

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 06-PM-13163-JMR
)	
DEBORAH ANN DUGGAN,)	
)	DECISION AND ORDER OF
Member No. 113112,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

I. INTRODUCTION

On June 30, 2006, the State Bar of California's Office of Probation (State Bar) filed a motion, under Business and Professions Code section 6093, subdivisions (b) and (c)¹ and rules 560 through 566 of the Rules of Procedure of the State Bar,² to revoke the probation that the Supreme Court imposed on respondent Deborah Ann Duggan in its order filed on January 20, 2005, in case number S128999 (State Bar Court case numbers 00-O-11492, et al.). In its motion, the State Bar charges that respondent wilfully violated six of the probation conditions imposed on her in the Supreme Court's January 20, 2005, order.

The State Bar was represented by Supervising Attorney Terrie Goldade. Respondent did not file a response to the State Bar's motion or otherwise participate in this proceeding even

¹ Unless otherwise noted, all further statutory references are to Business and Professions Code.

² Unless otherwise noted, all further rule references are to these Rules of Procedure of the State Bar.

though, on August 9, 2006, she was properly served with a copy of the motion by certified mail, return receipt requested, at her latest address shown on the official membership records of the State Bar (§ 6002.1, subd. (c); rules 60(a), 563(a); see also *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108 [service under section 6002.1 is deemed complete when mailed even if the respondent attorney does not receive it]).

Respondent's failure to file a response to the State Bar's motion constitutes an admission of the factual allegations contained in the motion and its supporting documents. (Rule 563(b)(3).)

This court took the State Bar's motion under submission for decision without a hearing on September 13, 2006. For the reasons stated *post*, this court finds, by a preponderance of the evidence (§ 6093, subd. (c); rule 561), that respondent is culpable of violating the six conditions of her probation as alleged in the State Bar's motion. Therefore, the court recommends that respondent's probation be revoked and that she be actually suspended from the practice of law for three years and until she shows proof satisfactory to the State Bar Court of her rehabilitation, fitness to practice, and learning in the law in accordance with standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.³ In addition, the court will order that respondent be involuntarily enrolled inactive under section 6007, subdivision (d).

II. FINDINGS OF FACT

A. Jurisdiction

Respondent was admitted to the practice of law in the State of California on June 13, 1984, and has been a member of the State Bar since that time.

³ The standards are found in title IV of the Rules of Procedure of the State Bar. All further references to standards are to this source.

B. Probation Violations

In State Bar Court case numbers 00-O-11492 et al., this court filed an order on September 13, 2004, in which it modified and approved a stipulation as to facts, conclusions of law, and disposition that respondent and the State Bar filed. In that stipulation, the parties stipulated to respondent being placed on three years' stayed suspension and three years' probation on conditions, including restitution in four client matters and an actual suspension of thirteen months and until respondent complies with standard 1.4(c)(ii). Thereafter, the Supreme Court imposed that stipulated discipline on respondent in its January 20, 2005, order in case number S128999. The Supreme Court's January 20, 2005, order became effective on February 19, 2005. (Cal. Rules of Court, rule 953(a).)

The Clerk of the Supreme Court properly served a copy of the January 20, 2005, order on respondent (or respondent's counsel) in accordance with California Rules of Court, rule 29.4(a). (Evid. Code, § 664; *In re Linda D.* (1970) 3 Cal.App.3d 567, 571.) Thereafter, on February 25, 2005, the State Bar mailed a letter to both respondent and respondent's counsel in which it reminded each of them of the specific probation conditions that were imposed on respondent under the Supreme Court's January 20, 2005, order.

On March 23, 2005, in State Bar Court case numbers 00-O-11492 et al. (S128999), respondent filed a motion for relief from, or an extension of time to comply with the mental health counseling and the restitution probation conditions and the disciplinary cost assessment imposed on her in the Supreme Court's January 20, 2005, order. This court granted respondent's motion in part in an order it filed on April 8, 2005, in case numbers 00-O-11492 et al.

The record in this proceeding establishes that, under six of the probation conditions imposed on respondent in the Supreme Court's January 20, 2005, order as modified by this court's April 8, 2005, respondent is or was required to:

1. Submit written quarterly probation reports to the State Bar on each January 10, April 10, July 10, and October 10 during her three-year probation;
2. Obtain psychiatric or psychological help/treatment twice a month from June 1, 2005, until January 31, 2006 and furnish proof of such help/treatment to the State Bar on a quarterly basis;
3. Prepare and submit a law office management plan no later than November 19, 2005;
4. Attend and complete the State Bar's Ethics School no later than February 19, 2006;
5. Attend and complete the State Bar's Client Trust Accounting School no later than February 19, 2006; and
6. Make restitution payments of at least \$25 per month in each of the Windom, Ferguson, Courtier, and Robinson client matters.

