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P.B.

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case Nos. 17-N-02072; 17-O-00837
)	(Cons.)-CV
EDWARD WILLIAM PACHECO,)	
)	DECISION AND ORDER OF
A Member of the State Bar, No. 91903.)	INVOLUNTARY INACTIVE
_____)	ENROLLMENT

Introduction¹

In this contested disciplinary proceeding, respondent Edward William Pacheco (Respondent) is charged with four counts of misconduct involving two consolidated matters. The alleged misconduct includes: (1) failing to comply with rule 9.20 of the California Rules of Court;² (2) committing moral turpitude by making a false representation in his rule 9.20 declaration; (3) continuing to practice law while on actual suspension for his previous State Bar disciplinary matter; and (4) committing moral turpitude by making a misrepresentation to a judge.

This court finds, by clear and convincing evidence, that Respondent is culpable on all four counts. Based on the nature and extent of culpability, as well as the serious aggravating circumstances that far outweigh the mitigating factors, the court recommends that Respondent be disbarred from the practice of law.

¹ Unless otherwise indicated, all statutory references are to the Business and Professions Code.

² Unless otherwise indicated, all references to rules are to the California Rules of Court.

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 December 18, 2017. On January 16, 2018, Respondent filed a response in which he answered “nolo contendere” to all counts. On March 23, 2018, the parties filed a Stipulation as to Facts and Admission of Documents. On April 4, 2018, a one-day trial was held, after which this court took the matter under submission.

Findings of Fact and Conclusions of Law

The following findings of fact are based on the parties’ stipulation of facts and the documentary and testimonial evidence admitted at trial. All findings of fact have been established by clear and convincing evidence. (Rules Proc. of State Bar, rule 5.103).

Respondent was admitted to the practice of law in California on May 30, 1980, and has been a member of the State Bar of California at all times since that date.

Case Nos. 17-N-02072 and 17-O-00837

Facts

On October 21, 2016, the California Supreme Court filed order No. S236750 (disciplinary order) which ordered that Respondent be suspended from the practice of law for two years, with execution of that period of suspension stayed, and placed on probation for two years subject to various conditions, including the condition that Respondent be suspended from the practice of law for the first 90 days of probation. Respondent had knowledge of this disciplinary order.

The disciplinary order was imposed in connection with a stipulation in State Bar Court case No. 15-O-12690, et al., wherein Respondent acknowledged that, in two client matters, he: failed to perform; failed to communicate; failed to account; failed to refund unearned fees;

committed an act of moral turpitude by failing to disclose his fees as required by the rules of the bankruptcy court; appeared in court on behalf of a client while suspended; and failed to cooperate in a disciplinary investigation.

The disciplinary order further ordered Respondent to comply with rule 9.20 and perform the acts specified in subdivisions (a) and (c) of rule 9.20 within 30 and 40 calendar days, respectively, after the effective date of the disciplinary order.

On November 20, 2016, the disciplinary order became effective. Accordingly, Respondent was actually suspended from the practice of law from November 20, 2016 to February 18, 2017. In addition, he was required to file with the clerk of the State Bar Court the declaration required under subdivision (c) of rule 9.20 (compliance declaration) by December 30, 2016. Respondent failed to file a compliance declaration with the clerk of the State Bar Court by December 30, 2016.

During his suspension, Respondent represented the plaintiff in the matter of *Joseph Anthony Castellanos v. Saint Thomas Aquinas Catholic Church*, Los Angeles County Superior Court case No. BC631354. On January 24, 2017, Respondent appeared before Judge Robert L. Hess in Department 24 of the Los Angeles Superior Court on the *Castellanos* matter. Respondent was suspended from the practice of law at the time he made this appearance. Nonetheless, when Judge Hess asked Respondent if he was entitled to practice law, Respondent misrepresented to Judge Hess he was reinstated to practice law and he had fulfilled all conditions for reinstatement. Judge Hess accepted Respondent's representations, and Respondent proceeded to represent his client at the January 24, 2017 hearing and made an argument on the client's behalf.

On January 31, 2017, Respondent filed an untimely compliance declaration with the State Bar Court under penalty of perjury. That declaration, however, was deemed non-compliant by

the Office of Probation of the State Bar of California (Office of Probation) because it contained directly conflicting statements. In the January 31, 2017 declaration, Respondent checked a box indicating, “I delivered to all clients any papers or other property to which the clients were entitled, or notified clients and co-counsel, if any, of a suitable time and place where the papers or other property could be obtained, and called attention to any urgency for obtaining the papers or other property,” as well as a box indicating, “As of the date upon which the order with rule 9.20 was filed, I had no papers or other property to which clients were entitled.” (Exhibit 10, p. 3.) Moreover, Respondent checked a box indicating that he notified opposing counsel in pending matters of his suspension and filed such notice to opposing counsel with the tribunals where Respondent had pending litigation; however, Respondent also checked a box indicating, “As of the date upon which the order with rule 9.20 was filed, I did not represent any clients in pending matters.” (Exhibit 10, p. 3.)

