

PUBLIC MATTER

FILED
JUN 18 2019 P.B.
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No. 17-O-05345-CV
)	
STEVEN MARK KLUGMAN,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
State Bar No. 53902.)	ENROLLMENT
_____)	

Introduction¹

In this contested disciplinary matter, Respondent Steven Mark Klugman (Respondent) is charged with failing to comply with disciplinary probation conditions. Having considered the facts and the law, as well as the mitigation and aggravation, the court finds Respondent culpable of the alleged misconduct and recommends that he be disbarred 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 September 10, 2018. Respondent filed an answer to the NDC on September 21, 2018.

On March 27, 2019, the parties filed an Amended Stipulation as to Facts and Admission of Documents. Trial was held on March 27, 2019. The matter was submitted for decision at the conclusion of the trial. The parties submitted post-trial closing briefs.

¹ Unless otherwise indicated, all references to rules refer to the former State Bar Rules of Professional Conduct that were operative through October 31, 2018. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 14, 1972, and has been an attorney of the State Bar of California at all times since that date.

Facts

Supreme Court Order

On June 12, 2014, the California Supreme Court issued an order, No. S183845 (State Bar Court case No. 13-PM-14322) (“Disciplinary Order”), revoking Respondent’s probation in State Bar Court case No. 03-O-05112 and placing him on probation for three years with conditions, including that he be actually suspended from the practice of law for the first 30 days of probation.

The Disciplinary Order ordered that Respondent comply, among other things, with the following probation conditions:

1. Respondent must, within 30 days from the effective date of discipline, contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of his probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
2. During the period of probation, Respondent was required to submit a written report to the Office of Probation on January 10, April 10, July 10 and October 10 of each year, or part thereof, during which the probation is in effect, stating under penalty of perjury that he has complied with provisions of the State Bar Act and Rules of Professional Conduct during said period (quarterly report). In addition to all quarterly reports, a final report, containing the same information, was due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.
3. Respondent must pay restitution to the following individuals of the amount set forth below, plus 10% interest per annum, accruing from the date specified below, and provide satisfactory proof thereof to the Office of Probation:
 - a. Seryozah Avakyan in the amount of \$3,500, plus interest of 10% per annum accruing from January 1, 2001;

- b. Gharndick Avenessians in the amount of \$22,500, plus interest of 10% per annum accruing from May 1, 2001;
- c. Israel Sanchez in the amount of \$31,500, plus interest of 10% per annum accruing from May 1, 2001;
- d. Tamara Vaschenko in the amount of \$1,130.90, plus interest of 10% per annum accruing from January 1, 2002;
- e. Ivan Vaschenko in the amount of \$4,500, plus interest of 10% per annum accruing from January 1, 2002;
- f. Daria Alekseyeva in the amount of \$4,000, plus interest of 10% per annum accruing from January 1, 2002;
- g. Jessica Rosales in the amount of \$4,500, plus interest of 10% per annum accruing from January 1, 2002; and
- h. Ernesto Castillo in the amount of \$7,200, plus interest of 10% per annum accruing from March 1, 2003.

If the State Bar's Client Security Fund (CSF) has reimbursed any of the above individuals for all or any portion of the principal amounts, Respondent must also pay restitution to the CSF of the amount paid, plus applicable interest and costs. To the extent the CSF had paid only principal amounts, Respondent would still be liable for interest payments to said individuals.

Respondent must pay restitution in a minimum amount of \$6,000 per year. Proof of the first payment was due by January 10, 2015, with Respondent's quarterly report(s), or as otherwise directed by the Office of Probation. Proof of each subsequent payment was due by January 10, annually.

With each written quarterly report required herein, Respondent must provide to the Office of Probation satisfactory proof of all restitution payments made by him during that quarter or period.

- 4. If Respondent possessed client funds, property, or securities at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from a certified public accountant or other financial professional approved by the Office of Probation. If Respondent does not possess any funds, property, or securities, Respondent must so state under penalty of perjury in the report for that period (Client Funds Certificate).

The Supreme Court order became effective on July 12, 2014, 30 days after it was entered. (Cal. Rules of Court, rule 9.18(a).) It was properly served on Respondent.²

Failure to Timely Meet With Probation Deputy

On July 18, 2014, the Office of Probation sent Respondent a reminder letter which outlined all of the probation conditions, and reminded Respondent of the various deadlines applicable to his probation. The letter was mailed to Respondent's membership records address and was not returned as undeliverable. Respondent received the letter.

