

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A SUSPENDED
MEMBER OF THE STATE BAR OF
ARIZONA,

JOHN PATRICK BRUNO,

Bar No. 013489

Respondent.

PDJ 2019-9022-PV

ORDER OF SUSPENSION

[State Bar No. 20-0626-N]

FILED MARCH 23, 2020

Preface

On March 3, 2020, the State Bar filed a Notice of Noncompliance with Terms of Probation (“Notice”) pursuant to Rule 60(a)(5)(C), Ariz. R. Sup. Ct. The Notice was mailed and emailed to Mr. Bruno. He filed no response. A probation violation hearing date was set for March 23, 2020.

The Chief Justice by Administrative Order 2020-47 authorized and directed the limitations of certain court operations during a public health emergency. These included the authorization of this judge to use technologies to eliminate or limit in-person contact in the conduct of court business. After notice to the parties, an audio recorded telephonic hearing was held on March 23, 2020.

David L. Sandweiss appeared telephonically for the State Bar. John Patrick Bruno appeared representing himself. Yvette Pinar was available to testify if needed. All State Bar exhibits were admitted by stipulation.

Mr. Bruno filed no response but during the hearing stated he agreed and stipulated with the request of the State Bar for his suspension of six months and one day. After discussion, the parties entered on the record a stipulation for that suspension. He has been administratively suspended since January 24, 2020.

Civil Rule 80(a) applies to disciplinary proceedings under Rule 48(b), Ariz. R. Sup. Ct. That Civil Rule provides that an agreement or consent between the parties is binding upon the parties if “it is made orally in open court and entered in the minutes.” This was explained to and understood by Mr. Bruno.

Findings of Fact

1. Mr. Bruno entered into an Agreement for Discipline by Consent. On September 6, 2018, the Presiding Disciplinary Judge (“PDJ”) accepted the Agreement and issued an order regarding sanctions. [Judgment by Consent, 1.]

2. The PDJ issued an Order reprimanding Mr. Bruno and placing him on probation for two years with the State Bar’s Member Assistance Program (“MAP”). [Final Judgment and Order by Consent, 1-2.]

3. The terms of probation required Mr. Bruno to: i) Undergo a MAP assessment by its contract psychologist and follow-up on the recommendations of that doctor or, in lieu of that MAP assessment, undergo a psychiatric assessment by a licensed psychiatrist of his choice and at his expense as provided in the agreement and in either case follow up on the recommendations of that physician; ii) Sign the

MAP terms; iii) Pay MAP costs; iv) Submit to random drug testing bimonthly; v) Continue with medical treatment for his chronic pain condition; vi) Comply with court orders regarding child support and health care; vii) Report monthly on all efforts to obtain and maintain employment consistent with his professional and physical capabilities; and viii) Comply with all terms and conditions of MAP participation, including any reporting requirements. [Id.]

4. The State Bar submitted an affidavit from the State Bar's Compliance Monitor, Yvette Penar. [Ex. B, Aff. of Yvette F. Penar.] They were uncontested and are accepted as true. Ms. Penar sent Mr. Bruno the terms of probation, but he failed to sign them. [Id. at 1-2.] The affidavit stated that Mr. Bruno failed to follow recommendations following a MAP assessment, undergo bimonthly drug testing, obtain medical care for his chronic pain condition, comply with family court orders for the provision of health care, or furnish monthly reports describing his effort to maintain employment. [Id.] The affidavit also demonstrated Ms. Penar's attempts to assist Mr. Bruno in complying with the terms. For example, Ms. Penar sent him a list of low-cost counseling services. [Id.] He did not respond to Ms. Penar's emails in November 2019 or February 2020. [Id.]

5. Failure to respond to inquiries from the State Bar typically shows "a disregard for the Rules of Professional Conduct and borders on contempt for the legal system." *In re Galusha*, 164 Ariz. 503, 505, (1990).

6. Mr. Bruno complied with the term requiring him to undergo a MAP assessment with Dr. Lett; however, he failed to comply with Dr. Lett's recommendations. [State Bar's Notice of Noncompliance with Terms of Probation, 1-3.] Dr. Lett's recommendations included attending Alcoholics Anonymous meetings, obtaining counseling, and obtaining peer monitor support. [Id. at 2.]

7. Mr. Bruno complied with the term requiring him to pay MAP costs and the term requiring him to pay court-ordered child support. [Id. at 3.] He is accordingly credited for this compliance.

