

PUBLIC MATTER

FILED
SEP 25 2017
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

P.B.

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No. 16-O-17583-CV
)	
ROBERT ARTHUR DEGREL,))	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 151498.))	ENROLLMENT
_____))	

Introduction

In this contested disciplinary matter, Robert Arthur Degrell (respondent) is charged with failing to comply with conditions of probation in willful violation of Business and Professions Code section 6068, subdivision (k).¹ This court finds, by clear and convincing evidence, that respondent is culpable as charged and, based on the nature of the culpability, as well as the lack of mitigating circumstances and the serious aggravating circumstances surrounding the misconduct, this court recommends, among other things, that respondent be disbarred from the practice of law.

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 (NDC) against respondent on March 17, 2017. Respondent filed an answer to the NDC on April 10, 2017.

///

¹ Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.



The parties filed a partial stipulation as to facts and admission of documents on June 13, 2017. On June 14, 2017, the parties filed a partial stipulation as to conclusions of law and a first amended partial stipulation as to conclusions of law.² That same day, a one-day trial was held in this matter. The parties filed closing trial briefs on June 28, 2017, and this matter was submitted for decision on that date.

Findings of Fact and Conclusions of Law

Jurisdiction

Respondent was admitted to the practice of law in California on December 4, 1990, and has been a member of the State Bar of California at all times since that date.

Facts³

On October 19, 2011, the California Supreme Court filed an order with respect to State Bar Court case Nos. 05-O-03730 (05-O-05112; 06-O-12535); 06-N-10556 (Cons.) (S195359) (Supreme Court Order), which became effective on November 18, 2011.

The Supreme Court Order imposed the following discipline against respondent, inter alia: four years' stayed suspension and five years' probation with conditions, including 30 months' actual suspension (with credit given for inactive enrollment, which was effective July 1, 2008, through March 27, 2011).

Respondent's period of probation commenced on November 18, 2011, and continued for five years until November 18, 2016.

///

² The court approves the parties' First Amended Partial Stipulation as to Conclusions of Law filed on June 14, 2017, with the exception, as discussed *infra*, of the conclusion that respondent failed to file his final report due by November 3, 2015.

³ The following factual findings are based on the parties' stipulated facts, the documentary evidence in this matter, and the testimony of respondent and Probation Officer Michael Kanterakis.

Pursuant to the Supreme Court Order, respondent was ordered to comply with the following relevant conditions of probation, among other conditions:

a. Respondent must comply with all provisions and conditions of his Participation Agreement/Plan with the Lawyers Assistance Program (LAP)⁴ and must provide the Office of Probation (OP) with certification of completion of the LAP. Respondent must immediately report any non-compliance with any provision(s) or condition(s) of his Participation Agreement/Plan to the OP. Respondent must provide an appropriate waiver authorizing the LAP to provide the OP and this court with information regarding the terms and conditions of respondent's participation in the LAP and his compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. Respondent will be relieved of this condition upon providing to the OP satisfactory certification of completion of the LAP;

b. Respondent must submit written quarterly reports to the OP on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent shall state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report shall be submitted on the next quarter date, and cover the extended period. In addition to all quarterly reports, a final report, containing the same information, is due

⁴ In order to demonstrate compliance with this probation condition, the OP required respondent to have the LAP submit a written quarterly report to the OP regarding respondent's compliance with LAP conditions. The reports were to cover the entire reporting period and be received by the OP each January 10, April 10, July 10, and October 10.

no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of the probation period;

c. Within one year of the effective date of the discipline herein, respondent must provide, to the OP, satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session;

d. Within one year of the effective date of the discipline herein, respondent must attend and satisfactorily complete the State Bar's Client Trust Accounting School ("CTA School"), and provide satisfactory proof of completion of that program to the State Bar's OP;

e. Respondent must pay restitution to Moises Juarez and Josephine Hurtado-Juarez jointly in the amount of \$9,750 plus 10 percent interest per annum from October 1, 2000, until paid (or to the Client Security Fund ("CSF") to the extent of payment from the fund to either Moises Juarez or Josephine Hurtado-Juarez, plus interest and costs, in accordance with Business and Professions Code section 6140.5, subdivision (c) and (d). To the extent the CSF has paid only principal amounts, respondent will still be liable for interest payments to Moises Juarez and Josephine Hurtado-Juarez as set forth above. With each written quarterly report required herein, respondent must provide to the OP satisfactory proof of all restitution payments made by him during that quarter or applicable reporting period. To the extent that respondent has paid any restitution prior to the effective date of the Supreme Court's final disciplinary order in this proceeding, respondent will be given credit for such payments provided satisfactory proof of such is or has been shown to the State Bar's OP.

