

STATE BAR COURT
REVIEW DEPARTMENT

In the Matter of

RAYMOND C. GRUENEICH

A Member of the State Bar

Nos. 91-N-05518, 91-P-06419

Filed May 14, 1993

SUMMARY

As a result of misconduct involving abandonment of clients and failure to return unearned fees, respondent previously received three years stayed suspension and was actually suspended for four months, placed on probation, and ordered to comply with rule 955, California Rules of Court. In this proceeding, respondent was found to have failed to comply with rule 955 and to have violated several conditions of his probation. The hearing judge, finding mitigating circumstances including respondent's numerous pro bono activities and severe personal problems, declined to recommend disbarment and instead recommended actual suspension for 30 months and until respondent could show rehabilitation and fitness to practice. (Hon. Alan K. Goldhammer, Hearing Judge.)

The State Bar Office of Trials requested review, seeking respondent's disbarment pursuant to recent Supreme Court decisions in rule 955 proceedings. Respondent had participated only intermittently in the disciplinary proceeding at the hearing level and failed to file a brief on review. Despite respondent's demonstration of high personal ethics and dedication to client causes, he had injured clients in whose cases he had lost interest and had failed to comply with numerous stipulated conditions of his original suspension order, including rule 955. Although this failure was due to chronic disorganization rather than venality, respondent had shown no likelihood of getting his practice under control. The review department held that under the circumstances, applicable case law compelled a recommendation of disbarment.

COUNSEL FOR PARTIES

For Office of Trials: Mark Torres-Gil

For Respondent: No appearance

HEADNOTES

- [1] **130 Procedure—Procedure on Review**
 165 Adequacy of Hearing Decision
 166 Independent Review of Record
 1093 Substantive Issues re Discipline—Inadequacy
 Where Office of Trials argued that recommended discipline was too low in light of existing findings, and also suggested supplemental findings, and on de novo review, review department agreed that discipline was insufficient in light of findings made by hearing judge, review department did not need to address issue of supplemental findings.
- [2 a-f] **582.10 Aggravation—Harm to Client—Found**
 750.52 Mitigation—Rehabilitation—Declined to Find
 760.34 Mitigation—Personal/Financial Problems—Found but Discounted
 765.10 Mitigation—Pro Bono Work—Found
 1911.20 Rule 955—Failure to Appear
 1913.24 Rule 955—Delay—Filing Affidavit
 1913.42 Rule 955—Compliance—Notice
 Disbarment is generally the appropriate sanction for a wilful violation of rule 955, California Rules of Court. Where respondent not only failed to notify courts and file timely affidavit of compliance as required by rule 955, but also had wilfully failed to comply with other stipulated conditions of prior discipline; respondent had injured a number of clients, and posed substantial risk of continuing to do so; respondent's participation in rule 955 proceeding was sporadic; respondent provided evidence of personal problems but no evidence that he was likely to overcome them, organize his practice, and comply with prior disciplinary probation; and respondent provided no evidence of rehabilitation, but rather evidence that his problems had increased, then despite respondent's history of pro bono work, idealism, honesty, and altruism, disbarment recommendation was required for public protection.
- [3] **114 Procedure—Subpoenas**
 148 Evidence—Witnesses
 199 General Issues—Miscellaneous
 740.10 Mitigation—Good Character—Found
 Judges are required under canon 2B of the California Code of Judicial Conduct not to testify voluntarily as character witnesses, but where subpoenas were issued to compel judges to testify, their declarations regarding good character of disciplinary respondent could be considered by State Bar Court.
- [4] **204.90 Culpability—General Substantive Issues**
 430.00 Breach of Fiduciary Duty
 582.10 Aggravation—Harm to Client—Found
 586.19 Aggravation—Harm to Administration of Justice—Found
 765.39 Mitigation—Pro Bono Work—Found but Discounted
 An attorney owes the same fiduciary obligations to all clients, paying or nonpaying. Impecunious clients are ill-served by well-meaning attorneys who fail to deliver the services for which they were engaged. Nor are the courts or public served by litigation brought without likelihood it can be realistically be prosecuted to completion.

