

Filed April 10, 2015

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

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| In the Matter of |) | Case No. 12-O-16954 |
| |) | |
| JAMES ALLEN TEEL, |) | OPINION AND ORDER |
| |) | |
| A Member of the State Bar, No. 150696. |) | |
| _____ |) | |

Between 1999 and 2006, respondent James Allen Teel was convicted of seven crimes, including spousal battery, violations of protective orders, two offenses for driving under the influence (DUI), child endangerment, and assault and battery. These convictions were referred to the State Bar Court, and subsequently the Supreme Court ordered that Teel be suspended for two years, stayed, subject to a five-year probationary period with various conditions. Teel violated the terms of his probation, which resulted in this court’s revocation of his probation and the imposition of a 60-day suspension with a new two-year probation period. At the time we revoked his probation, we admonished him: “[F]ailing to abide by probation terms and conditions is serious misconduct.”

Teel is again before this court, facing discipline for the third time. In the proceeding below, the hearing judge found he was culpable of additional probation violations. Having determined there were three factors in aggravation (prior record, multiple acts, and indifference) and three factors in mitigation (cooperation, extreme physical difficulties, and severe financial stress), the hearing judge recommended a two-year actual suspension to continue until Teel demonstrates rehabilitation.

The Office of the Chief Trial Counsel of the State Bar (OCTC) appeals, seeking Teel's disbarment. Teel also filed an appeal but failed to file an opening brief or a response to OCTC's opening brief.

Based on our independent review (Cal. Rules of Court, rule 9.12), we affirm the hearing judge's culpability findings, but give greater weight to the evidence in aggravation and find no mitigation. Of particular concern to this court is the fact that the probation violations are due in large measure to Teel's ongoing failure to successfully participate in a random drug and alcohol testing program, which is intended to monitor his sobriety following his DUI convictions. This is a common thread that runs through Teel's entire disciplinary record. We thus find the risk is high that he will continue to offend and that he is not a good candidate for probation. We recommend that Teel be disbarred in accordance with the presumptive discipline recommendation under standard 1.8(b) of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.¹

I. PROCEDURAL HISTORY

On February 4, 2013, OCTC filed a one-count Notice of Disciplinary Charges (NDC) alleging that Teel willfully violated Business and Profession Code section 6068, subdivision(k).² Specifically, he failed to: (1) file a timely Alcoholics Anonymous (AA) attendance log with the Office of Probation (Probation); (2) properly complete several requested drug and alcohol screening tests and report the results in a timely fashion; (3) ensure that all drug and alcohol screening tests were performed in a manner that maintained specimen integrity, i.e., as an observed testing; and (4) maintain a current telephone number where Probation could contact him at all times. OCTC also charged that Teel stated under penalty of perjury in his quarterly

¹ Standard 1.8(b) provides under circumstances relevant to this case that "disbarment is appropriate" when an attorney has two or more prior disciplines. All further references to standards are to this source.

² All further references to sections are to this source.

reports that he had complied with all of his probation conditions, knowing he had not successfully completed all drug and alcohol testing.

At the one-day trial, OCTC offered documentary evidence and the testimony of Probation Deputy Terese Laubscher. In his defense, Teel presented his testimony and documentary evidence. Both parties appealed. However, Teel did not file an opening brief or a response to OCTC's brief. He was therefore precluded from appearing at oral argument pursuant to rule 5.153(A)(2) of the Rules of Procedure of the State Bar of California.

II. FAILURE TO COMPLY WITH PROBATION CONDITIONS (§ 6068, subd. (k))

Section 6068, subdivision (k), requires attorneys “[t]o comply with all conditions attached to any disciplinary probation. . . .” Teel’s multiple failures to comply with his probation conditions are not in dispute.³ Further, the record clearly and convincingly supports the culpability findings by the hearing judge, which we affirm and summarize below.⁴

Teel was admitted to the State Bar on December 4, 1990. He has two prior records of discipline. *In re James Allen Teel*, case number S175014 (State Bar Court case numbers 07-C-11834, 07-C-12541, 07-C-12542, 07-C-12543, and 07-C-13265 (consolidated)) became effective on September 29, 2009 (*Teel I*). *In re James Allen Teel on Discipline*, case number S175014 (State Bar Court case number 10-PM-03937 (consolidated)) became effective on July 12, 2011 (*Teel II*). In *Teel I*, as the result of his conviction referral matter, the Supreme Court placed him on two years’ stayed suspension and five years’ probation with conditions. In *Teel II*, due to his violations of his probation conditions in *Teel I*, the Supreme Court suspended

³ OCTC does not challenge the hearing judge’s culpability findings, and, by failing to file a brief, Teel has also waived any claim of factual error. (Rules Proc. of State Bar, rule 5.152(C) [“Any factual error that is not raised on review is waived by the parties”].)