On February 7, 2017, Respondent filed a second untimely rule 9.20 declaration with the State Bar Court. The declaration was approved by the Office of Probation. In the February 7, 2017 declaration, Respondent declared under penalty of perjury that he had notified all opposing counsel of his suspension in all matters that were pending on the date upon which the order to comply with rule 9.20 was filed. (See Exhibit 12, p. 3.) In truth, however, Respondent did not inform his opposing counsel in the *Castellanos* matter, Alison Beanum, of his suspension.

Conclusions

Count One – Rule 9.20 [Duties of Disbarred, Resigned, or Suspended Attorneys]

The OCTC charged Respondent with willfully violating rule 9.20 by: (1) failing to notify opposing counsel of his suspension; and (2) failing to file a rule 9.20 compliance declaration by December 30, 2016, as required by Supreme Court order No. S236750.

The court will begin by considering the allegation that Respondent violated rule 9.20 by failing to notify opposing counsel of his suspension. Rule 9.20(a) provides, in relevant part, that an attorney must:

(1) Notify all clients being represented in pending matters and any co-counsel of his or her . . . suspension . . . and his or her consequent disqualification to act as an attorney after the effective date of the . . . suspension . . . and in the absence of co-counsel, also notify the clients to seek legal advice elsewhere. (Italics added.) [¶] . . . [¶]

(4) Notify opposing counsel in pending litigation or, in the absence of counsel, the adverse parties of the . . . suspension . . . and consequent disqualification to act as an attorney after the effective date of the . . . suspension . . . and file a copy of the notice with the court, agency, or tribunal before which the litigation is pending for inclusion in the respective file or files.

Respondent was ordered to comply with rule 9.20(a) within 30 days after the effective date of discipline (to wit, by December 20, 2016). Respondent, however, did not inform his opposing counsel in the *Castellanos* matter of his suspension. By failing to notify opposing counsel of his disciplinary suspension as required by rule 9.20(a)(4), Respondent failed to comply with Supreme Court order No. S236750 (State Bar Court case No. 15-O-12690), in willful violation of rule 9.20.

Next, the court considers the allegation that Respondent violated rule 9.20 by failing to file a rule 9.20 compliance declaration by December 30, 2016. Rule 9.20(c) provides that “[w]ithin such time as the order may prescribe after the effective date of the member’s . . . suspension . . . the member must file with the Clerk of the State Bar Court an affidavit showing that he or she has fully complied with those provisions of the order entered under this rule.”

Respondent was ordered to comply with rule 9.20(c) within 40 days after the effective date of discipline (to wit, by December 30, 2016). Respondent received the Supreme Court order but did not file his rule 9.20 compliance declaration until January 31, 2017. After that

declaration was deemed non-compliant, Respondent filed a compliant 9.20 declaration on February 7, 2017. By failing to file his rule 9.20 declaration (albeit non-compliant) until 32 days past the filing deadline, Respondent failed to comply with Supreme Court order No. S236750 (State Bar Court case No. 15-O-12690), in willful violation of rule 9.20.

Count Two – § 6106 [Moral Turpitude-Misrepresentation]

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. By falsely declaring under penalty of perjury in his 9.20 declaration filed on February 7, 2017, that he had notified all opposing counsel in pending matters of his suspension when he knew or was grossly negligent in not knowing that statement was untrue, Respondent willfully committed an act involving dishonesty and moral turpitude, in violation of section 6106.

Count Three – § 6068, Subd. (a) [Unauthorized Practice of Law]

Section 6068, subdivision (a), provides that an attorney has a duty to support the Constitution and laws of the United States and California. Section 6125 provides that only active members of the State Bar may lawfully practice law in California. Section 6126 provides that any person advertising or holding himself or herself out as practicing or entitled to practice law or otherwise practicing law who is not an active member of the State Bar, or otherwise authorized pursuant to statute or court rule to practice law in this state at the time of doing so, is guilty of a misdemeanor. By making an appearance in the *Castellanos* matter when he knew he was not an active member of the State Bar of California, Respondent held himself out as entitled to practice law and actually practiced law when he was not an active member of the State Bar of California. Accordingly, Respondent willfully violated sections 6125 and 6126 and thereby failed to support the laws of the State of California, in willful violation of section 6068, subdivision (a).

