

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 08-PM-12377-RAH
)	
JUDITH A. CENTERS)	ORDER GRANTING MOTION TO
)	REVOKE PROBATION AND ORDER OF
Member No. 150247)	INACTIVE ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

I. Introduction

In this probation revocation proceeding, respondent **Judith A. Centers** 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, among other things, 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.

The court finds, by preponderance of the evidence, that respondent has violated her probation conditions and hereby grants the Office of Probation's motion to revoke. The court recommends, among other things, that respondent's probation be revoked, that the previously stayed suspension be lifted, and that respondent be actually suspended from the practice of law for one year and until she makes restitution, as discussed *post*.

II. Pertinent Procedural History

On June 17, 2008, the Office of Probation filed and properly served a motion to revoke probation on respondent, pursuant to Rules of Procedure of the State Bar of California (Rules of

Procedure), rules 560, et seq. A copy of said motion was sent to respondent's official membership records address¹ by certified mail, return receipt requested. Respondent did not file a response, as required by rule 563(b) of the Rules of Procedure. The court ultimately took this matter under submission on September 3, 2008.

III. Findings of Fact and Conclusions of Law

All factual allegations contained in the motion to revoke probation and supporting documents are deemed admitted upon respondent's failure to file a response. (Rules Proc. of State Bar, rule 563(b)(3).)

A. Jurisdiction

Respondent was admitted to practice law in California on December 5, 1990, and has since been a member of the State Bar of California.

B. Probation Conditions in Supreme Court Case No. S156899

On December 6, 2007, in Supreme Court Case No. S156899 (Supreme Court order), the California Supreme Court ordered that:

1. Respondent be suspended from the practice of law for one year, that execution of suspension be stayed, and that she be placed on probation for two years, on condition that she be actually suspended for 60 days; and

2. Respondent comply with other conditions of probation recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation filed August 8, 2007, including, but not limited to:

- a. Within thirty (30) days from the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss the terms and conditions of probation;

¹ Pursuant to Evidence Code section 452, subdivision (h), the takes judicial notice of respondent's official membership records address history.

b. Submitting quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation;

c. Making restitution to Davida Oberman in the amount of \$45,133.13, plus interest of 10% per annum, accruing from May 25, 2005.² Respondent was to make monthly payments to Ms. Oberman, beginning 30 days after the final Supreme Court order in this matter, and in an amount to be determined by the Office of Probation.

Notice of the Supreme Court order was served upon respondent in the manner prescribed by rule 8.264 of the California Rules of Court at respondent's official address in accordance with Business and Professions Code section 6002.1.³ The Supreme Court order became effective on January 5, 2008.

C. Probation Violations

On December 17, 2007, the Office of Probation sent a letter to respondent at her official address, outlining the terms and conditions of her probation, including the requirement that, beginning January 5, 2008, respondent was required to make regular restitution payments to Ms. Oberman in the amount of \$2,850 a month. This letter was not returned to the State Bar as undeliverable, or for any other reason.

On May 12, 2008, the Office of Probation received a telephone call from Eugene Wolver, Jr., Ms. Oberman's attorney. Mr. Wolver advised the Office of Probation that respondent had yet to make any restitution payments to Ms. Oberman.

² Because the restitution amount reflected an outstanding judgment, the terms of probation allowed for respondent to pay a lesser amount in restitution upon her negotiating or settling the outstanding judgment for a lesser amount, in full satisfaction of the judgment.

³ All references to section(s) are to the Business and Professions Code, unless otherwise stated.

On May 12, 2008, the Office of Probation telephoned Ms. Oberman. She confirmed that she had not received any restitution payments from respondent and had not had any contact from respondent.

On May 12, 2008, the Office of Probation wrote respondent and advised her of her noncompliance. This letter specifically addressed respondent's failure to contact the Office of Probation to schedule an initial meeting, her failure to file her first quarterly report, and her failure to provide the Office of Probation with proof of payment of monthly restitution payments to Ms. Oberman. Said letter was not returned as undeliverable, or for any other reason.

On May 12, 2008, the Office of Probation also telephoned respondent at her membership records telephone number. The Office of Probation left a voice mail message requesting that respondent call the Office of Probation as soon as possible. Respondent did not return the Office of Probation's telephone call.