Respondent did not schedule his required meeting with the Office of Probation by the August 11, 2014 due date. Respondent contacted the Office of Probation one day late, on August 12, 2014, to schedule his required meeting with his probation deputy.

Respondent missed his first scheduled meeting with his probation deputy on August 19, 2014. Respondent contacted his probation deputy on August 22, 2014, to reschedule his meeting. Respondent did not meet with his probation deputy until August 25, 2014.

Failure to Timely File Quarterly Reports

The following quarterly reports were submitted late and/or were deemed deficient by the Office of Probation:

1. October 10, 2015 quarterly report (initially the report was submitted on October 9, 2015, but it was deemed not compliant by the Office of Probation because it was not made under penalty of perjury; it was submitted again on October 10, 2015, but it was

²Although no proof was offered that the Clerk of the Supreme Court served the Supreme Court's order upon Respondent, California Rules of Court, rule 8.532(a) requires clerks of reviewing courts to immediately transmit a copy of all decisions of those courts to the parties upon filing. It is presumed pursuant to Evidence Code section 664 that official duties have been regularly performed. (*In re Linda D.* (1970) 3 Cal.App.3d 567, 571.) Therefore, in the absence of evidence to the contrary, this court finds that the Clerk of the Supreme Court performed his duty and transmitted a copy of the Supreme Court's order to Respondent immediately after its filing.

deemed not compliant by the Office of Probation because it was backdated; subsequently, it was submitted on October 20, 2015, but was not compliant because it was untimely; wet signature received by the Office of Probation on November 4, 2015, but it was untimely);

2. July 10, 2016 quarterly report (initially the report was submitted July 8, 2016, but it was deemed not compliant by the Office of Probation because it was backdated and did not cover the entire time period; subsequently, it was submitted late on July 12, 2016); and
3. Final quarterly report, due by July 12, 2017, was submitted on August 4, 2017, but it was deemed not compliant by the Office of Probation because it was untimely and the reporting period was unclear.

Failure to Timely Submit Client Funds Certificate

On June 30, 2016, Respondent submitted the April 10, 2016 Client Funds Certificate late. An earlier report was submitted on April 8, 2016, but it was signed and dated April 10, 2016, and therefore was deemed not compliant by the Office of Probation.

Failure to Timely Pay Restitution

On December 10, 2015, Respondent filed a motion to modify the terms of his probation. Specifically, Respondent requested that he make payments directly to the CSF in cases where he is unable to locate clients, and that the requirement that he pay yearly restitution, in the amount of \$6,000, be extended by 60 days. The motion was based upon Respondent's poor health – a tumor on his leg – which inhibited his ability to work.

On January 13, 2016, the court granted Respondent's December 10, 2015 motion and amended the terms of his probation such that his \$6,000 yearly restitution payment was extended to February 29, 2016. Respondent was also ordered to make complete and final payments to

Israel Sanchez, Daria Alekseyeva, and Jessica Rosales by July 13, 2016. All other restitution terms remained in effect as previously ordered.

Respondent failed to submit sufficient proof of complete and final payment to the following individuals in the restitution interest amounts owed to each by July 13, 2016:

1. Israel Sanchez in the restitution interest amount of \$14.38;
2. Daria Alekseyeva in the restitution interest amount of \$1.83; and
3. Jessica Rosales in the restitution interest amount of \$0.03.

Respondent submitted proof of his annual restitution payment of \$6,000 late, on March 29, 2016, one month past the extended due date of February 29, 2016.

On January 10, 2016, Respondent submitted proof of payment to Seryozah Avakyan in the amount of \$2,500, to the Office of Probation. But the Office of Probation deemed that it was not compliant because it was not for the minimum amount. On February 9, 2016, Respondent again attempted to submit proof of the \$3,500 payment. But this, too, was deemed not compliant by the Office of Probation because the accompanying declaration was not signed by Seryozah Avakyan and contained misspelled names and the incorrect date of receipt. Finally, in his third attempt, on March 29, 2016, Respondent successfully submitted proof of payment of \$3,500 to Seryozah Avakyan.