Count Four – Section 6106 [Misrepresentation]

By knowingly misrepresenting to Judge Hess that he was entitled to practice law at the time of the January 24, 2017 hearing in the *Castellanos* matter, Respondent committed an act involving moral turpitude and dishonesty, in willful violation of section 6106.

Aggravation³

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

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

Respondent has been previously disciplined on three occasions.

On July 7, 1994, the Supreme Court issued order No. S039521 (State Bar Court case No. 91-O-03252, et al.) suspending Respondent from the practice of law for one year, stayed, with two years' probation, including a forty-five-day period of actual suspension. In this matter, Respondent stipulated to culpability in six matters. The stipulated misconduct included failing to perform legal services with competence (two counts); improperly withdrawing from employment (two counts); failing to inform a client of significant developments; failing to release a client file upon termination of employment; failing to respond to client inquiries; and failing to cooperate with disciplinary investigations (four counts). No aggravating factors were involved. In mitigation, Respondent had no prior record of discipline and was experiencing emotional and professional difficulties relating to the dissolution of his marriage.

On July 13, 1995, the Supreme Court issued order No. S039521 (State Bar Court case No. 94-PM-17578) revoking Respondent's probation and ordering a one-year stayed suspension with a period of probation of approximately eighteen months. In this matter, Respondent

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

stipulated to violating the terms of his State Bar probation. In aggravation, he had a prior record of discipline. In mitigation, Respondent was experiencing emotional difficulties and displayed spontaneous candor and cooperation with the OCTC.

On October 21, 2016, the Supreme Court issued order No. S236750 (State Bar Court case Nos. 15-O-12690 (15-O-13748)) suspending Respondent from the practice of law for two years, stayed, with two years' probation, including a 90-day minimum period of actual suspension and until payment of restitution. In this matter, Respondent stipulated to culpability in two matters. The stipulated misconduct included failing to perform legal services with competence; committing moral turpitude by failing to disclose to the bankruptcy court that he had received compensation from his client; failing to respond to client inquiries; failing to account; failing to refund unearned fees; engaging in the unauthorized practice of law by appearing in court on behalf of a client while suspended; and failing to cooperate with a disciplinary investigation. In aggravation, Respondent committed multiple acts of wrongdoing, failed to pay restitution, and had a prior record of discipline. In mitigation, Respondent cooperated with the OCTC by entering into a pretrial stipulation, and he was experiencing personal and physical difficulties at the time of the misconduct.

The current discipline exhibits a repetition of misconduct for which Respondent has previously been disciplined, i.e., engaging in the unauthorized practice of law and committing misconduct constituting moral turpitude. This repetition of misconduct demonstrates Respondent's unwillingness or inability to conform to his ethical responsibilities. The court assigns substantial weight to Respondent's prior record of discipline.

Multiple Acts (Std. 1.5(b).)

Respondent's multiple acts of misconduct warrant moderate consideration in aggravation.

Mitigation

It is Respondent's burden to prove mitigating circumstances by clear and convincing evidence. (Std. 1.6.) The court finds Respondent has established two mitigating factors.

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

Respondent is the sole caretaker of his son, who is severely disabled and autistic. Although Respondent is over 80 years of age, he continues to work in order to financially support his son and to keep his son home rather than in an institution. Respondent is also a veteran who served during the Cuban missile crisis and has been diagnosed with – and is being treated for – post-traumatic stress disorder.

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 attorney will engage in misconduct. (Std. 1.6(d).) Here, the only evidence with respect to emotional difficulties was Respondent's own testimony. No expert testimony was offered by Respondent, and there was no other corroborating evidence on this issue.

While the court is sympathetic to all that Respondent has faced, there was no expert testimony regarding his emotional difficulties and their connection to the present misconduct. (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 993 [attorney not entitled to mitigation for emotional difficulties since no expert evidence existed to establish causal connection between attorney's anxiety disorder and misconduct at issue].) Nonetheless, the court still affords Respondent's emotional difficulties limited weight in mitigation. (See *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])

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

The court affords Respondent significant mitigating credit for cooperating with the OCTC by entering into a stipulation and essentially admitting culpability. His cooperation conserved judicial resources. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive weight in mitigation for those who admit culpability and facts].)

Good Character (Std. 1.6(f).)

Respondent credibly testified to his good character and community service. Respondent testified and the court finds that before becoming a member of the State Bar, he contributed to the country through military service. Thereafter, he served his local community as a public school bilingual education teacher in the roughest parts of Los Angeles. As he grew up fatherless, he took up the role as father figure and mentor to many of his students – several of whom he maintains contact with to this day. As an attorney, Respondent testified that he spent his entire legal career as a solo practitioner serving the low-income and underserved community of East Los Angeles. In addition to taking many cases on a pro bono basis over his almost four decades of law practice, he has volunteered to work with other veterans to provide counseling.