The record in this proceeding further establishes the following:

- Respondent filed each of her first 4 quarterly probation reports late: respondent filed her first report (due April 10, 2005) fifty-two days late; her second report (due July 10, 2005) one day late; her third report (due October 10, 2005) two days late; and her fourth report (due January 10, 2006) one hundred thirty-four days late.
- Respondent has never filed her fifth probation report (due April 10, 2006).
- Respondent failed to submit proof that she obtained the required mental health counseling help/treatment during the third and fourth quarters of 2005 (proof was due on October 10, 2005, and January 10, 2006, respectively) and during the first quarter of 2006 (proof was due on April 10, 2006).
- Respondent has not submitted a law office management plan.
- Respondent has not attended and completed ethics school or trust accounting school.
- Respondent did not make any restitution payments in the Windom, Courtier, and Robinson client matters during the nine-month period from June 2005 through March

2006, and respondent did not make any restitution payments in the Ferguson client matter during the four month-period from February 2006 through May 2006.⁴

Finally, the record establishes that on May 26, 2006, respondent telephoned the State Bar and spoke to State Bar Probation Deputy Cheryl Chisholm. Respondent told Chisholm that she was going to promptly submit a law office organization plan, to register for ethics school and trust accounting school, and to submit proof of restitution. However, at least as of June 28, 2006 (the date of Chisholm's declaration that is attached to the State Bar's motion to revoke probation), respondent had not submitted a law office plan, proof of registration for ethics school or trust accounting school, or proof of restitution. Accordingly, the State Bar filed the present motion to revoke respondent's probation.

III. CONCLUSIONS OF LAW

Bad faith is not a requirement for a finding of culpability in a probation violation matter; "instead, a 'general purpose or willingness' to commit an act or permit an omission is sufficient. [Citations.]" (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536.) Thus, the court concludes that the State Bar has established by a preponderance of the evidence that, as alleged, respondent willfully violated the probation conditions imposed on her in the Supreme Court's January 20, 2005, order as modified by this court's April 8, 2005, order by (1) filing her first four probation reports late and not filing her fifth probation report, (2) not submitting proof that she obtained mental health help/treatment during the third and fourth quarters of 2005 or during the first quarter of 2006, (3) not submitting a law office management plan, (4) not attending and completing ethics school or trust accounting school, and (5) not making any restitution payments in three client matters for nine months and not making any payments in a fourth client matter for four months.

⁴ For some unstated reason, respondent made a \$125 payment to the Client Security Fund on June 9, 2006.

IV. AGGRAVATING CIRCUMSTANCES

In aggravation, respondent has one prior record of discipline. (Std. 1.2(b)(i).)

Respondent's prior record of discipline is the Supreme Court's January 20, 2005, order. As noted *ante*, in that order, respondent was placed on three years' stayed suspension and three years' disciplinary probation on conditions, including restitution and thirteen months' actual suspension and until she complies with standard 1.4(c)(ii). Also, as noted *ante*, that discipline was imposed on respondent in accordance with the stipulation that this court approved on September 13, 2004, in State Bar Court case numbers 00-O-11492 et al. The discipline was imposed on respondent because she (1) engaged in extensive misconduct in 11 client matters, including repeatedly failing to competently perform legal services and to communicate with her clients; and (2) committed numerous trust account violations, including acts of moral turpitude by issuing 32 insufficiently funded checks on her trust account. That prior misconduct was aggravated because it involved in multiple acts of misconduct and because respondent was unable to account for client trust funds. The prior misconduct was mitigated because respondent had no prior record of discipline, cooperated by stipulating to her misconduct, and suffered from extreme emotional difficulties and family problems.

Respondent's present misconduct is also aggravated because she engaged in multiple probation violations. (Std. 1.2(b)(ii).)

Furthermore, respondent's failure to submit a law office organization plan, to register for ethics school and trust accounting school, and to submit proof of restitution after she spoke with Probation Deputy Chisholm on May 26, 2006, clearly demonstrates an indifference toward rectification of or atonement for the consequences of her misconduct. (Std. 1.2(b)(v).)

V. MITIGATING CIRCUMSTANCES

No mitigating evidence was proffered on respondent's behalf, and none can be gleaned from the record.

VI. DISCUSSION

Protection of the public and rehabilitation of the attorney are the primary goals of disciplinary probation. (*In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445, 452; *In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291, 298.) In determining the level of discipline, the court must consider the "total length of stayed suspension which could be imposed as an actual suspension and the total amount of actual suspension earlier imposed as a condition of the discipline at the time probation was granted." (*In the Matter of Potack, supra*, 1 Cal. State Bar Ct. Rptr. at p. 540.)