Pursuant to the Disciplinary Order, Respondent was also to complete payment of restitution, including restitution interest in full, and submit proof of complete payment by June 12, 2017, to the following five former clients, which he failed to do so:

1. Seryozah Avakyan, in the restitution interest amount of \$2,768.08;

2. Hrazda Avenessians,³ in the restitution principal amount of \$16,500, plus 10% interest accruing (on the principal amount of \$22,500 less \$6,000 on January 5, 2017) from May 1, 2001;
3. Ivan and Tamara Vaschenko, in the restitution interest amount of \$2,497.65; and
4. Ernesto Castillo, in the restitution interest amount of \$543.62.

Respondent submitted copies of the front of two checks written for the benefit of Ernesto Castillo, one dated December 31, 2009, in the amount of \$1,500, and another dated March 31, 2010, in the amount of \$4,900. However, this proof was deemed unsatisfactory by the Office of Probation because a copy of the front *and* back of the check was not provided. Respondent, however, was given credit for \$1,500 Respondent paid to Mr. Castillo on October 9, 2009.

Non-Compliance Letters

The Office of Probation sent Respondent a non-compliance letter on June 23, 2016, regarding his deficient April 8, 2016 Client Funds Certificate. The letter was sent to Respondent's membership mailing and email address and was not returned as undeliverable. Respondent received the letter and email.

The Office of Probation sent a second non-compliance letter to Respondent on August 1, 2017, which detailed his non-compliance with the conditions of his probation to date. This letter was sent to Respondent's membership mailing and email address and was not returned as undeliverable. The evidence reflects that Respondent received the letter and email.

On August 28, 2018, Respondent made a payment of \$40,000 to CSF.

Respondent has failed to submit proof of complete payment of restitution to the CSF. Respondent currently owes the CSF \$56,226.25.

³ Hrazda Avenessians is the heir of Respondent's former client, Gharndick Avenessians. The court granted Respondent's motion to modify the terms of his probation on January 6, 2017, to pay Hrazda the restitution he owed to Gharndick.

Respondent's probation in case number 13-PM-14322 terminated on July 12, 2017.

Conclusions of Law

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

Section 6068, subdivision (k), provides that an attorney has a duty to comply with all conditions attached to any disciplinary probation.

Respondent did not deny non-compliance with the conditions of probation. Rather, he argued that his financial situation precluded him from complying with probation conditions regarding restitution. He claimed that he substantially complied with the restitution requirements and paid \$40,000 to the CSF.

But, Respondent still owes the CSF \$56,226.25.

Respondent credibly testified that he made tangible efforts to pay restitution interest to the following three individuals, and that their failure to cash the checks that he sent to them was out of his control: Israel Sanchez (\$14.38); Daria Alekseyeva (\$1.83) (Jessica Rosales \$0.03.) Because they never cashed the checks, Respondent was not able to provide copies of canceled checks to the probation office as proof of complete payment of restitution. Although that is true, the burden rested on Respondent to work with his probation officer to determine what, if any, other proof of payment was acceptable to satisfy this probation condition. Respondent's probation officer had provided Respondent with specific instructions as to what constitutes sufficient proof of payment.

Respondent testified that he thought Seryozah Avakyan had been paid, although he stipulated to the contrary. Similarly, Respondent testified that he made payments to Hrazda Avenessians, Ivan and Tamara Vaschenko, but provided no proof. He stipulated that he did not provide proof of payment to all three. Respondent testified that he was unaware of any

restitution interest being owed to Ernest Castillo. Correspondence from the probation office to Respondent proves that he was so informed.

Respondent further testified that his poor health has hampered his efforts to comply with probation conditions – especially with regard to restitution – but also with regard to scheduling and meeting with his probation officer. He testified that he had been diagnosed with attention deficit disorder, and that before he was prescribed the proper medication he could not focus and was not efficient. He testified that he has problems reviewing information from the state bar and that he “just can’t focus on it.” Respondent, however, did not offer any medical records to support his position. (See *Barnum v. State Bar* (1990) 52 Cal.3d 104, 113 [reliable extrinsic evidence needed to assess extent and nature of attorney’s alleged mental condition].)

