

**STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES**

In the Matter of	)	Case No. <b>08-PM-10681-RAH</b>
	)	
<b>ROBIN CHANDLER CARR,</b>	)	<b>ORDER RE</b>
	)	<b>MOTION TO REVOKE PROBATION</b>
<b>Member No. 154023,</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

**I. Introduction**

In this probation revocation proceeding, respondent **Robin Chandler Carr** is charged with violating her probation conditions imposed by the California Supreme Court. The Office of Probation of the State Bar of California (Office of Probation) seeks to revoke her probation, to impose upon respondent the entire period of suspension previously stayed, and to involuntarily enroll respondent as an inactive member of the State Bar.

Respondent opposes the motion, arguing that she has substantially complied with her probation conditions and that any period of actual suspension would be unduly harsh.

The court finds, by preponderance of the evidence, that respondent has violated her probation conditions and hereby grants the motion in part and denies it in part. The court recommends, among other things, that respondent's probation be revoked; that the previously

stayed one year suspension be lifted; that she be actually suspended for 60 days; and that she be placed on probation for two years on conditions and that she be suspended for one year, that execution of the suspension be stayed.

## **II. Pertinent Procedural History**

On February 20, 2008, the Office of Probation filed and properly served a motion to revoke probation on respondent. Respondent, representing herself, filed an opposition on March 17, 2008.

The court took this matter under submission on April 29, 2008, after a brief hearing.

## **III. Findings of Fact and Conclusions of Law**

The following findings of fact are based on declarations, testimony and documentary evidence submitted at the hearing.

### **A. Jurisdiction**

Respondent was admitted to the practice of law in California on September 23, 1991, and has since been a member of the State Bar of California.

### **B. Probation Conditions in Supreme Court Case No. S150150**

On April 13, 2007, in Supreme Court case No. S150150, the California Supreme Court ordered that:

1. Respondent be suspended from the practice of law for one year, that execution of the suspension be stayed, and that she be placed on probation for two years, as recommended by the Hearing Department of the State Bar Court in its order approving stipulation filed December 11, 2006 (State Bar Court case No. 06-H-12155); and
2. Respondent comply with certain probation conditions, including, but not limited

to:

- a. Within 30 days from the effective date of discipline, she must contact the Office of Probation and schedule a meeting with her assigned probation deputy to discuss the probation conditions;
- b. Submit quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of probation; and
- c. Obtain a mental health evaluation from a licensed psychiatrist (or other mental health professional approved by the State Bar) within 30 days of the effective date of discipline and respondent must provide a copy of the psychiatrist's evaluation to the Office of Probation within 10 days of preparation, including a treatment plan, if any.

Notice of this order was properly served upon respondent in the manner prescribed by California Rules of Court, rule 8.532(a), at respondent's official address in accordance with Business and Professions Code section 6002.1.<sup>1</sup>

**C. The Office of Probation, Quarterly Reports and Mental Health Evaluation**

Respondent did not contact the Office of Probation by June 12, 2007, to schedule a meeting to discuss the terms of her probation.

On June 28, 2007, the Office of Probation sent a letter to respondent outlining the terms and conditions of her probation. It was not returned to the State Bar as undeliverable.

On July 11, 2007, respondent filed her July 10 quarterly report, stating that she did not have a treating psychiatrist and that she was not undergoing treatment with any mental health professional.

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<sup>1</sup>References to sections are to the Business and Professions Code.

On July 13, 2007, the Office of Probation telephoned respondent and told her to submit a written statement why she was out of compliance regarding her mental health treatment condition. She was also reminded that she was to contact her probation deputy to review the probation conditions. As of February 20, 2008, she has failed to do so.

On October 20, 2007, she mailed the October 10 quarterly report. The report was later received but never filed because respondent did not sign it. On March 17, 2008, she filed the January 10, 2008 report.

On January 11, 2008, half a year later, respondent was again notified that she was not in compliance with her probation conditions. Probation Deputy Cindy Jollotta of the Office of Probation left her a telephone message regarding her noncompliance but respondent never returned the call.