On November 14, 2011, State Bar Probation Deputy Michael Kanterakis mailed respondent a courtesy reminder letter, notifying respondent of the terms of the Supreme Court Order. The letter explicitly listed certain terms of respondent's probation, and the deadlines for completing each condition of probation which required submission of proof of compliance to the

OP and the probation monitor. Probation Deputy Kanterakis's November 14, 2011, courtesy reminder letter was sent to respondent's membership records address by first-class mail and was not returned by the U.S. Postal Service as undeliverable or for any other reason. In particular, the letter set forth that (1) quarterly reports were due quarterly beginning January 10, 2012, and the final report was due by November 18, 2016; (2) LAP quarterly reports were due quarterly beginning January 10, 2012; (3) proof of payments of restitution were due quarterly; and (4) the deadline for compliance with the State Bar Ethics School and the State Bar Client Trust Account Record-Keeping Course⁵ conditions was November 18, 2012. An entire paragraph of the letter centered on the payment of restitution as a condition and measure of rehabilitation, and directed respondent to pay the amount ordered or file a motion to modify the restitution condition. Enclosed with the letter were, inter alia, a copy of the Supreme Court Order, that portion of the State Bar Court Hearing Department's June 20, 2011, decision recommending the probation conditions that were imposed by the Supreme Court, and a quarterly report form and instruction sheet.

On November 16, 2011, respondent left a voicemail message for Probation Deputy Kanterakis acknowledging that he received Probation Deputy Kanterakis's November 14, 2011, courtesy reminder letter.

On November 21, 2011, respondent attended an in-person meeting with Probation Deputy Kanterakis at the State Bar OP's offices in Los Angeles. During the meeting, Probation Deputy Kanterakis reviewed with respondent the conditions of respondent's probation, discussed the reporting schedule and requirements, and notified respondent that compliance documents "must be received by the [OP] on or before the due date [and] NOT signed or postmarked on the due date."

⁵ This is the State Bar Client Trust Accounting School referred to in the hearing department's June 20, 2011, decision.

Respondent was required to have the LAP submit a written quarterly report to the OP. Respondent was therefore required to file a quarterly LAP report by April 10, 2012. However, respondent did not submit by April 10, 2012, his quarterly LAP report which was due by that date.

On June 1, 2012, Probation Deputy Kanterakis left a voicemail message for respondent on respondent's membership records telephone number indicating that respondent needed to have his probation monitor submit respondent's April 10, 2012, quarterly LAP report to the OP.

On June 7, 2012, the Probation Monitor assigned to Respondent e-mailed respondent's April 10, 2012, quarterly LAP report to the OP, 58 days late.

On September 17, 2012, Probation Deputy Kanterakis received a telephone call from respondent, alerting Probation Deputy Kanterakis that respondent had passed the Multistate Professional Responsibility Examination (MPRE), had completed CTA School and would forward proof to the OP, would be attending the State Bar's Ethics School and would forward proof to the OP when completed, and requesting that the OP check on the status of amounts owed to the CSF after the CSF had paid the principal amount of restitution owed by respondent jointly to Moises Juarez and Josephine Hurtado-Juarez.

Proof of completion of Ethics School and CTA School were due to be provided to the OP by November 18, 2012. Although Probation Deputy Kanterakis was able to confirm that respondent had completed CTA School on August 24, 2012, and the State Bar's Ethics School on October 25, 2012, at the time, respondent did not send proof of completion of those probation conditions to the OP as promised. On February 28, 2017, respondent mailed a letter to Probation Deputy Kanterakis attaching copies of his Ethics School and CTA School completion letters and

certificates. Both the Ethics School and CTA School completion certificates, which had been due by November 18, 2012, were submitted on March 2, 2017, 1,564 days after the due date.⁶

Respondent timely filed his quarterly reports due January 10, April 10, July 10, and October 10, 2012; and January 10, April 10, and July 10, 2013.

On November 6, 2013, Probation Deputy Kanterakis sent respondent a non-compliance letter, informing respondent that his October 10, 2013, quarterly report had not been received by the OP. The letter further advised that if for any reason respondent could not timely comply with his probation requirements, respondent must file a motion with the State Bar Court and referenced certain State Bar Rules of Procedure. The letter also noted that failure to comply with probation requirements could lead to a non-compliance referral which could lead to additional discipline. Probation Deputy Kanterakis's November 6, 2013, letter was mailed to respondent's membership records address by first-class mail and was not returned by the U.S. Postal Service as undeliverable or for any other reason. Respondent received Probation Deputy Kanterakis's November 6, 2013, non-compliance letter. Respondent filed his October 10, 2013, quarterly report on November 12, 2013, 33 days late.

On February 5, 2014, Probation Deputy Kanterakis mailed respondent a letter regarding a revised quarterly report form for respondent to use for the remainder of his probation, along with a notice regarding the change of address for the Los Angeles office of the State Bar and the OP. Probation Deputy Kanterakis's February 5, 2014, letter was mailed to respondent's membership records address by first-class mail and was not returned by the U.S. Postal Service as undeliverable or for any other reason. Respondent received Probation Deputy Kanterakis's February 5, 2014, letter.

⁶ Although the parties stipulated that the certificates were filed on March 3, 2017, which was 1,565 days after the due date (see June 13, 2017, Partial Stipulation as to Facts and Admission of Documents, page 8, numbered paragraph 40), a review of Exhibit 39 reflects that the certificates were submitted to the OP on March 2, 2017.

