

AGENDA ITEM

MAY 125

**Proposed Resignation with
Disciplinary Charges Pending
of John R. LaBrucherie**

DATE: April 24, 2007

TO: Members of the Board of Governors of the State Bar of California
Members of the Board Committee on Regulation, Admissions &
Discipline Oversight

FROM: Scott J. Drexel, Chief Trial Counsel

SUBJECT: Proposed Resignation with Disciplinary Charges Pending
Of John Raymond LaBrucherie, Member No. 141051

EXECUTIVE SUMMARY

Rule 9.21 (former rule 960) of the California Rules of Court requires the Board of Governors to make a recommendation to the Supreme Court regarding whether the resignation of a member with disciplinary charges pending should be accepted by the Court. Pursuant to a resolution adopted by the Board of Governors in April 1986, resignations with disciplinary charges pending are routinely forwarded to the Supreme Court with the Board's recommendation that the resignation be accepted.

The Office of the Chief Trial Counsel recommends to the Board of Governors and to the Board Committee on Regulation, Admissions and Discipline Oversight that it reject the resignation of State Bar member John Raymond LaBrucherie (State Bar No. 141051 in light of the recommendation of the State Bar Court Hearing Department that Mr. LaBrucherie be disbarred from the practice of law in California. In the view of the Office of the Chief Trial Counsel, the acceptance of Mr. LaBrucherie's resignation at this stage of the proceedings against him would neither protect the public nor save State Bar resources.

DISCUSSION

1. Summary

The Office of the Chief Trial Counsel requests that the Board of Governors recommend that the Supreme Court *not* accept the resignation of respondent John Raymond LaBrucherie with disciplinary charges pending. Mr. LaBrucherie failed to appear or participate in either of the two separate disciplinary proceedings against him and both proceedings were adjudicated as default cases. In light of Mr. LaBrucherie's failure to participate in the proceedings, he should not now be allowed to avoid the full consequences of his misconduct by resigning to avoid disbarment. OCTC submits that the interests of justice would not be served by allowing Mr. LaBrucherie to resign at this late date.

2. The Board of Governors Has Authority to Recommend That Resignations Be Rejected

Attorneys facing disciplinary charges are not allowed to resign “. . . unless and until accepted by the Supreme Court after consideration and recommendation by the Board of Governors of the State Bar.” (Rule 9.21, Calif. Rules of Ct.)¹ However, the Board has long followed a practice of automatically recommending that every resignation be accepted, if submitted in proper form. (See April 5, 1986 resolution, attached as Exhibit 1.) In general, the practice of accepting a resignation with disciplinary charges pending is a good one because it encourages respondents to resign at an early stage of the proceeding, thereby saving significant State Bar resources. In exchange, attorneys facing disciplinary charges may avoid the stigma of disbarment or the expense and inconvenience of a trial.² In general, acceptance of a resignation also provides greater public protection because the resignation is processed more quickly than a disciplinary proceeding and the attorney is precluded from practicing law pending the Supreme Court's acceptance of the resignation.

However, the acceptance of Mr. LaBrucherie's resignation would neither conserve State Bar resources nor increase public protection. The Office of the Chief Trial Counsel respectfully submits that it would be unjust to provide the benefits of resignation to an attorney who waited to resign until his disciplinary proceeding had been completed.

¹ The California Rules of Court were amended and re-numbered effective January 1, 2007. Rule 9.21 was formerly numbered as Rule 960.

² However, resignation and disbarment have the same legal effect, i.e., termination of the attorney's license to practice. Moreover, attorneys seeking reinstatement following resignation are held to the same high standard of rehabilitation as attorneys seeking reinstatement following disbarment.

The Supreme Court has declined to accept resignations under similar circumstances. In *Harford v. State Bar* (1990) 52 Cal.3d 93, the Supreme Court disbarred an attorney who failed to appear for oral argument but instead submitted a resignation, stating:

“Rule 960 of the California Rules of Court governs an attorney’s resignation from membership in the State Bar while disciplinary proceedings are pending. It gives this court the final authority to accept or reject an attorney’s tendered resignation. Because petitioner tendered his resignation at the last minute, and because the record shows that disbarment is appropriate in this case, we reject petitioner’s tendered resignation from membership in the State Bar.” (*Id.*, at p. 103, fn. 5.)