Based on the evidence submitted by the Office of Probation, respondent failed to do the following:

1. Contact the Office of Probation by February 8, 2008, to schedule a meeting with her assigned probation deputy to discuss the terms and conditions of her probation;
2. Submit her first quarterly report, due April 10, 2008; and
3. Provide the Office of Probation with proof that respondent made her monthly restitution payments to Ms. Oberman.⁴

To establish culpability for a probation violation charged in a probation revocation proceeding, the State Bar must prove, by a preponderance of the evidence, the text of the probation condition that the attorney is charged with violating and that the attorney willfully

⁴ There is absolutely no indication that respondent negotiated or settled the outstanding judgment for a lesser amount, in full satisfaction of the judgment.

failed to comply with it. Willfulness in this context does not require a bad purpose or evil intent. Instead, it requires only a general purpose or willingness to commit an act or permit an omission. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536.)

The court finds that respondent violated the conditions of her probation and that those violations were willful. Respondent's willful probation violations warrant the revocation of her probation. (Section 6093, subd. (b).)

IV. Mitigating and Aggravating Circumstances

A. Mitigation

Since respondent did not file a response to the probation revocation motion, no evidence in mitigation was presented and none is apparent from the record. (Rules Proc. of State Bar, tit. IV, Stds. For Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)⁵

B. Aggravation

In aggravation, respondent has a prior record of discipline. (Std. 1.2(b)(i).) Effective January 5, 2008, in the underlying matter, respondent was ordered suspended for one year, stayed, and placed on probation for two years, with 60 days actual suspension, for committing seven acts of misconduct while representing Oberman in two separate matters. Said misconduct consisted of failing to perform legal services with competence (two counts), failing to respond promptly to reasonable status inquiries (two counts), failing to keep her client reasonably informed of significant developments (two counts), failing to promptly release the client's file, and appearing without authority. Respondent participated in this prior proceeding.

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.)

⁵ All further references to standard(s) are to this source.

“[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 has given the court no indication that she intends to comply with any of the conditions of her previously imposed probation. In doing so, respondent has failed to undertake any of the rehabilitative steps that were deliberately crafted to insure public protection.

In consideration of respondent’s violation of probation conditions, her lack of participation in these proceedings, and her continuing noncompliance with probation conditions despite the Office of Probation’s efforts to secure it, the court does not believe it worthwhile to recommend again placing her on probation subject to conditions.

The prior disciplinary order “provided [respondent] an opportunity to reform [her] conduct to the ethical strictures of the profession. [Her] culpability in [the matter] presently under consideration sadly indicates either [her] unwillingness or inability to do so.” (*Arden v. State Bar* (1987) 43 Cal.3d 713, 728.)

Hence, the court finds good cause to GRANT the motion to revoke respondent’s probation and recommends, among other things, that the entire period of her stayed suspension be imposed.

VI. Recommended Discipline

Accordingly, the court recommends as follows:

1. That the probation of respondent **Judith A. Centers** previously ordered in Supreme Court case No. S156899 (State Bar Court case No. 06-O-13768) be revoked;
2. That the previous stay of execution of the suspension be lifted; and
3. That respondent be actually suspended from the practice of law for one year and until respondent makes restitution to Davida Oberman in the amount of \$45,133.13 plus 10% interest per annum from May 25, 2005 (or to the Client Security Fund to the extent of any payment from the fund to Davida Oberman, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnishes satisfactory proof thereof to the State Bar's Office of Probation. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d).

If respondent is actually suspended for two years or more, she must remain actually suspended until she provides proof to the satisfaction of the State Bar Court of her rehabilitation, present fitness to practice and present learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.

The court recommends that respondent be ordered to comply with California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter. Willful failure to comply with the provisions of rule 9.20 may result in suspension, disbarment, denial of reinstatement, conviction of contempt, or criminal conviction.⁶

⁶Respondent is required to file a rule 9.20(c) affidavit even if she has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination as she was previously ordered to do so in Supreme Court matter S156899.

VII. 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.

VIII. Order of Involuntary Inactive Enrollment

Respondent is ordered to be involuntarily enrolled inactive under Business and Professions Code section 6007, subdivision (d)(1).⁷ This inactive enrollment order will be effective three calendar days after the date upon which this order is served.

Dated: September ___, 2008

RICHARD A. HONN
Judge of the State Bar Court

⁷Any period of involuntary inactive enrollment will be credited against the period of actual suspension ordered. (Bus. & Prof. Code, § 6007, subd. (d)(3).)