Respondent timely submitted his quarterly report due January 10, 2014.

On April 24, 2014, Probation Deputy Kanterakis telephoned respondent at respondent's membership records telephone number, directing him to submit his April 10, 2014, quarterly report and to use the revised quarterly report form that was sent to him with Probation Deputy Kanterakis's February 5, 2014, letter. On May 8, 2014, respondent filed his April 10, 2014, quarterly report, 28 days late, using the outdated quarterly report form.

Respondent timely submitted his quarterly report due July 10, 2014.

On October 16, 2014, respondent filed his October 10, 2014, quarterly report, six days late, using the outdated quarterly report form.

On April 20, 2015, respondent filed his April 10, 2015, quarterly report, 10 days late, using the outdated quarterly report form. Thereafter, respondent again filed his April 10, 2015, quarterly report on the updated reporting form on June 1, 2015, 51 days late.

On April 21, 2015, Probation Deputy Kanterakis sent respondent a letter summarizing respondent's non-compliance with his probation conditions. Probation Deputy Kanterakis's April 21, 2015, letter was sent to respondent's membership records address by first-class mail and was not returned by the U.S. Postal Service as undeliverable or for any other reason. Probation Deputy Kanterakis's April 21, 2015, letter detailed that respondent was non-compliant with the terms of his probation because he had filed three late quarterly reports and had failed to file two quarterly reports.⁷ Respondent received Probation Deputy Kanterakis's April 21, 2015,

⁷ Although the letter indicated that no report was received for January 10 and April 10, 2015, it was noted in the letter that a non-compliant report was received on April 20, 2015, which did not reflect the period it was covering. The parties have stipulated that respondent filed his April 10, 2015, quarterly report on April 20, 2015, on the outdated quarterly report form.

Furthermore, although the parties stipulated that the letter detailed that respondent was non-compliant with his probation terms because he failed to pay restitution, a review of Exhibit 22, Probation Deputy Kanterakis's April 21, 2015, letter, reflects that if any restitution payments were made, the proof was due quarterly, and no proof of restitution payments had been received

letter. On June 1, 2015, Probation Deputy Kanterakis left respondent a voicemail message at respondent's membership records telephone number, requesting a return call. On that same date, respondent telephoned Probation Deputy Kanterakis and left a voicemail message admitting to owing late quarterly reports to the OP and promising to send the reports "this evening."

On June 1, 2015, respondent filed his January 10, 2015, quarterly report, 141 days late.

On November 2, 2015, respondent filed his October 10, 2015, quarterly report, 23 days late.

On November 2, 2015, Probation Deputy Kanterakis e-mailed a non-compliance message to respondent at his membership records e-mail address stating that respondent's quarterly report due July 10, 2015, had not been received. Probation Deputy Kanterakis's November 2, 2015, e-mail did not bounce back, nor was it returned for any other reason. That same date, respondent replied to Probation Deputy Kanterakis's November 2, 2015, e-mail, stating that he would file the July 10, 2015, quarterly report "asap." However, respondent filed his July 10, 2015, quarterly report, 143 days late on December 1, 2015.

On March 24, 2016, Probation Deputy Kanterakis e-mailed a non-compliance message to respondent at his membership records e-mail address, stating that respondent's quarterly report due January 10, 2016, had not been received. This message also reminded respondent that proof of restitution was due to the OP by November 18, 2016. Respondent received Probation Deputy Kanterakis's March 24, 2016, e-mail.

On August 4, 2016, respondent filed his July 10, 2016, quarterly report, 25 days late.

As a condition of probation, respondent owed restitution in full to Moises Juarez and Josephine Hurtado-Juarez (or the CSF, to the extent of any payment by CSF, plus interest and costs). Respondent was required to pay restitution during his period of probation or no later than

by the OP. Thus, the court finds that the letter did not reflect that respondent was non-compliant with his restitution probation condition.

November 18, 2016, and to provide proof of restitution to the OP by that date. Probation Deputy Kanterakis sent an e-mail to respondent on August 5, 2016, which reminded respondent that he was required to provide proof of compliance with his restitution condition by November 18, 2016. This e-mail was sent to respondent's membership records e-mail address, and delivery of the e-mail was completed. However, respondent did not make restitution in full by this date to either Mr. Juarez and Ms. Hurtado-Juarez or the CSF.

On December 19, 2016, respondent filed his October 10, 2016, quarterly report, 70 days late and his final report, due November 18, 2016, 41 days late.

On January 27, 2017, Probation Deputy Kanterakis obtained a CSF Reimbursement Ledger for respondent which reflected the total amount of restitution (including interest and costs) owed through January 27, 2017. As of that date, respondent owed the CSF restitution of \$14,112.12 in outstanding principal, accrued interest, and costs.⁸ As of May 31, 2017, respondent owed the CSF \$14,300.68 in principal, interest and costs.