While the court acknowledges Respondent's contributions to his country and his community, the court cannot 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 gives nominal weight in mitigation to Respondent's community service because Respondent's testimony was the only evidence on this subject and the nature and extent of his community service remains unclear. (See *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 647-648; *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139, 158 & fn. 22.)

Discussion

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].)

Standard 1.7(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions. In the present matter, the most severe sanction for Respondent's misconduct is found in standards 2.10 (unauthorized practice of law), 2.11 (moral turpitude), and 2.12(a) (disobeying a court order), all three of which provide, in part, that the presumed sanction is disbarment or actual suspension.

Due to Respondent's prior record of discipline, the court also looks to standard 1.8(b) for guidance. Standard 1.8(b) states, in part, that unless the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct, disbarment is appropriate when an attorney has two prior records of discipline and has been previously ordered to serve a period of actual suspension.

The standards, however, "do not mandate a specific discipline." (*In the Matter of Van Sickle, supra*, 4 Cal. State Bar Ct. Rptr. at p. 994.) It has long been held that the court is "not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with

considerations peculiar to the offense and the offender.” (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton, supra*, 36 Cal.4th at p. 92.)

The OCTC argues that the appropriate level of discipline for Respondent’s misconduct is disbarment. Respondent, on the other hand, maintains that his misconduct warrants a level of discipline short of disbarment. The court agrees with the OCTC.

Respondent has been previously disciplined on three separate occasions. Despite his repeated involvement with the disciplinary system, he continues to demonstrate an unwillingness or inability to conform his behavior to the ethical demands of the profession. (*Arden v. State Bar* (1987) 43 Cal.3d 713, 728.) Moreover, Respondent’s present misconduct involved moral turpitude and engaging in the unauthorized practice of law, a repetition of two charges that he was recently found culpable of in his third October 2016 discipline.

Respondent’s actions demonstrate that another round of disciplinary probation would not adequately satisfy the interests of public protection. His past probations and suspensions did not prevent the present misconduct, and he has twice violated the terms and conditions attached to his previous disciplines, including his present failure to obey the Supreme Court’s actual suspension order. Further, Respondent’s aggravating circumstances far outweigh the mitigating effect of his good character and cooperation. Accordingly, the court has no reasonable basis to recommend a level of discipline short of disbarment.

Moreover, a disbarment recommendation is supported by the case law. A willful violation of rule 9.20 is grounds for disbarment absent compelling evidence in mitigation. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131; *Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186-1188; *Powers v. State Bar* (1988) 44 Cal.3d 337, 342.) The court found additional guidance in *In the Matter of Esau* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 131.

In *Esau*, the attorney, who had been previously disciplined on three occasions, violated rule 9.20 by filing his compliance declaration 104 days late. In aggravation, the Review Department cited the attorney's prior record of discipline⁴ and his failure to comply with his prior terms of probation. In mitigation, the attorney entered into a pretrial stipulation. He also received minimal weight in mitigation for the testimony of his three character witnesses, as well as his own testimony regarding his community service and pro bono activities. Noting that the attorney's apparent lack of concern for his license to practice law demonstrated that he was not a candidate for further disciplinary probation, the Review Department recommended his disbarment.

The misconduct in the present case is considerably more serious than that found in *Esau*. Here, Respondent not only violated rule 9.20, but also committed additional serious misconduct including continuing to practice law while on disciplinary suspension and making misrepresentations to the superior court and in his rule 9.20 declaration. Similar to the attorney in *Esau*, Respondent's actions demonstrate a lack of concern for his license to practice law.

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

Recommendations

It is recommended that Edward William Pacheco, State Bar Number 91903, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

⁴ The attorney's prior record of discipline consisted of a private reproof, a stayed suspension, and a six-month actual suspension.

California Rules of Court, Rule 9.20

It is further recommended that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter.⁵

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: June 5, 2018


CYNTHIA VALENZUELA
Judge of the State Bar Court

⁵ For purposes of compliance with rule 9.20(a), the operative date for identification of “clients being represented in pending matters” and others to be notified is the filing date of the Supreme Court order, not any later “effective” date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar, supra*, 44 Cal.3d at p. 341.) In addition to being punished as a crime or contempt, an attorney’s failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on June 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 Los Angeles, California, addressed as follows:

EDWARD WILLIAM PACHECO
LAW OFFICE OF EDWARD W. PACHECO
5410 E BEVERLY BLVD # 100
LOS ANGELES, CA 90022 - 2208

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

STACIA L. JOHNS, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 5, 2018.



Paul Barona
Court Specialist
State Bar Court