- [5] 130 **Procedure—Procedure on Review**
- 135 **Procedure—Rules of Procedure**
- 173 **Discipline—Ethics Exam/Ethics School**
- 1715 **Probation Cases—Inactive Enrollment**
- 1911.90 **Rule 955—Other Procedural Issues**
- 2503 **Reinstatement—Showing to Shorten Waiting Period**

Review department, in recommending respondent's disbarment for failure to comply with rule 955, California Rules of Court, was not required to address issue whether time respondent had already spent on inactive enrollment due to probation violation, or on suspension due to failure to pass professional responsibility examination, should be counted toward required waiting period to apply for reinstatement. (Trans. Rules Proc. of State Bar, rule 662.) Respondent could raise those issues before a hearing judge at the time he wished to file a reinstatement petition.

ADDITIONAL ANALYSIS

Culpability

Found

 1915.10 Rule 955

Aggravation

Found

 511 Prior Record

Discipline

 1810 Disbarment

 1921 Disbarment

Other

 1751 Probation Cases—Probation Revoked

OPINION

PEARLMAN, P.J.:

In May of 1991, as a result of stipulated misconduct primarily involving abandonment of several clients and failure to return unearned fees, respondent received three years stayed suspension and was ordered actually suspended for four months, placed on probation and ordered to comply with the notification requirements of rule 955, California Rules of Court (hereafter "rule 955").¹ In these consolidated proceedings for alleged violation of probation and wilful failure to comply with rule 955, respondent was found to have failed to file the affidavit required by rule 955(c) for almost one year after it was due despite repeated warnings from his probation monitor, the examiner and the hearing judge that failure to comply with the requirements of that rule generally results in disbarment. He was also found to have substantially failed to comply with rule 955(a) and to have failed to file any required probation reports, prepare a law office management plan, or make restitution to clients as he had been ordered to do as conditions of his probation.

Based on the numerous probation violations, the hearing judge exercised his authority to place respondent on immediate inactive enrollment pursuant to Business and Professions Code section 6007 (d)² from the date of his decision until further order of this court or the Supreme Court. However, after finding mitigating circumstances, including respondent's numerous pro bono activities for which he received a State Bar president's pro bono publico award, and severe personal problems, the hearing judge recommended a total of 30 months suspension and compliance with standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct (Trans. Rules Proc. of State Bar, div. V) in lieu of disbarment.

The Office of Trials requested review, seeking disbarment pursuant to recent Supreme Court deci-

sions in rule 955 proceedings. Respondent failed to file an opposing brief and we consequently precluded him from appearing at oral argument.

Despite respondent's demonstration of high personal ethics and dedication to particular client causes since he was admitted to practice in 1979, the record shows that he has injured a number of other clients in whose cases he apparently lost interest but failed to withdraw and has repeatedly failed to comply with numerous stipulated conditions of his original suspension order including compliance with rule 955. This failure was found to be due to chronic disorganization rather than venality, but respondent has shown no likelihood of getting his practice under control. The applicable case law, which we recently reviewed in *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322, appears to compel disbarment under these circumstances and we so recommend to the Supreme Court.

DISCUSSION

[1] The findings below were extensive and are for the most part unchallenged on review. However, the Office of Trials has suggested a number of supplemental findings, in addition to arguing that the degree of discipline is too low in light of the existing findings. Upon undertaking de novo review of the record we agree that the recommended discipline is insufficient in light of the findings made by the hearing judge. We therefore do not need to address the supplemental findings urged by the Office of Trials.

[2a] As the Supreme Court reiterated in *Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131, "disbarment is generally the appropriate sanction for a wilful violation of rule 955." The hearing judge found that respondent wilfully failed to comply with the requirements of rule 955. Bercovich, like respondent, filed a belated declaration attempting to justify his failure to comply with rule 955(c). Bercovich

1. Rule 955 required respondent to give timely notification to clients, courts and opposing counsel of his disciplinary suspension by registered or certified letter, to deliver to all clients in pending matters their papers or property and to file a timely affidavit with the Supreme Court showing he complied with this rule.