Section 6093 authorizes the revocation of probation for a violation of a probation condition, and standard 1.7(a) requires that the court recommend greater discipline in this matter than that imposed in respondent's prior records of discipline. However, the period of actual suspension recommended in the present case cannot exceed the entire period of stayed suspension. (Rule 562.) The extent of the discipline to recommend is dependent, in part, on the seriousness of the probation violation and on respondent's recognition of her misconduct and her efforts to comply with the conditions. (*In the Matter of Potack, supra*, 1 Cal. State Bar Ct. Rptr. at p. 540.)

When an attorney repeatedly violates the same probation condition, as respondent has with respect to both her quarterly reporting probation and restitution conditions, the gravity of each successive violation increases. (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 531.) Moreover, respondent's failure to strictly comply with her quarterly probation reporting requirement alone suggests that a high level of discipline is warranted

because that "reporting requirement permits the State Bar to monitor [an attorney probationer's] compliance with professional standards" (*Ritter v. State Bar* (1985) 40 Cal.3d 595, 605) and because probation reporting is an important step towards the attorney probationer's rehabilitation (*In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759, 763, and cases there cited).

Further, respondent's continued unwillingness or inability to comply with the conditions of probation imposed on her in the Supreme Court's January 20, 2005, order " 'demonstrates a lapse of character and a disrespect for the legal system that directly relate to [her] fitness to practice law and serve as an officer of the court. [Citation.].' [Citation.]" (*In the Matter of Tiernan, supra*, 3 Cal. State Bar Ct. Rptr. at p. 530.)

The State Bar contends that the probation imposed on respondent in the Supreme Court's January 20, 2005, order should be revoked, that the stay of execution of the three-year suspension previously imposed should be lifted, and that respondent should be actually suspended for three years and until she completes the restitution in the Windom, Ferguson, Courtier, and Robinson client matters and until she complies with standard 1.4(c)(ii). In addition, the State Bar contends that respondent should be involuntarily enrolled as an inactive member of the State Bar under section 6007, subdivision (d). The court agrees except that the court declines to recommend that respondent's actual suspension continue until she completes restitution.⁵

⁵ Even though the court does not recommend that respondent's actual suspension continue until she completes restitution, respondent's efforts at completing restitution (together with whether she obtained mental health treatment, prepared a law office management plan, completed ethics school and trust account school, and complied with the other financial conditions to which she stipulated) will be a key factor in any standard 1.4(c)(ii) proceeding in which respondent seeks to be relieved from the three-year actual suspension imposed on her in this proceeding.

The court does not recommend that respondent again be ordered to take and pass the Multistate Professional Responsibility Examination because she was ordered, in the Supreme Court's January 20, 2005, order, to take and pass that examination within the period of her actual suspension and that portion of the Supreme Court's January 20, 2005, order will remain in effect even if her probation is revoked in this proceeding.⁶

VII. DISCIPLINE RECOMMENDATION

The court recommends that the probation imposed on respondent Deborah Ann Duggan in the Supreme Court's January 20, 2005, order in case number S128999 (State Bar Court case numbers 00-O-11492, et al.) be revoked; that the stay of execution of the three-year suspension imposed in that order be lifted; and that respondent be actually suspended from the practice of law in the State of California for three years and until she shows proof satisfactory to the State Bar Court of her rehabilitation, present fitness to practice, and present learning and ability in the general law in accordance with standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct with credit given for the period of time she is involuntarily enrolled as an inactive member of the State Bar under the order of inactive enrollment *post* (§ 6007, subd. (d)(3)).

VIII. COSTS

Further, the court recommends 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.

⁶ Likewise, the court does not recommend that respondent be ordered again to comply with California Rules of Court, rule 955, as she was required to comply with the rule as part of her underlying discipline and has not been entitled to practice law since that time.

IX. ORDER OF INACTIVE ENROLLMENT

The requirements for inactive enrollment under Business and Professions Code section 6007, subdivision (d)(1) have been met: respondent is subject to a stayed suspension, and this court has found that she violated the conditions of her probation and is recommending that she be actually suspended from the practice of law because of those violations. Therefore, it is ordered that respondent be involuntarily enrolled as an inactive member of the State Bar of California under section 6007, subdivision (d)(1), effective three days after service of this order (rule 564).

It is further ordered that respondent's involuntary inactive enrollment be terminated in accordance with section 6007, subdivision (d)(2).

Dated: October 12, 2006.

JOANN M. REMKE
Judge of the State Bar Court