On February 23, 2017, respondent filed his January 10, 2016, quarterly report, 410 days late. On February 23, 2017, respondent also filed his April 10, 2016, quarterly report, 319 days late, and bearing the incorrect reporting period due date of April 10, 2017. He resubmitted this report on March 7, 2017, and another final quarterly report.

⁸ The parties stipulated that as of that date (January 27, 2017), respondent jointly owed Mr. Juarez and Ms. Hurtado-Juarez restitution of \$14,112.12 in outstanding principal, accrued interest, and costs. However, a review of Exhibit 10 reflects that the CSF paid the \$9,750 in principal owed to Mr. Juarez and Ms. Hurtado-Juarez on June 13, 2006, and that interest in the amount of \$5,558.84 was owed to Mr. Juarez and Ms. Hurtado-Juarez. Furthermore, Exhibit 33 reflects that respondent reimbursed the CSF \$4,200 on June 7, 2012. Thus, the court finds that Exhibit 37 (page 037-002) reflects that \$14,112.12 is owed to the CSF, not to Mr. Juarez and Ms. Hurtado-Juarez. In fact, Exhibit 42 makes clear that as of May 31, 2017, respondent owes CSF \$14,300.68. Respondent testified that he had not paid any restitution since June 2012. As such, the court finds that respondent still owes \$5,558.84 in interest jointly to Mr. Juarez and Ms. Hurtado-Juarez.

On February 28, 2017, Probation Deputy Kanterakis sent a letter to respondent, which he received, which noted, in pertinent part, that the OP had not received proof of payment of restitution.

Conclusions of Law

The parties stipulated, and the court finds, that Respondent failed to comply with conditions attached to respondent's disciplinary probation in Supreme Court Order No. S195359 (State Bar Court case Nos. 05-O-03730 (05-O-05112; 06-O-12535); 06-N-10556 (Cons.)), as follows, in willful violation of Business and Professions Code section 6068, subdivision (k):

- a. By failing to timely submit the quarterly Lawyers Assistance Program report due April 10, 2012;
- b. By failing to timely submit the quarterly reports due by October 10, 2013, April 10, 2014, October 10, 2014, January 10, 2015, April 10, 2015, July 10, 2015, October 10, 2015, January 10, 2016, April 10, 2016, July 10, 2016, October 10, 2016, and the final report due by November 18, 2016,⁹ to the OP; and
- c. By failing to timely submit proof of completion of Ethics School and Client Trust Accounting School to the OP, due November 18, 2012.

The court further finds, based on the testimony and documentary evidence in this matter, that, as a condition of probation, respondent was to pay restitution in full by the end of his probation (i.e., November 18, 2016), and respondent failed to timely comply with this restitution probation condition, imposed on him in Supreme Court Order No. 195359, in willful violation of section 6068, subdivision (k).¹⁰

⁹ The NDC alleges that respondent failed to timely submit the final report due by November 3, 2015. However, this appears to be a de minimis error, as it is clear from the evidence that the final report was due by November 18, 2016. Accordingly, the court finds no due process issue with respect to this pleading error. Although the court rejects the parties' stipulation that respondent failed to timely submit the final quarterly report due by November 3, 2015, there is clear and convincing evidence that respondent failed to timely file the final report due November 18, 2016, and the court so finds.

¹⁰ Given that respondent had been on probation several times previously and was reminded by the OP that proof of restitution was due by November 18, 2016, the court does not find credible respondent's contention that restitution had no deadline, as long as it was paid at

Aggravation¹¹

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 four prior records of discipline. On May 25, 2000, the State Bar Court filed an order imposing a public reproof on respondent¹² with conditions for two years. Respondent stipulated that he failed to pay client funds promptly in violation of rule 4-100(B)(4) of the State Bar Rules of Professional Conduct¹³ and collected an illegal fee in violation of rule 4-200(A). Respondent's misconduct occurred sometime between November 1997 and March 1998. In mitigation, respondent had no prior record of discipline, and no client was harmed by respondent's misconduct. There were no aggravating circumstances.

On September 4, 2002, the Supreme Court filed an order in Supreme Court matter S108152 (State Bar Court case No. 01-O-02431; 01-O-03015) suspending respondent from the practice of law for one year, staying execution of that suspension, and placing respondent on probation for four years on condition that he be actually suspended for 60 days. Respondent stipulated that he failed to perform legal services with competence in violation of rule 3-110(A); committed an act or acts of moral turpitude, dishonesty or corruption in violation of section 6106 by making misrepresentations to the court and his client; failed to promptly pay to his client and

some date in the future, and he did not understand that there was a due date for the restitution probation condition. In addition, respondent's contention that he did not have the financial resources to pay restitution does not preclude a finding of culpability, as respondent did not seek relief from, or modification of the restitution probation condition. (*In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 148.)

¹¹ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

¹² At that time, respondent was known as Robert A. Dickrell. Respondent changed his name shortly after his daughter was born on November 23, 2007. All respondent's prior records of discipline prior to his most recent discipline in 2011 are under this name.