2. Under Business and Professions Code section 6007 (d), a hearing judge may order involuntary inactive enrollment of an attorney immediately upon a finding of violation of probation when the attorney is already under a suspension order any portion of which has been stayed and the hearing judge recommends actual suspension.

argued that his inaction was based on emotional and medical problems. Bercovich had been active in bar activities and had been a judge pro tempore of the municipal court, but none of the evidence offered in mitigation was found to justify a sanction short of disbarment. In particular, the Supreme Court noted Bercovich's consistent untimeliness in the State Bar proceedings as raising "a serious question as to his ability and fitness to practice law." (*Id.* at p. 132.) With respect to his attempt to attribute his shortcomings to emotional difficulties, the Supreme Court noted that "if we accept petitioner's claim of emotional paralysis, we must ask whether he can now practice law in accordance with the standards of professional conduct. He provides no evidence that he is able to do so." (*Ibid.*)³ [2b - see fn. 3]

[2c] There are a number of similarities here to the situation in *Bercovich*. In the court below, respondent was also repeatedly untimely,⁴ and he did not participate at all on review. With respect to respondent's law practice, the hearing judge noted that "while the quality of his work is excellent on particular aspects of particular cases, he is unable to handle a caseload without neglecting and dissatisfying clients." No evidence of rehabilitation was offered. To the contrary, the hearing judge pointed to respondent's own testimony that he has become increasingly disorganized; that he had become preoccupied with the needs of his profoundly handicapped son to the detriment of his practice; and that he was aware that he had obtained a reputation that he "was slipping between the cracks in cases." Respondent's situation is exacerbated by the vow of poverty he has taken, but he has repeatedly accepted new low-paying or no-fee cases with insufficient funding by clients of anticipated costs when he was already unable to handle his existing caseload.

Respondent's inability to manage his practice without client neglect is extremely unfortunate. In

his career, he has represented at little or no cost a number of clients who could not otherwise obtain representation. Four clients and an attorney provided evidence on respondent's behalf below as did two judges.⁵ [3 - see fn. 5] One judge, who vouched for respondent's passionate concern for his clients, stated that he has "never met an attorney who more embodied the ideals of our legal profession[;] . . . his first priority is his own integrity with his clients, with opposing counsel and with the Court We need a few Rays in our world The idealistic lawyer operating on the fringe, unencumbered by economics, keeps us all honest . . . a constant reminder to the bench that we are here to do justice . . . not to be compromised on the alter [sic] of judicial efficiency, and that the rights of the individual citizen are to be zealously guarded and enforced."

[2d] Despite his idealistic goals, respondent has admitted to failure to meet deadlines or adequately advance several cases in which he remains counsel of record (the Saunders/Syracusa matters and the Assenza, Avila, Bishop, and Deming matters). [4] He has a prior record of discipline pursuant to stipulation in case number 88-O-11973 which involved seven different clients, five of whom had never received the return of unearned fees and a sixth who had loaned money to respondent without ever receiving repayment. The same fiduciary obligations exist to all clients, paying or nonpaying. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 780.) Respondent's honesty and altruism are undisputed. However, respondent has not recognized that impecunious clients are ill-served by well-meaning attorneys who fail to deliver the services for which they were engaged. Nor are the courts or public served by litigation brought without likelihood that it can realistically be prosecuted to completion.

As indicated above, the prior disciplinary proceeding against respondent resulted in, among other

3. The Supreme Court found Bercovich's belated claims of emotional and physical problems untimely and insufficiently documented to affect its decision. (*Id.* at p. 127.) However, it considered the merits of his claim of emotional incapacity in any event because of the ultimate nature of the sanction recommended by the State Bar. (*Ibid.*) [2b] Here, respondent provided timely evidence of his personal problems but provided no evidence that he was likely to overcome his problems, organize his practice and comply with the probation terms if a sanction short of disbarment were ordered.

4. Respondent waited until after the Office of Trials applied for an entry of default before he filed an answer to the notice to show cause re revocation of probation. Respondent failed to file a pretrial statement and failed to appear at the pretrial conference although he did appear at the trial.