⁴ Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

Teel for 60 days and placed him on a new two-year probationary period with conditions, including that Teel must:

1. Attend at least four AA meetings per month and provide to Probation proof of monthly attendance on or before the tenth day of the following month;
2. Be randomly tested for the use of alcohol five to ten times per year;
3. Maintain with Probation a current address and telephone number where he could be reached for testing purposes;
4. Furnish to the approved medical laboratory blood and/or urine samples as required to prove abstinence from drugs and/or alcohol, within 36 hours of Probation's request; and
5. Furnish samples to the laboratory in such a manner as may be specified by the laboratory to ensure specimen integrity.

As charged in the NDC, Teel willfully and repeatedly disobeyed the conditions of his second probation. First, he submitted his AA Attendance log to Probation one day after the October 10, 2011 deadline. More significantly, Teel did not successfully complete several random drug and alcohol screening tests. In December 2011, he provided a urine sample to a laboratory within 36 hours of Probation's initial request that he do so. However, the testing was not observed, as required, and Probation rejected the test and related report.⁵ Probation left a message for Teel instructing him to re-test within 36 hours. Teel did not.

In January 2012, Probation called for another test. Teel timely provided a urine sample, but the laboratory deemed it a "dilute specimen." Probation notified him that the specimen was not satisfactory and instructed him to re-test within 36 hours. Teel did not provide the required sample until two and a half weeks later. In April 2012, he failed entirely to submit to the testing requested by Probation. In June 2012, Teel again submitted a diluted specimen when tested. These facts further establish his failure to ensure specimen integrity, as set forth in his probation conditions.

⁵ Prior to this test, Probation repeatedly reminded Teel that all testing must be observed.

Teel also neglected to maintain a current telephone number at which he could be reached for testing purposes. He relied on a voicemail message system that he knew sometimes erased messages. On one occasion, Probation left a voicemail message asking Teel to respond. He did not respond — later citing as an excuse the unreliability of his voicemail system.

Finally, Teel falsely stated, under penalty of perjury, in three of his quarterly reports that he had complied with all the conditions of his disciplinary probation when he knew he had not done so. Probation notified him that he needed to correct his reports but he never did.

III. SIGNIFICANT AGGRAVATION AND NO MITIGATION⁶

The hearing judge correctly found several factors in aggravation. Most significantly, Teel's present misconduct is closely related to his two prior disciplines. *Teel I* arose from five criminal convictions from 1999 to 2006, involving two DUIs, spousal battery, two violations of a protective order, child endangerment, and assault and battery. In *Teel II*, Teel was found culpable of violating three conditions of his probation based on his failure to provide timely proof of his AA attendance; proof of his compliance with his criminal probation terms; and blood and urine samples as directed for drug and alcohol testing. We found Teel's failure to test for substance abuse to be a serious probation violation directly related to his underlying DUI convictions. We explicitly warned that his failure to abide by his probation conditions would constitute further serious misconduct.

In the present case, we ascribe substantial aggravation to Teel's prior disciplinary records because he has again failed to comply with probation conditions designed to monitor his sobriety. (Std. 1.5(a); see *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 444 [prior misconduct similar to that found in present case “must be considered to be a serious” aggravation].) Equally aggravating is Teel's failure to understand the seriousness of his

⁶ Standard 1.5 requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Teel to meet the same burden to prove mitigation.

misconduct. (Std. 1.5(g); see *Weber v. State Bar* (1988) 47 Cal.3d 492, 506 [lack of remorse and failure to acknowledge wrongdoing are aggravating factors].) Given our express warning in *Teel II*, he was indisputably on notice that further probation violations would constitute serious misconduct. He was also warned that strict compliance was required.

Yet he did not take the necessary steps to ensure his compliance, even after Probation alerted him about his violations. Of particular concern, Teel blamed his financial circumstances for hampering his ability to comply with his probation. However, when Probation encouraged him to file a motion to modify the conditions of his probation, he continued to violate his probation for almost a year rather than seek a modification. In addition, Teel showed no insight at the hearing below. Instead, he attributed his problems to the State Bar and complained about the unfairness of being shackled with a probation resulting from his earlier criminal convictions. His failure to submit briefing on appeal underscores his lack of appreciation for the seriousness of this disciplinary proceeding. Teel also committed multiple acts of misconduct. (Std. 1.5(b).)