¹³ Unless otherwise indicated, all references to rule(s) refer to the State Bar Rules of Professional Conduct.

the client's medical providers, as requested by the client, funds in his possession which the client was entitled to receive in willful violation of rule 4-100(B)(4); and committed an act or acts of moral turpitude, dishonesty or corruption in violation of section 6106 by making a misrepresentation to the State Bar. The misconduct occurred between 1999 and December 2001. In mitigation, during the disciplinary investigation and proceedings, respondent displayed spontaneous candor and cooperation to the State Bar; respondent voluntarily paid funds to his client in one matter and, in another matter, paid additional funds to a medical provider in full payment of its lien and the balance of funds was paid to his client. The stipulation also noted as other factors for consideration that respondent voluntarily changed the nature of his practice and that respondent, who had habitually used marijuana, was attending meetings of Marijuana and Narcotics Anonymous to try to regain control of his life and was planning to attend meetings of the Other Bar to locate an attorney sponsor. In aggravation, respondent had a prior record of discipline.

On August 4, 2005, the Supreme Court filed an order in Supreme Court matter S108152 (State Bar Court case No. 04-PM-15495) revoking respondent's probation in Supreme Court matter 108152, lifting the previously ordered stay of execution of suspension in that matter, and actually suspending respondent from the practice of law for one year¹⁴ and placing him on probation for four years subject to probation conditions. The court found that respondent willfully violated his probation by failing to (1) file one quarterly report; (2) file a CPA report; (3) submit lab screening reports for three months; (4) submit proof of weekly attendance at a meeting of either Marijuana Anonymous, Narcotics Anonymous, or the Other Bar for four months; (5) maintain a current telephone number with the Probation Office; (6) provide the Probation Office with a requested medical waiver; and (7) timely report his change of address to the Probation Office and the Membership Records Office. The misconduct occurred between

¹⁴ Respondent received credit toward his period of actual suspension for his involuntary inactive enrollment period.

July 2004 and April 2005.¹⁵ No mitigating circumstances were found. In aggravation, respondent had two prior records of discipline; respondent engaged in uncharged misconduct (failing to timely file a quarterly probation report; failing to submit a laboratory drug screening report for seven additional months; failing to submit proof of weekly attendance at either Marijuana Anonymous, Narcotics Anonymous, or the Other Bar for four additional months; and he continued to use marijuana).

On October 19, 2011, the Supreme Court filed an order in Supreme Court matter S195359 (State Bar Court case Nos. 05-O-03730 (05-O-05112; 06-O-12535); 06-N-10556) suspending respondent from the practice of law for four years, staying execution of that suspension, and placing him on probation for five years subject to certain conditions, including that he be suspended from the practice of law for the first 30 months of probation with credit for his inactive enrollment. In this decision, which followed respondent's successful completion of the State Bar Court's Alternative Discipline Program, respondent stipulated that he (1) failed to pay promptly, as requested by his client, funds in his possession which the client was entitled to receive, in willful violation of rule 4-100(B)(4); (2) willfully violated rule 4-100(A) by failing to maintain client funds in a trust account in willful violation of rule 4-100(A); (3) by misappropriating client funds, he committed an act involving moral turpitude, dishonesty or corruption in willful violation of section 6106; (4) failed to render appropriate accounts to his client regarding all client funds coming into respondent's possession in willful violation of rule 4-100(B)(3); (5) by soliciting a prospective client with whom the member had no family or prior professional relationship, he committed acts in willful violation of rule 1-400(C); (6) without the informed written consent of each client, he accepted representation of more than one client in which the interests of the clients potentially conflicted in willful violation of rule 3-310(C)(1); (7) failed to keep his client reasonably informed of significant developments relating to the representation or employment in willful violation of section 6068, subdivision (m); (8) in willful violation of rule 3-700(A)(2), he failed to take reasonable steps to avoid reasonably foreseeable

¹⁵ This time period includes the period covered by the uncharged acts of misconduct found in aggravation in this matter.

prejudice to a client; (9) by holding himself out as a licensed attorney when he was suspended or otherwise not entitled to practice law in violation of sections 6125 and 6126, respondent committed acts in willful violation of section 6068, subdivision (a); (10) willfully violated section 6068, subdivision (k), by failing to comply with the terms and conditions of his disciplinary probation imposed by the Supreme Court in matter S108152 (State Bar Court case No. 04-PM-15495);¹⁶ and (11) willfully violated or disobeyed a court order by failing to file an affidavit of compliance regarding California Rules of Court, rule 955,¹⁷ in conformity with the Supreme Court order in matter S108152 (State Bar Court case No. 04-PM-15495) and the requirements of subdivision (c) of rule 955. The misconduct occurred between April 2000 and April 2006. In mitigation, during the disciplinary investigation and proceedings, respondent displayed spontaneous candor and cooperation with the State Bar. Respondent's successful completion of the ADP was considered a further mitigating circumstance. In aggravation, respondent had three prior records of discipline; engaged in multiple acts of wrongdoing and those acts demonstrated a pattern of misconduct; and respondent's clients were significantly harmed by his misconduct.