5. [3] The judges' declarations were submitted pursuant to subpoenas being issued to compel their testimony. Judges are required under canon 2B of the California Code of Judicial Conduct not to testify voluntarily as character witnesses. (See *In re Rivas* (1989) 49 Cal.3d 794, 798.)

things, respondent's actual suspension for four months as well as various probation conditions his violation of which resulted in one of the two consolidated proceedings before us. Also as part of respondent's prior stipulated discipline, the Supreme Court ordered respondent to take and pass the professional responsibility examination ("PRE") and to comply with rule 955.

[2e] In the trial below, respondent was found to have made some informal efforts to comply with rule 955(a) by orally notifying clients, courts and opposing counsel and to have made some belated formal notifications to clients and opposing counsel, but not to have filed any required notices in the courts where the actions were pending. Respondent did not file his rule 955 affidavit until July 17, 1992, which he himself described as "an effort to at least belatedly accomplish partial substantial compliance with the Order of the Supreme Court filed on May 15, 1991 . . ." He further was found to have failed to file any probation reports, to develop his law office management plan or to make any meaningful payments in restitution. The hearing judge found that "his self-imposed poverty is not an adequate excuse for his failure to reimburse his clients for moneys they lost due to respondent's carelessness or incompetence." Respondent further failed to take the PRE and was suspended therefor by order of this court dated June 23, 1992, effective July 4, 1992, and has remained on suspension ever since.⁶

[2f] Respondent's involvement in these State Bar proceedings has been sporadic. His concern for his license has apparently diminished as his personal problems have increased. Some similarities exist to *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382, in which the respondent

repeatedly failed to comply with probation conditions and the rule 955 requirement and, like respondent, failed to participate on review despite a request for her disbarment. We recommended disbarment in that case, not because of any evidence of acts of dishonesty, but because it appeared necessary to protect the public, enforce professional standards and maintain public confidence in the legal profession. (Cf. *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1, 16.) Because respondent has demonstrated wilful failure to comply with stipulated conditions of his prior discipline, has already injured a number of clients and poses a substantial risk of continuing to do so, public protection dictates a disbarment recommendation as a result of the findings in these consolidated proceedings as well.

If respondent can successfully address his problems he will be able to seek reinstatement with the possibility of again becoming an effective advocate for clients.⁷ [5 - see fn. 7] It is ironic that his concern for client welfare has not extended to taking the necessary steps to comply with stipulated disciplinary conditions of his prior suspension designed to permit him to maintain his license to practice law.

For the reasons stated above, we recommend that respondent Raymond C. Grueneich be disbarred from the practice of law in this state and that costs of this proceeding be awarded the State Bar pursuant to Business and Professions Code section 6086.10.

We concur:

NORIAN, J.
STOVITZ, J.

6. We take judicial notice that he also has not paid his State Bar dues and was suspended on that basis as well effective August 10, 1992.

7. [5] Rule 662 of the Transitional Rules of Procedure of the State Bar requires a petition for reinstatement to be filed five years after disbarment or resignation with charges pending. For good cause a petition for reinstatement may be considered three years after the effective date of a member's disbarment or resignation with charges pending. That rule expressly gives credit for time spent on interim suspension against the five-year or three-year period. In *In re Lamb* (1989) 49 Cal.3d 239, 249, the Supreme Court gave the respondent credit for stipulated time on inactive enrollment against the waiting period for seeking reinstatement "[u]nder the circumstances, and in

furtherance of the policy that disbarred attorneys should receive 'credit' against the reinstatement period for any related interim ban on practice." Whether time spent on inactive enrollment under section 6007 (d) and time under suspension for failure to pass the PRE should be counted toward the required waiting period have not been addressed by the parties and we need not reach these issues at this juncture. If the Supreme Court adopts our recommendation or accepts respondent's resignation and respondent wishes to petition for reinstatement at the earliest possible date, he can at that time raise these issues before a hearing judge. If either period is so adjudicated, the time period for applying for reinstatement would run from either July 4, 1992 (PRE suspension), or September 11, 1992 (section 6007 (d) order), rather than the effective date of the Supreme Court order.