#### **D. Respondent's Arguments**

In her declaration in opposition to the motion to revoke her probation, respondent admitted that she did not obtain a mental health evaluation from a licensed psychiatrist.<sup>2</sup> But she reasoned that her failure to do so was due to her difficult financial condition. Because her health insurance plan does not cover those services, she was unable to afford the costs on her own. Moreover, she declared that because she did not have sufficient funds, she had to move out of her rental home and into her father's home with her two children.

Also, respondent declared that in August 2007, she had told the Office of Probation that she could not afford the costs of psychological counseling or the costs of a mental health evaluation. She had believed that by informing the Office of Probation, her failure to provide the evaluation would be excused.

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<sup>2</sup>On April 28, 2008, respondent had set up a mental health evaluation with a psychologist, whom her psychiatrist referred, on May 1, 2008.

The court sympathizes with respondent's predicament. But, absent any financial statement or motion to modify her probation conditions based on financial hardship, her brief reference to her financial situation is not clear and convincing evidence to demonstrate financial difficulty. Moreover, the Office of Probation did not inform her that she did not need a mental health evaluation. And it was not reasonable for her to believe that the Office of Probation could forgive such failure. Thus, her arguments of financial difficulty and misunderstanding are rejected.

Furthermore, respondent testified that she mailed the October 10, 2007 quarterly report on October 20, 2007, claiming that because of the wildfires in San Diego County during that period, a lot of mail was not delivered, including hers. Although the Office of Probation received the report, it was not filed because it did not have a signature.

#### **E. Conclusions of Law**

Section 6093, subdivision (b), provides that violation of a probation condition constitutes cause for revocation of any probation then pending and may constitute cause for discipline. Section 6093, subdivision (c), provides that the standard of proof is the preponderance of the evidence. 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." (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536.)

Respondent violated her probation conditions by failing to do the following:

1. Contact the Office of Probation by June 12, 2007 to schedule a meeting to discuss the terms of her probation;
2. Timely submit three quarterly reports (July 10, 2007, October 10, 2007, and January 10, 2008);

3. Provide a mental health evaluation from a licensed psychiatrist by June 12, 2007;  
and
4. Submit reports showing a mental health treatment plan and her compliance with  
its recommendations.

Therefore, the State Bar has demonstrated by a preponderance of the evidence that respondent willfully violated the probation conditions ordered by the Supreme Court in its April 13, 2007 order.

As a result, the revocation of respondent's probation in California Supreme Court case No. S150150 is warranted.

#### **IV. Mitigating and Aggravating Circumstances**

The parties bear the burden of proving mitigating and aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)<sup>3</sup>

##### **A. Mitigation**

Respondent's financial distress and mental health condition, which is now being treated by medication, are not sufficiently supported by clear and convincing evidence and thus are not considered as mitigation. (Std. 1.2(e)(iv).)

But respondent's active pro bono practice merits some weight in mitigation. Of her current 83 client matters, 20 are pro bono. (Std. 1.2(e)(vi).)

##### **B. Aggravation**

In aggravation, respondent has two prior records of discipline. (Std. 1.2(b)(i).)

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<sup>3</sup>All further references to standards are to this source.

1. Effective April 13, 2005, respondent was privately reprovved for holding herself out as entitled to practice law and engaged in the unauthorized practice of law. (State Bar Court case No. 04-O-15587.)

2. Effective May 13, 2007, respondent was ordered suspended for one year, stayed, and placed on probation for two years for failing to complying with the conditions attached to her private reprovval, including failing to file and timely file certain quarterly reports and failing to complete the ethics school. (Supreme Court case No. S150150; State Bar Court case No. 06-H-12155.)

Respondent committed multiple acts of wrongdoing, including failing to timely submit reports due July 10 and October 10, 2007, and January 10, 2007, and failing to obtain a mental health evaluation. (Std. 1.2(b)(ii).)

Respondent's misconduct was clearly followed by uncharged probation violations. (Std. 1.2(b)(iii).) Specifically, respondent failed to sign up for and take the Multistate Professional Responsibility Exam and the State Bar Ethics School by May 13, 2008.<sup>4</sup> And she did not timely file her April 10, 2008 quarterly report.