Respondent's last two prior disciplinary matters involved respondent's failure to comply with probation conditions, including timely submitting quarterly reports and proof of compliance with probation conditions, the same or similar misconduct found in this current disciplinary matter. Accordingly, respondent's four prior records of discipline is given significant weight in aggravation. (*In the Matter of Bouyer* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 888, 892-893 [three prior records of discipline considered serious aggravating factor]; *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443-444 [similarity between prior and current misconduct demonstrates lack of rehabilitation and renders prior discipline more serious aggravation].)

¹⁶ Among other things, respondent failed to timely file two quarterly reports and failed to timely submit proof of compliance with a probation condition.

¹⁷ Rule 955 was subsequently renumbered as rule 9.20.

Multiple Acts (Std. 1.5(b).)

Respondent failed to timely file one quarterly LAP report, failed to timely file 11 quarterly reports and the final report, failed to timely submit proof of completion of Ethics School and Client Trust Accounting School, and failed to pay the full amount of restitution as ordered. While the court therefore finds that Respondent engaged in multiple acts of wrongdoing, the court assigns only modest weight to this aggravating factor, as the violations arose from failing to comply with one Supreme Court order. (*In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348, 355.)

Indifference (Std. 1.5(k).)

An attorney's continued failure to comply with his probation conditions after being notified of that non-compliance is properly considered a substantial aggravating circumstance. It demonstrates indifference toward rectification of or atonement for the consequences of one's misconduct. (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 530.) Respondent demonstrated indifference toward rectification or atonement for the consequences of his misconduct in three respects. First, despite a courtesy reminder letter, an in-person meeting with his probation deputy, two non-compliance letters, two telephone calls from his probation deputy, and two e-mails, respondent continued to submit untimely quarterly reports, even submitting his July 10, 2015, report 143 days late, after he had told Probation Deputy Kanterakis that he would file it "asap." Second, respondent noted he would have done the quarterly reports perfectly if he had been told earlier that he could be disbarred for late quarterly reports. Attorneys are expected and required to comply with their professional obligations, not just if the failure to do so would result in disbarment. Third, respondent's indifference was demonstrated by his failure to pay any amount of restitution since June 2012, despite making \$100,000 per year for several years. He claims hard financial times, yet he made no attempt to pay any amount towards restitution, to set up a payment plan with his clients or the CSF, to seek relief from this probation condition, or to have this probation condition modified by the court. In addition, although in the past he had borrowed small amounts of money from his sister to make

ends meets, he did not inquire about borrowing money to pay restitution until shortly before trial. (*In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 913 [attorney demonstrated indifference toward the consequences of her misconduct by failing, as of the discipline hearing, to refund costs and fees wrongfully collected].) The court gives great weight in aggravation to respondent's indifference.

Lack of Insight

Respondent also minimizes the seriousness of his misconduct and fails to accept – although he now claims to at least understand - that timeliness is a component of compliance with probation conditions. This lack of insight suggests that respondent may repeat his misconduct. (*In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366, 380.) The intervention in the form of repeated reminders and prodding by the State Bar for respondent to complete his probation duties is inconsistent with the self-governing nature of probation as a rehabilitative part of the attorney disciplinary system, as are his claims that it was the OP's responsibility to clarify that timeliness was, in his words, "a test" of his ability to comply with probation conditions, and that by accepting his late reports the OP condoned his conduct. Respondent's lack of insight merits great 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.

Good Faith (Std. 1.6(b).)

Respondent contends that (1) he did not understand that full restitution was to be made before the term of probation expired; (2) that he had a good faith belief that restitution could be paid at a later date at his convenience; (3) the deadlines for quarterly reports were "soft",¹⁸ and (4) the State Bar would communicate within the organization his completion of Ethics School and CTA School which he notified the OP of by telephone. Respondent contends his beliefs

¹⁸ Respondent's closing brief filed June 28, 2017, page 10, line 10.

were honestly held and objectively reasonable. The court, however, finds that respondent's beliefs were not reasonable for the following reasons: (1) respondent had been on probation several times; (2) the State Bar had brought a prior probation revocation proceeding against respondent which should have made him hypersensitive to the fact that he had to understand and strictly comply with his probation conditions; and (3) respondent was given ample reminders by the OP regarding his probation conditions. As such, the court does not find good faith as a mitigating circumstance in this matter. (*In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 683 [respondent must prove beliefs were honestly held and reasonable to establish good faith mitigation].)

Candor/Cooperation (Std. 1.6(e).)

Respondent contends that he was candid and "very cooperative" with the State Bar. Respondent did enter into a partial stipulation of facts, admission of documents, and culpability. Although the stipulations were entered into either just before the trial date or after the case was called for trial, and respondent stipulated to easily provable facts, he did enter a partial stipulation to culpability and the stipulated facts were relevant and assisted the State Bar's prosecution of this matter. We therefore give respondent limited weight in mitigation for his cooperation. (See *In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547, 567 [respondent given mitigation for belatedly entering stipulations which mainly involved easily provable facts].)