As for mitigation, we disagree with the hearing judge's findings. In fact, we find Teel is not entitled to any mitigation. To begin, he deserves no mitigation for candor and cooperation. (Std. 1.6(e).) He did not stipulate to facts in this proceeding. His candid testimony merely fulfilled his "legal and ethical duty" to cooperate with the State Bar's investigation (*Hipolito v. State Bar* (1989) 48 Cal.3d 621, 627, fn. 2), and to participate in the disciplinary process (§ 6068, subd. (i).)

In addition, Teel submitted a letter from a psychiatrist, who saw him on three occasions, stating Teel is medicated and struggles with depression. That letter did not establish that he suffers from physical disabilities "directly responsible for [his] misconduct" and which "no longer pose a risk that [Teel] will commit misconduct." (Std. 1.6(d).) We have no evidence that he is no longer depressed. Finally, we find that his financial stress does not warrant mitigation.

He had the opportunity to seek modification of his probation conditions on grounds he was unable to pay for some or all of the required drug testing, but he did not do so.

IV. DISBARMENT IS THE ONLY APPROPRIATE DISCIPLINE⁷

Our disciplinary analysis begins with the standards. (*In re Silverton* (2005) 36 Cal.4th 81, 91.) Standard 1.8(b) provides, inter alia, that when a member has two or more prior records of discipline, disbarment is appropriate if actual suspension was ordered in any of the prior matters, or if the prior disciplines coupled with the current misconduct demonstrate the member's unwillingness or inability to conform to ethical responsibilities. Standard 1.8(b) further provides for a departure from the presumptive recommendation of disbarment if the most compelling mitigating circumstances clearly predominate or if the misconduct underlying the prior discipline occurred during the same period as the current misconduct. Such is not the case here.

Significantly, we have found no mitigation. Even after his prior 60-day suspension for probation violations in *Teel II*, he has continued to commit virtually identical misconduct. The repeated probation violations and his ongoing lack of insight demonstrate that Teel is either unwilling or unable to conform to his professional responsibilities. (See *Barnum v. State Bar* (1990) 52 Cal.3d 104, 111.)

The hearing judge acknowledged the applicability of standard 1.8(b), yet declined to recommend disbarment. The judge correctly observed that disbarment is not mandatory in every case of two or more prior disciplines, even where no compelling mitigating circumstances clearly predominate. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 506-507 [analysis under former

⁷ 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.)

std. 1.7(b)].) Nevertheless, disbarment is called for in this case. We consider it of paramount concern that Teel violated probation conditions intended to address the alcohol-related convictions for which he was initially placed on probation and to ensure his ongoing abstention. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540 [violation of probation condition significantly related to attorney's prior misconduct merits greatest discipline, especially if violation shows attorney's failure to undertake steps toward rehabilitation]; *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 151.)

We are also concerned about the sheer number of probation violations Teel committed in *Teel II* and in this case. We note too that he engaged in repeated acts of dishonesty by filing three false quarterly probation reports. Given his track record of replicating the same misconduct, “[w]e believe that the risk of [Teel] repeating this misconduct would be considerable if he were permitted to continue in practice. [Citation.]” (*McMorris v. State Bar* (1983) 35 Cal.3d 77, 85.)

We conclude that additional probation and suspension are inadequate to prevent Teel from committing future misconduct that would endanger the public and the legal profession. Standard 1.8(b) and the decisional law support our conclusion that the public and profession are best protected if Teel is disbarred.⁸

⁸ *Farnham v. State Bar* (1988) 47 Cal.3d 429 [disbarment where attorney with prior discipline record habitually ignored ethical duties to clients]; *McMorris v. State Bar*, *supra*, 35 Cal.3d 77 [disbarment where attorney habitually failed to perform in five client matters and was twice previously suspended for similar misconduct]; *Barnum v. State Bar*, *supra*, 52 Cal.3d at p. 113 [disbarment where attorney was previously placed on probation followed by suspension and probation revocation, and where depression was not “most compelling” mitigation when weighed against risk of recurrence of misconduct]; *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 80 [disbarment where attorney had two prior records of discipline and was unable to conform conduct to ethical norms].)

V. RECOMMENDATION

We recommend that James Allen Teel, Member No. 150696, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys admitted to practice in this state.

We also recommend that Teel be ordered to comply with 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 calendar days, respectively, after the effective date of the Supreme Court order in this matter.

We further recommend that costs be awarded to the State Bar in accordance with section 6086.10 and that such costs be enforceable as provided in section 6140.7 and as a money judgment.

VI. ORDER

Pursuant to section 6007, subdivision (c)(4), and rule 5.111(D)(1) of the Rules of Procedure of the State Bar, Teel is ordered enrolled inactive. The order of inactive enrollment is effective three days after service of this opinion. (Rules Proc. of State Bar, rule 5.111(D)(1).)

EPSTEIN, J.

WE CONCUR:

PURCELL, P. J.

HONN, J.