In conclusion, despite Respondent's testimony and excuses, there is clear and convincing evidence that Respondent failed to comply with the terms of his probation, in willful violation of section 6068, subdivision (k), as ordered by the Supreme Court in S183845, by willfully:

- (1) failing to timely schedule his meeting with his probation deputy by August 11, 2014;
- (2) failing to attend his scheduled meeting with his probation deputy on August 19, 2014;
- (3) failing to timely submit proof of payment of restitution to Seryozah Avakyan; Hrazda Avenessians; Ivan and Tamara Vaschenko; and Ernesto Castillo by June 12, 2017;
- (4) failing to timely submit quarterly reports on October 10, 2015, July 10, 2016, and July 12, 2017; and
- (5) failing to timely submit a Client Funds Certificate due April 10, 2016.⁴

⁴ Final Client Funds Certificate, due by July 12, 2017, did not need to be filed because Respondent reported that he did not possess client funds in his July 12, 2017 final quarterly report, which was submitted on August 4, 2017. Accordingly, at the request of OCTC, the NDC on page 3, paragraph F, is amended to read: “Failing to submit one Client Fund Certificate by the due date of April 10, 2016.”

Aggravation⁵

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. The court assigns substantial weight in aggravation for Respondent's prior records of discipline.

1. On August 25, 2010, the Supreme Court filed an order in case No. S183845 (State Bar Court case No. 03-O-05112 et al.), suspending Respondent from the practice of law for three years, stayed, with four years' probation, including an actual suspension of four months. Respondent stipulated to culpability in 12 matters, including employment and termination of a resigned attorney, failure to perform services competently, failure to communicate, failure to return unearned fees, failure to maintain client funds, and acts of moral turpitude. His misconduct occurred between 1999 and 2003. Respondent was in the Alternative Discipline Program from 2005 to 2009; there was a nexus between his substance abuse and mental health issues and his misconduct. After he had successfully completed the ADP, he was then disciplined in this matter in 2010.
2. On June 12, 2014, the Supreme Court filed an order in case No. S183845 (State Bar Court case No. 13-PM-14322), revoking Respondent's probation and suspending Respondent from the practice of law for 30 days with three years' probation. Respondent was found culpable of violating his probation conditions.

⁵ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

3. On May 10, 2017, the Supreme Court filed an order in case No. S240205 (State Bar Court case No. 13-O-17015), suspending Respondent from the practice of law for two years, stayed, with two years' probation, including an actual suspension of six months. He was culpable of failing to obey a court order, failing to support the laws of the state, and failing to maintain client funds.

Respondent's current misconduct is similar to the misconduct involved in his second prior disciplinary matter – failure to comply with probation conditions. He should have had a heightened awareness of his need for strict compliance with his probation conditions. Although he was disciplined in 2014 for violating these similar conditions, he did not learn from that experience.

Moreover, Respondent's misconduct in this proceeding occurred during the probationary period of his prior record of discipline. The aggravating circumstance of prior misconduct is magnified by the fact that Respondent committed the current misconduct while on probation in a prior disciplinary proceeding. (*In the Matter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430.)

Multiple Acts (Std. 1.5(b).)

Respondent committed multiple acts of wrongdoing, including failing to timely file three quarterly reports, failing to timely pay restitution, failing to timely schedule and meet with his probation deputy, and failing to timely submit a client funds certificate. Respondent's multiple acts of probation violations constitute significant weight in aggravation.

Mitigation

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

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

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

Good Character (Std. 1.6(f).)

Respondent is afforded minimal mitigating credit for good character. Respondent presented the testimony of two character witnesses and declarations from four character witnesses who attested to Respondent's good character. Four are attorneys; serious consideration is given to their testimony because attorneys have a "strong interest in maintaining the honest administration of justice." (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319.) But, here, these four attorneys either have either a cursory or no understanding of the allegations against Respondent. And, the other two character witnesses also did not come from those "who are aware of the full extent of the misconduct." (See *In re Aquino* (1989) 49 Cal.3d 1122, 1130-1131 [testimony of seven witnesses plus 20 letters affirming attorney's good character were not entitled to significant weight in mitigation because most of those who testified or wrote were unaware of the details of attorney's misconduct].)

Moreover, testimony by these six character witnesses was not entitled to significant weight in mitigation since it was not an extraordinary demonstration of good character attested to by a wide range of references in the legal and general communities, as required. (*In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153; *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 387 [three attorneys and three clients do not constitute a broad range of references from legal and general communities].)