An attorney's continued failure to comply with her probation conditions after being notified of that noncompliance is properly considered a substantial aggravating circumstance. It demonstrates indifference toward rectification of or atonement for the consequences of one's misconduct. (Std. 1.2(b)(v); *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 530.) Such conduct is particularly troubling where, as here, respondent has been previously disciplined for failing to comply with the conditions of probation. And, although the motion to revoke her probation was filed in February 2008, which put her on notice that her

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<sup>4</sup> Respondent has signed up to take the MPRE on August 8, 2008.

probation status was in jeopardy and that her past quarterly reports were delinquent, respondent still failed to timely submit her April 10, 2008 quarterly report.

## V. Discussion

Public protection and attorney rehabilitation are the primary goals of disciplinary probation. (*In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445, 452.)

“[T]here has been a wide range of discipline imposed for probation violations from merely extending probation ... to a revocation of the full amount of the stayed suspension and imposition of that amount as an actual suspension.” (*In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567, 573.)

In determining the level of discipline to be imposed, 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. 525, 540.) The extent of the discipline is dependent, in part, on the nature of the probation violation and its relationship to respondent’s prior misconduct. (*Ibid.*)

Here, respondent’s two prior records involved unauthorized practice of law and probation violations. In this third disciplinary matter, respondent again failed to comply with the court-ordered conditions of her probation, to which she specifically stipulated. She failed to timely file four quarterly reports, failed to obtain a mental health evaluation, and failed to take and pass the MPRE and State Bar Ethics School.

“[A] probation ‘reporting requirement permits the State Bar to monitor [an attorney probationer’s] compliance with professional standards.’” (*In the Matter of Wiener* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759, 763, citing *Ritter v. State Bar* (1985) 40 Cal.3d 595, 605.)

In addition, “an attorney probationer’s filing of quarterly probation reports is an important step towards the attorney’s rehabilitation.” (*In the Matter of Wiener, supra*, 3 Cal. State Bar Ct. Rptr. at p. 763.)

The State Bar contends that respondent’s probation should be revoked because her probation violations demonstrate a lack of concern about professional responsibilities and that the full amount of stayed suspension of one year should be imposed for respondent’s rehabilitation.

Respondent, on the other hand, argues that she had filed all quarterly reports, albeit late, and that she did not have the funds to obtain a mental health evaluation due to financial hardship. In particular, she is a single mother of two children. She thus urges the court to extend her probation, arguing that any period of actual suspension would be grossly disproportionate to her misconduct.

Respondent’s prior misconduct and her present probation violations involve inattention to her professional duties and a continued unwillingness or inability to conform to the standards required of attorneys licensed in this state. While she may be facing financial challenges, her living circumstances or earning ability was not the cause of her tardiness to file the quarterly reports. Absent compelling mitigating circumstances, an attorney who willfully violates a significant condition of probation can anticipate actual suspension as the expected result. (*In the Matter of Gorman, supra*, 4 Cal. State Bar Ct. Rptr. at p. 574.)

The court finds guidance in *In the Matter of Gorman, supra*, 4 Cal. State Bar Ct. Rptr. 567; *In the Matter of Laden* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 678; and *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445.

In *Gorman*, the attorney was actually suspended for 30 days with a two-year probation and a two-year stayed suspension after he violated two probation conditions to timely complete

restitution and ethics school. His cooperation, good faith efforts to pay restitution, and emotional difficulties were considered as mitigation. But these factors did not outweigh the aggravating circumstances that included prior misconduct, the fact that the State Bar had to repeatedly remind the attorney to comply with probation, the fact that the attorney misrepresented the official participation of a third party in the proceedings, and the fact that the attorney's failure to pay restitution was significantly related to the underlying misconduct. He had one prior record of discipline.