In a second case, *Slaten v. State Bar* (1988) 46 Cal.3d 48, the attorney resigned his license, but then rescinded the resignation and litigated his case to completion. When the case reached the Supreme Court, Slaten asked permission to revoke the withdrawal of his resignation (thereby shortening the time he would have to wait to apply for reinstatement). The Supreme Court flatly rejected Slaten’s request and instead disbarred him, stating:

“Obviously, an attorney who is the subject of disciplinary proceedings cannot be permitted to gamble on a favorable outcome of those proceedings and then avoid the consequences of a disbarment recommendation by reinstatement of an earlier resignation.” (*Id.*, at p. 59.)

For similar reasons, we believe that the Board of Governors should exercise its discretion, in appropriate cases, to recommend the rejection of last-minute resignations.

3. Mr. LaBrucherie’s Resignation Should Be Rejected

By decision filed March 9, 2007 in *In the Matter of John Raymond LaBrucherie*, Case No. 06-N-12339, the State Bar Court Hearing Department recommended that Mr. LaBrucherie be disbarred because of his willful failure to comply with an order of the California Supreme Court directing him to comply with former rule 955 of the California Rules of Court in a prior disciplinary proceeding.³ (State Bar Court Hearing Department Decision, attached hereto as Exhibit 2.) Because he neither appeared nor participated in this proceeding, the State Bar Court entered Mr. LaBrucherie’s default and adjudicated the proceeding in his absence. That proceeding is now final in the State Bar Court and is

³ Former rule 955 of the California Rules of Court (current rule 9.20) requires a suspended, disbarred or resigned attorney to notify clients, opposing counsel, courts, administrative agencies and others of the attorney’s suspension, disbarment or resignation and to promptly return client files and papers and unearned fees. Former rule 955 also requires the attorney to file an affidavit with the State Bar Court demonstrating his or her compliance with the notification requirements of rule 955.

ready to be transmitted to the Supreme Court for its independent review and for imposition of a final disciplinary order.

Significantly, Mr. LaBrucherie also failed to appear or participate in his prior disciplinary proceeding (*In the Matter of John Raymond LaBrucherie*, Supreme Court Case No. S140354 [State Bar Court Case No. 04-O-11372]), i.e., the proceeding in which the requirement to comply with former rule 955 was imposed. In that prior proceeding, Mr. LaBrucherie was found culpable, in two client matters, of failing to competently perform legal services, failing to adequately communicate, improperly withdrawing from employment, misrepresentation and failing to cooperate with the State Bar's investigations.

The acceptance of Mr. LaBrucherie's resignation, which was not submitted until April 10, 2007, would neither conserve State Bar resources nor provide any greater measure of public protection. (A copy of Mr. LaBrucherie's resignation is attached hereto as Exhibit 3.) State Bar resources would not be conserved by the acceptance of Mr. LaBrucherie's resignation because the disciplinary proceeding against him is now final and requires only transmittal to the Supreme Court. Likewise, acceptance of Mr. LaBrucherie's resignation would not provide additional public protection because Mr. LaBrucherie was placed on involuntary inactive status upon the filing of the State Bar Court's disbarment recommendation and may not engage in the practice of law pending the Supreme Court's final action in that proceeding. (See Bus. & Prof. Code, § 6007, subd. (c)(4).)

4. Proposed Resolutions

The Office of the Chief Trial Counsel's recommendation regarding the rejection of Mr. LaBrucherie's resignation will be considered by both the Board Committee on Regulation, Admissions and Discipline Oversight ("RAD Committee") on May 10, 2007 and by the entire Board of Governors on May 11, 2007.

The Office of the Chief Trial Counsel recommends adoption of the following respective resolutions by the RAD Committee and by the Board of Governors:

Proposed Resolution for the RAD Committee

"RESOLVED, that the Board Committee on Regulation, Admissions and Discipline Oversight hereby recommends, pursuant to rule 9.21 of the California Rules of Court, that the Board of Governors recommend the Supreme Court's rejection of the resignation with disciplinary charges pending of John Raymond LaBrucherie (State Bar No. 141051) and that, instead of the acceptance of such resignation, the Supreme Court should enter a final disciplinary order in Case No. 06-N-12339."

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Proposed Resolution for the Board of Governors

“RESOLVED, upon the recommendation of the Board Committee on Regulation, Admissions and Discipline Oversight, that the Board of Governors hereby recommends to the California Supreme Court, pursuant to rule 9.21 of the California Rules of Court, that it reject the resignation with disciplinary charges pending of John Raymond LaBrucherie (State Bar No. 141051) and, instead, that the Supreme Court issue a final disciplinary order in Case No. 06-N-12339.”

SJD:dim
Attachments