Financial Difficulties

Respondent's financial difficulties is not a mitigating factor; Respondent did not present any actual supporting evidence regarding his finances. He had previously sought to delay making any payments restitution based on claims of financial hardship. Some modifications were made. But here, there is no clear and convincing evidence to support such a claim of financial problems.

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney but to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (Std. 1.1; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silvertan* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be

deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Standard 1.8(b) provides that, unless the most compelling mitigating circumstances clearly predominate or the prior misconduct occurred in the same time period as the current misconduct, if an attorney has two or more prior records of discipline, disbarment is appropriate if: (1) an actual suspension was ordered in one of the prior matters; (2) the prior and current matters together demonstrate a pattern of misconduct; or, (3) the prior disciplinary matters coupled with the current record demonstrate the member's unwillingness or inability to conform to ethical responsibilities.

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 lawyer's unwillingness or inability to comply with disciplinary orders." The extent of the discipline to recommend is dependent, in part, on the seriousness of the probation violation and Respondent's recognition of his misconduct and his efforts to comply with the conditions. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.)

The State Bar urges Respondent be disbarred for his failure to comply with the terms of the probation imposed in his prior PM case, in light of his three prior records of discipline under standard 1.8(b) and *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646.

Respondent contends that this case must be dismissed because he had substantially complied with the probation conditions. He also argues that his only deficiency was due to his inability to timely pay the restitution and that he should not be punished when his failure to comply was solely due to his lack of money.

Respondent's arguments are without merit. It is well settled that substantial compliance with a probation requirement is not a defense to violation of the requirement. (See *In the Matter*

of Potack (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536-537.) Respondent is not being punished for his failure to comply with the restitution requirement. Disciplinary probation serves the critical function of protecting the public and rehabilitating the attorney. (*Ibid.*) Contrary to Respondent's assertion, the “importance of these goals makes distinctions between substantial and insubstantial or technical violations of probation inappropriate. It is the importance of the goals, not just the particular probation condition at issue, that makes such distinction inappropriate.” (*In the Matter of Rose, supra*, 3 Cal. State Bar Ct. Rptr. 646, 652.)

Thus, Respondent's multiple tardiness – in scheduling a meeting and meeting with the Office of Probation late by several days, in filing three quarterly reports late by several days, in filing the final report late by a few weeks, in failing to submit proof of payment of restitution to five payees, and in submitting a client funds certificate late by more than two months – is a clear violation of his probation requirements.

Moreover, there is no clear and convincing evidence that Respondent's failure to pay or provide proof of restitution payment to Office of Probation was due to his financial difficulties. While Respondent may have encountered health or financial issues, they do not obviate him from his obligations to comply with the probation conditions. (See *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138.)

In fact, there are no compelling mitigating circumstances in this matter. Instead, there is a track record of repeated violations by Respondent of his professional obligations since 1999. Respondent's three prior impositions of discipline have not operated to cause Respondent to conform his conduct to ethical norms. Probation and suspension have proven inadequate in the past to protect against future misconduct, and the record in the current proceeding provides no reasonable indication that discipline short of disbarment will ensure that future misconduct will not occur. (*In the Matter of Rose, supra*, 3 Cal. State Bar Ct. Rptr. 646.)

In sum, it is clear that strong steps must be taken to prevent future professional misconduct on Respondent's part. Consequently, the court finds no reasonable cause to deviate from standard 1.8(b) and recommends that Respondent be disbarred for the "protection of the public, the profession, and the courts, maintenance of high professional standards, and preservation of public confidence in the legal profession." (*Rose v. State Bar* (1989) 49 Cal.3d 646, 666.)

Recommendations

It is recommended that Respondent Steven Mark Klugman, State Bar Number 53902, be disbarred from the practice of law in California and Respondent's name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

It is further recommended that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter.⁶

Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for

⁶ For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against an attorney who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

Order of Involuntary Inactive Enrollment

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: June 18, 2019



CYNTHIA VALENZUELA
Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on June 18, 2019, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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

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

KENNETH CHARLES KOCOUREK
736 CENTER DRIVE, NO. 125
SAN MARCOS, CA 92069

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

CAITLIN M. ELEN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 18, 2019.



Paul Barona
Court Specialist
State Bar Court