In *Laden*, the attorney was actually suspended for 90 days and until he made restitution for his numerous untimely restitution payments to a single client and several delinquent quarterly probation reports. The attorney had four prior records of discipline, but this was the third matter involving his failure to make timely restitution to the same client. But for his strong mitigating evidence, including financial hardship, good faith efforts, cooperation with the client, recognition of the seriousness of his wrongdoing and community service, the Review Department would have recommended more than a 90-day actual suspension.

In *Howard*, the attorney was actually suspended for one year because he failed to submit two quarterly probation reports, to timely deliver financial records to a former client's accountant, and defaulted in the disciplinary proceeding. The attorney's lack of cooperation with the State Bar was a serious concern.

Respondent's misconduct is less serious than that of *Howard* and *Laden* in that respondent has participated in these proceedings, did not completely abandon her probationary duties since she did file her quarterly reports and had made an appointment to obtain a mental health evaluation and to take the MPRE, albeit late, and did not have four prior records of discipline. However, the severity of her violations is more than that of *Gorman* in that at the

time of hearing, she had yet to obtain a mental health evaluation or complete the ethics school and MPRE, whereas the attorney in *Gorman* was late in making restitution payment by nine months and completing ethics school by six weeks.

Although significant discipline is warranted for respondent's probation violations, the court does not believe that imposing the entire period of stayed suspension is necessary to achieve the goals of attorney disciplinary probation. The State Bar's recommendation that respondent's probation be revoked without further conditions is inadequate to impress upon her the importance of strict compliance with probation conditions as an integral step toward rehabilitation, and that she be actually suspended for one year, the entire original period of stayed suspension, is excessive and not necessary.

The court finds good cause for granting the State Bar's motion to revoke respondent's probation and concludes that part of the period of the stayed suspension be imposed. Balancing all relevant facts and circumstances to reach the appropriate recommendation of degree of discipline, the court finds that a 60-day actual suspension with a two-year probation would be sufficient to achieve the goals of attorney disciplinary probation.

The State Bar further recommends that respondent be placed on involuntary inactive status under section 6007(d) for failing to comply with the terms of her disciplinary probation. However, it is possible that if respondent was placed on involuntary inactive status, by the time the Supreme Court order imposing discipline in this matter became effective, respondent would have been precluded from practicing law for a longer period than the recommended discipline. Therefore, based on the short period of actual suspension recommended, the court denies the State Bar's request to enroll respondent involuntarily inactive under section 6007(d).

## VI. RECOMMENDATION

Accordingly, the court recommends as follows:

### A. Discipline

The court recommends that the probation of respondent **Robin Chandler Carr**, previously ordered in Supreme Court Case No. S150150 (State Bar Court Case No. 06-H-12155) be revoked; that the previous stay of execution of the suspension be lifted; that respondent be actually suspended from the practice of law for 60 days; that she be suspended for one year, that execution of such suspension be stayed; and that she be placed on probation for two years on the following conditions:

1. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all the conditions of this probation;
2. Respondent must maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation, her current office address and telephone number or, *if no office is maintained*, an address to be used for State Bar purposes. (Bus. & Prof. Code, § 6002.1, subd. (a).) Respondent must also maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation, her current home address and telephone number. (See Bus. & Prof. Code, § 6002.1, subd. (a)(5).) Respondent's home address and telephone number will *not* be made available to the general public. (Bus. & Prof. Code, § 6002.1, subd. (d).) Respondent must notify the Membership Records Office and the Office of Probation of any change in any of this information no later than 10 days after the change;
3. Respondent must report, in writing, to the State Bar's Office of Probation no later than January 10, April 10, July 10 and October 10 of each year or part thereof in

which respondent is on probation (reporting dates). However, if respondent's probation begins less than 30 days before a reporting date, respondent may submit the first report no later than the second reporting date after the beginning of her probation. In each report, respondent must state that it covers the preceding calendar quarter or applicable portion thereof and certify by affidavit or under penalty of perjury under the laws of the State of California as follows:

- a. In the first report, whether respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation since the beginning of probation; and
- b. In each subsequent report, whether respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation during that period.