Lack of Harm (Std. 1.6(c).)

Respondent also contends that he should receive mitigation credit as his misconduct did not cause harm. However, based on his failure to pay restitution in full, and his failure to comply with other probation conditions which necessitated his probation deputy to spend time and resources seeking respondent's compliance with those conditions, the court does not find lack of harm as a mitigating circumstance.

Extreme Emotional Difficulties (Std. 1.6(d).)

Extreme emotional difficulties are a mitigating circumstance if expert testimony establishes that such emotional difficulties were directly responsible for the misconduct and were not the result of illegal conduct, and it is established by clear and convincing evidence that the emotional difficulties no longer pose a risk that the respondent will engage in misconduct. (Std. 1.6(d).) The only evidence with respect to emotional difficulties was respondent's own testimony regarding stress due to his unhappy marriage, divorce, and child custody issues. No expert testimony was offered by respondent, and there was no other corroborating evidence. Although mitigation has been given for emotional difficulties even without expert testimony (*In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47, 59-60 [although established by lay testimony, personal stress factors given some weight in mitigation]), the court gives only some weight in mitigation to respondent's emotional difficulties and does not afford it the significant weight which it would have been due if expert testimony had established a nexus between the emotional difficulties and respondent's misconduct, and if there had been evidence that the emotional difficulties were under control such that misconduct would not recur.

Good Character (Std. 1.6(f).)

Respondent testified to his good character and community service. However, the court does not give respondent any mitigation for good character, as his good character was not attested to by a wide range of references in the general and legal communities who were aware of the full extent of respondent's misconduct in this matter. (Std. 1.6(f).) Furthermore, the court does not given any weight in mitigation to respondent's testimony regarding community service, as the nature and extent of this community service is not known.

Delay (Std. 1.6(i).)

Respondent claims that delay by the OCTC in the prosecution of this matter is a mitigating circumstance. First, the court does not find excessive delay by the OCTC in the prosecution of this matter, as is required by standard 1.6(i), as the NDC was filed in this matter just a few months after the end of respondent's period of probation and just a few months after

he failed to comply with his restitution condition. Clearly, any delay was not excessive. Furthermore, there is no evidence of any delay causing prejudice to respondent. (Std. 1.6(i); *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735, 749 [no mitigation for delay when respondent failed to demonstrate specific, legally cognizable prejudice].) The court therefore does not find delay as a mitigating circumstance in this matter.

Other

Respondent also contends he should receive mitigation for (1) “prompt objective steps, demonstrating spontaneous remorse and recognition of the wrongdoing and timely atonement” (Std. 1.6(g)); (2) “remoteness in time of the misconduct and subsequent rehabilitation” (Std. 1.6(h)); and (3) “restitution . . . made without the threat or force of administrative, disciplinary, civil or criminal proceedings” (Std. 1.6(j)). The court finds no clear and convincing evidence of any of these mitigating circumstances.

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession, and maintain the highest possible professional standards for attorneys. (Std. 1.1; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025.) In determining the appropriate 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.) Although the standards are not binding, they are to be afforded great weight because “they promote the consistent and uniform application of disciplinary measures.” (*In re Silvertan* (2005) 36 Cal.4th 81, 91-92.) Nevertheless, the court is not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, the court is permitted to temper the letter of the law with considerations peculiar to the offense and the offender. (*In the Matter of Van Sickle* (2006) 4 Cal. State Bar Ct. Rptr. 980, 994; *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) In addition, the court considers relevant decisional law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of*

Frazier (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

After reviewing the standards and the applicable case law, the court finds that the appropriate discipline recommendation in this matter is disbarment. With respect to respondent's specific misconduct, the applicable standard in this matter is standard 2.14. Standard 2.14 states, "Actual suspension is the presumed sanction for failing to comply with a condition of discipline. The degree of sanction depends on the nature of the condition violated and the member's unwillingness or inability to comply with disciplinary orders."

As noted in *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540, "the greatest amount of discipline would be merited for violations which show a breach of a condition of probation significantly related to the misconduct for which probation was given. This would be especially significant in circumstances raising a serious concern about the need for public protection or showing the probationer's failure to undertake rehabilitative steps." Respondent's failure to fully pay restitution, to timely submit quarterly reports, and to provide proof of compliance with probation conditions are significantly related, in part, to the misconduct for which probation was imposed. As such, significant discipline is warranted in this matter.

In addition, in determining the appropriate discipline, standard 1.7(b) must be considered. Standard 1.7(b) provides that "[i]f aggravating circumstances are found, they should be considered alone and in balance with any mitigating circumstances, and if the net effect demonstrates that a greater sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a greater sanction than what is otherwise specified in a given Standard." The aggravating circumstances in this matter clearly outweigh the limited mitigating circumstances. Standard 1.7(b) also provides that "a greater sanction is appropriate in

cases . . . where the record demonstrates that the member is unwilling or unable to conform to ethical responsibilities.”