8. Mr. Bruno failed to comply with his other terms of probation. [Id.]

Discussion

Notwithstanding that the parties stipulated to the suspension during the hearing, the State Bar through its' exhibits has shown by a preponderance of evidence that the probation violations occurred. Rule 60(a)(5)(C), Ariz. R. Sup. Ct. Based on the evidence and the stipulation of the parties, the State Bar has shown by a preponderance of the evidence that Mr. Bruno underwent a MAP assessment, paid MAP costs, and paid his court-ordered child support; however, Mr. Bruno materially failed to comply with the other terms of probation.

Probation is an effort to aid in the rehabilitation of the respondent-attorney. It offers the attorney the opportunity to receive assistance in reducing the behaviors that necessitated discipline. The unsigned terms of probation were designed to help

Mr. Bruno effectively practice law but also required him to take affirmative steps to demonstrate his commitment to the process. Mr. Bruno failed to demonstrate an ability to comply with the terms of probation, which strongly implicates his ability to practice. Typically, the failure to sign the terms of probation calls into question a respondent's understanding of the importance of the process and his willingness to face the consequences of his actions. Mr. Bruno by his stipulation evidences that he recognizes his own shortfalls and his present inability to effectively practice law. Mr. Bruno's failure to follow Dr. Lett's recommendations evidences that he has not completed the important work of addressing the root causes of the conduct warranting discipline and it appears he is aware of this.

Suspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession. *Standards* 8.2;

“[A] graduated response from reprimand, to suspension, to disbarment is sometimes appropriate, depending on the severity of the subsequent conduct.” *In re Redondo*, 176 Ariz. 334, 338 (1993). Our Supreme Court has acknowledged the fact that multiple states have long ruled that suspension is appropriate when an attorney violates probation.

See, e.g., In re Skonnord, 441 N.W.2d 451 (Minn.1989); *In re Norton*, 112 N.M. 75, 811 P.2d 573 (1991); *Musslewhite v. State Bar*, 786 S.W.2d 437 (Tex.Ct.App.1990), *cert. denied*, 501 U.S. 1251, 111 S. Ct.

2891, 115 L.Ed.2d 1056 (1991). In *In re Johnson*, 414 N.W.2d 199 (Minn.1987), the Minnesota Supreme Court stated that “because some of the respondent's violations occurred while he was already in a disciplinary probation status, the imposition of more onerous sanctions than normally imposed is indicated.” *Id.* at 200. Similarly, in *In re Haugen*, 425 N.W.2d 835 (Minn.1988), the same court concluded that “because of [respondent's] existing probationary status, [he] should have taken greater steps to assure compliance with any obligations imposed on him in his capacity as a lawyer.” *Id.* at 836.

Matter of Davis, 181 Ariz. 263, 266, 889 P.2d 621, 624 (1995)

The terms Mr. Bruno successfully complied with do not outweigh the many terms he did not. The purpose of probation is not to punish the attorney. *See In re Schwartz*, 141 Ariz. 266, 277 (Ariz. 1984) (“The purpose of professional discipline is to protect the public rather than to punish the attorney.”) However, failing to participate in probation usually assures the entry of stronger sanctions.

Here, his failings remain without explanation. “Probation may be imposed only in those cases in which there is little likelihood that the respondent will harm the public during the period of probation, and the condition of probation can be adequately supervised.” Rule 60((a)(5)(B), Ariz. R. Sup. Ct. Mr. Bruno agrees that suspension is appropriate and warranted. The underlying case which has been sealed includes facts that add concern for the safety of the public and the profession.

Mr. Bruno previously received a reprimand and probation. [Final Judgment and Order by Consent, 1.] Due to his failure to comply with the terms of probation,

a suspension is warranted that requires him to demonstrate that his weaknesses that have resulted in his manifest failings have been identified and overcome, without which the public will not be protected.

IT IS ORDERED finding that Respondent, John Patrick Bruno, violated his terms of probation under Rule 54(e), Ariz. R. Sup. Ct.

IT IS FURTHER ORDERED suspending **John Patrick Bruno, Bar No. 013489**, from the practice of law for six (6) months and one (1) day pursuant to Rule 72(d), Ariz. R. Sup. Ct., retroactive to January 24, 2020.

DATED this 23rd day of March 2020.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copy of the foregoing emailed
this 23rd day of March, 2020, to:

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Respondent

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