During the last 20 days of this probation, respondent must submit a final report covering any period of probation remaining after and not covered by the last quarterly report required under this probation condition. In this final report, respondent must certify to the matters set forth in subparagraph (b) of this probation condition by affidavit or under penalty of perjury under the laws of the State of California;

4. Subject to the proper or good faith assertion of any applicable privilege, respondent must fully, promptly, and truthfully answer any inquiries of the State Bar's Office of Probation that are directed to respondent, whether orally or in writing, relating to whether respondent is complying or has complied with the conditions of this probation;

5. Upon the request of the Office of Probation, respondent must provide the Office of Probation with medical waivers and access to all of respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, Office of the Chief Trial Counsel, and the State Bar Court, who are directly involved with maintaining, enforcing or adjudicating this condition;
6. Other medical conditions:
  - a. Respondent must obtain a mental health evaluation from a licensed psychiatrist (or other mental health professional approved by the Office of the Chief Trial Counsel and/or State Bar Office of Probation, who is qualified to perform the evaluation described herein) within 30 days of the effective date of discipline.<sup>5</sup> The approved evaluator will, at the earliest practicable time, prepare a written report based on an evaluation utilizing the DSM IV axis. The evaluator's report must include, without limitation, a treatment plan, if any, to be followed for the duration of respondent's period of probation. The treatment plan, if any, may be modified from time to time during the probation based on subsequent written evaluations conducted by an approved psychiatrist or other mental health professional. The mental health evaluation discussed herein, and any follow-up evaluation as well as all treatment, will be at the respondent's expense.

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<sup>5</sup> Respondent declared that she had scheduled such a mental health evaluation in May 2008.

b. Copies of all evaluations conducted under this section must be provided to the Office of Probation as well as to the Office of the Chief Trial Counsel within 10 days of preparation;

c. Respondent is to comply with any and all mental health treatment plans developed by the licensed psychiatrist, psychologist or other approved mental health professional as a result of the mental health conditions. Along with every Quarterly Report required to be furnished to the Office of Probation, respondent must enclose a written status report from all treatment providers indicating whether respondent was in compliance during the preceding quarter, and any other relevant information. Should respondent terminate from treatment prior to successful completion, respondent must immediately self-report this to the Office of Probation;

d. Respondent understands the court will refer this condition to the Office of Probation for monitoring. Respondent must execute all waivers necessary to effect this provision;

e. If respondent's treating therapist determines that there has been a substantial change in respondent's condition such that treatment is no longer required or recommended, respondent must authorize and instruct her treating therapist to prepare and submit to the Office of Probation a written report describing the substantial change in respondent's condition, setting forth the therapist's opinion that treatment is not or is no longer required or recommended and setting forth the basis for the therapist's opinion. Respondent must also authorize and instruct her therapist to respond to any questions and/or requests for further explanation or clarification that the Office of Probation may have with

respect to the therapist's report. Upon receipt by the Office of Probation of a satisfactory report from respondent's therapist describing the substantial change in respondent's condition, setting forth the therapist's opinion that treatment is not, or is no longer required or recommended for respondent, and setting forth the basis for the therapist's opinion, respondent will be relieved of her obligation to comply with the mental health conditions set forth herein;

7. Unless respondent previously completed the State Bar Ethics School within the prior two years, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School within one year of the effective date of the discipline herein, given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015-2299, and passage of the test given at the end of that session. (Rules Proc. of State Bar, rule 290.) Arrangements to attend Ethics School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education Requirement (MCLE), and respondent will not receive MCLE credit for attending Ethics School (Rules Proc. of State Bar, rule 3201);
8. Respondent's probation will commence on the effective date of the Supreme Court order imposing discipline in this matter; and
9. At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for one year that is stayed will be satisfied and that suspension must be terminated.

**B. Multistate Professional Responsibility Examination**

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination since she was previously ordered to do so in S150150. Failure to pass the MPRE within the specified time results in actual suspension by the Review Department, without further hearing, until passage.

**C. Costs**

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.

Dated: May \_\_\_\_, 2008

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**RICHARD A. HONN**  
Judge of the State Bar Court