discipline involved his failure to perform with competence. Here, again he has failed to provide legal services with competence. His past and current misconduct demonstrate Respondent's unwillingness or inability to fulfill his ethical duties. (Std. 1.8(b); see *Barnum v. State Bar* (1990) 52 Cal.3d 104, 111.)

The court acknowledges that standard 1.8(b) allows a departure from the recommended discipline of disbarment when "the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct." But, as set forth above, respondent's mitigating circumstance is not compelling, and it is greatly outweighed by the aggravating factors. Further, while some of his present misconduct occurred during the misconduct in *Kitay II*, it occurred three years after the misconduct in *Kitay I*. Moreover, the misconduct in the Lumicon matter occurred over a year after the misconduct in *Kitay II*. Thus, neither exception outlined in standard 1.8(b) is applicable.

The court is mindful that disbarment is not mandatory in every case of two or more prior disciplines, even where compelling mitigating circumstances do not clearly predominate. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 506-507 [disbarment is not mandatory in every case of two or more prior disciplines, even where no compelling mitigating circumstances clearly predominate].) If the court deviates from the presumptive discipline, the court must explain the reasons for doing so. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776.)

In this case, respondent is culpable of three ethical violations involving two matters, one involving a client. Respondent has communicated with a represented party, failed to perform with competence, and failed to refund unearned fees. Disbarment is both necessary and appropriate since respondent's current violations, when considered with his prior misconduct, evidences a continuing disregard for his ethical responsibilities.

The court can find no reason to depart from the presumed discipline of disbarment as outlined in standard 1.8(b). Respondent has been involved with the disciplinary system twice before, yet he continues to commit misconduct, even while on probation. As such, respondent should be disbarred to ensure adequate protection of the public, the profession, and the administration of justice, as it is supported by the standards and the decisional law.[8]

Recommendations

It is recommended that respondent Robert Norik Kitay, State Bar Number 229966, 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 in this proceeding. Failure to do so may result in disbarment or suspension.

---

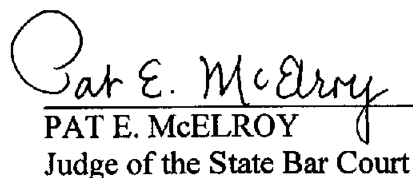
[8] See e.g., *In the Matter of Carver* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 427 (disbarment where attorney with two prior disciplines engaged in unauthorized practice of law and had significant aggravation that outweighed limited mitigation); *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63 (disbarment where attorney with two prior disciplines incompetently represented several clients in criminal matters and had multiple aggravating factors and no mitigation).

Costs

It is 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.

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 5, 2018

PAT E. McELROY
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 San Francisco, on April 5, 2018, 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 San Francisco, California, addressed as follows:

ROBERT N. KITAY
5150 FAIR OAKS BLVD # 101-326
CARMICHAEL, CA 95608

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

ERICA L. M. DENNINGS, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on April 5, 2018.

Bernadette Molina
Court Specialist
State Bar Court