Standard 1.8(b) is also an appropriate consideration in recommending discipline. Standard 1.8(b) provides that if a respondent has two or more prior discipline records, disbarment is appropriate if (1) actual suspension was ordered in any of the prior discipline matters; (2) a pattern of misconduct is demonstrated when the prior discipline matters are combined with the current record; and (3) the respondent’s unwillingness or inability to conform to ethical responsibilities is demonstrated when the prior discipline matters are combined with the current record. The exceptions are if “the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct.” Neither exception applies in this case. However, respondent’s second, third, and fourth disciplinary matters resulted in a period of actual suspension; respondent’s third and fourth disciplinary matters, when combined with the current matter, demonstrates a pattern of misconduct, as all these matters involved violations of conditions of respondent’s disciplinary probation; and when respondent’s prior disciplinary matters are combined with the current misconduct, the court finds that based on the nature and extent of this misconduct, such demonstrates respondent’s inability or unwillingness to conform to his ethical responsibilities. Disbarment is appropriate.

In this matter, respondent failed to timely submit to the OP one quarterly LAP report, several quarterly reports, his final report, proof of completion of Ethics School and CTA School, and failed to fully pay restitution and provide proof of completion of restitution to the OP by the end of his probation period. There are significant aggravating circumstances in this matter. Respondent has four prior records of discipline for very serious misconduct including, but not limited to, misappropriation, misrepresentations, client trust account violations, violating a Supreme Court order for failing to comply with California Rules of Court, rule 9.20 and, in two separate prior disciplinary matters, willfully violating conditions of his disciplinary probation. As further aggravating circumstances, the court found that respondent engaged in multiple acts

of misconduct, demonstrated indifference, and lacked insight into his misconduct. In mitigation, modest weight was given to respondent's cooperation with the State Bar and some weight was given for respondent's emotional difficulties.

Of particular concern to the court is the fact that despite being disciplined twice for violating probation conditions, including failing to timely file quarterly reports and failing to timely submit proof of compliance with a probation condition, respondent has again willfully violated similar probation requirements. The court views the similarities in respondent's two most recent prior discipline matters and this current matter as particularly troublesome, as they each involve respondent's inability or unwillingness to comply with probation conditions. The prior disciplinary orders "provided [respondent] an opportunity to reform his conduct to the ethical strictures of the profession. His culpability in [the matter] presently under consideration sadly indicates either his unwillingness or inability to do so." (*Arden v. State Bar* (1987) 43 Cal.3d 713, 728.) "[R]espondent's continued unwillingness or inability to comply with the conditions of probation imposed on him by a Supreme Court order 'demonstrates a lapse of character and a disrespect for the legal system that directly relate to an attorney's fitness to practice law and serve as an officer of the court. [Citation.]' (*In re Kelley* (1990) 52 Cal.3d 487, 495.)" (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 530.)

With respect to the appropriate discipline recommendation, the court also finds *In the Matter of Rose, supra*, 3 Cal. State Bar Ct. Rptr. 646, instructive. In *Rose*, the respondent failed to timely comply with three conditions of probation. In aggravation, *Rose* had three prior records of discipline¹⁹ and engaged in multiple wrongful acts over a significant period of time. In mitigation, some weight was given to *Rose*'s cooperation in the disciplinary proceeding and substantial weight in mitigation was given for *Rose*'s extensive community service. In recommending *Rose*'s disbarment, the court noted "probation and suspension have proven inadequate in the past to protect against future misconduct, and the record before us does not

¹⁹ *Rose*'s third disciplinary matter was a consolidated proceeding. This consolidated matter resulted in separate review department recommendations and two Supreme Court orders.

give assurance that such a sanction will ensure that future misconduct will not occur.” (*Id.* at p. 655.)

Except for an approximately two and one-half year period, respondent has either been committing misconduct or subject to disciplinary conditions since November 1997. This is close to two-thirds of his time as a practicing attorney. Although respondent contends that he now understands the significance of complying with his probation conditions, respondent had many previous opportunities to understand the importance of complying with his probation conditions in connection with his prior disciplinary matters. His recognition now is too late. Suspension and probation in the past have not resulted in respondent’s adherence to his professional obligations. Therefore, based on the standards and the case law, the court finds that disbarment is the only appropriate discipline recommendation in this matter to ensure that the goals of the attorney discipline system are met and that respondent’s misconduct does not recur.

Recommendations

Disbarment

The court recommends that respondent Robert Arthur Degrell, State Bar number 151498, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.²⁰

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 proceeding.

²⁰ The court will not again order respondent to pay restitution to Moises Juarez and Josephina Hurtado-Juarez (or to the CSF to the extent of any payment from the CSF to Mr. Juarez or Ms. Hurtado-Juarez), as he remains under the requirement to do so as ordered by the Supreme Court in matter S195359.

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 Robert Arthur Degrell 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: September 25, 2017



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 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 September 25, 2017, 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:

**ROBERT A. DEGRELL
818 W 20TH ST APT 1
SAN PEDRO, CA 90731 - 5350**

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

SCOTT D. KARP, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 25, 2017.



Paul Barona
Case Administrator
State Bar Court