

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 09-PM-10170-RAP
)	
NATASHA ANKE KOTTO)	ORDER GRANTING MOTION TO
)	REVOKE PROBATION AND FOR
Member No. 161806)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

I. Introduction

In this probation revocation proceeding, respondent **Natasha Anke Kotto** (“respondent”) 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 filed a motion in opposition to the revocation of her probation and requested a hearing. Respondent subsequently failed to appear at the scheduled hearing.

The court finds, by a preponderance of the evidence, that respondent has violated her probationary conditions and hereby grants the motion to revoke her probation. The court recommends, among other things, that respondent’s probation in Supreme Court matter S134803 (State Bar Court case nos. 02-N-15508; 04-O-10272; 04-O-15172) be revoked, and that respondent be actually suspended for three years and until she has shown proof satisfactory to

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.¹

II. Pertinent Procedural History

On January 14, 2009, 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. On February 17, 2009, respondent filed a response opposing the motion to revoke her probation and requesting a hearing.

On March 11, 2009, the court notified the parties that, pursuant to respondent’s request, the hearing for the present matter was scheduled for April 27, 2009. A copy of this notice was properly served upon respondent on March 11, 2009. Said copy was not subsequently returned to the State Bar Court by the United States Postal Service as undeliverable or for any other reason.

On April 22, 2009, the Office of Probation filed a motion requesting that the court take judicial notice of certified copies of two of respondent’s prior disciplines. Respondent did not file a response to this motion. The court hereby grants the Office of Probation’s request for judicial notice.

On April 27, 2009, respondent failed to appear for the scheduled hearing and this matter was taken under submission that same day.

III. Findings of Fact and Conclusions of Law

The following findings of fact are based on the declarations and exhibits submitted in support of the motion to revoke probation. (Rules Proc. of State Bar, rule 563(d)(2).)

¹ All further references to standard(s) are to this source.

Respondent's declaration and supporting exhibits attached to her February 17, 2009, response were not admitted. (Rules Proc. of State Bar, rule 563(d)(3).)

A. Jurisdiction

Respondent was admitted to the practice of law in California on December 1, 1992, and has since been a member of the State Bar of California.

B. Probation Conditions of Supreme Court Case No. S134803

On August 29, 2005, in Supreme Court case no. S134803, the California Supreme Court ordered that:

1. Respondent be suspended from the practice of law for three years and until she provides proof satisfactory to the State Bar Court of her rehabilitation, fitness to practice and present learning and ability in the general law pursuant to standard 1.4(c)(ii), that execution of the suspension be stayed, and that she be placed on probation for five years on condition that she be actually suspended for 18-months and until she complies with standard 1.4(c)(ii); and

2. Respondent comply with other conditions of probation, as recommended by the Hearing Department of the State Bar Court in its order approving stipulation filed April 27, 2005 (State Bar Court case nos. 02-N-15508; 04-O-10272; 04-O-15172), including, but not limited to:

- a. Submitting to the Office of Probation on every January 10, April 10, July 10, and October 10, a written probation report stating, under penalty of perjury, whether she complied with the Rules of Professional Conduct of the State Bar of California, the State Bar Act, and all the conditions of probation during the preceding calendar quarter ("quarterly reports");

- b. Submitting to the Office of Probation, with each quarterly report, satisfactory proof of the following substance abuse and mental health requirements:²
- i. Her attendance at a minimum of four acceptable abstinence-based support meetings per week;³
 - ii. Her attendance at a minimum of one meeting of The Other Bar (“Other Bar”)⁴ per week;
 - iii. Her compliance with all instructions and requirements of the Office of Probation for testing of her physical condition for the presence of alcohol and/or drugs;⁵ and
 - iv. Her participation in individual therapy with an alcohol addiction specialist who meets the approval of the Office of Probation.

Notice of the August 29, 2005 Supreme Court order was properly served on 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 6002.1.⁶

On September 14, 2005, the Office of Probation mailed an additional copy of the August 29, 2005 Supreme Court order to respondent at her official membership records address.

² Pursuant to the stipulation, these conditions were derived from recommendations of a medical provider certified by the American Society of Addiction Medicine after his evaluation of respondent.

³ Twelve-step groups such as Alcoholics Anonymous and Narcotics Anonymous, among others, were deemed acceptable.

⁴ The Other Bar is an attorney recovery support group.

⁵ Respondent was subsequently instructed by the Office of Probation to have substance abuse testing quarterly.

⁶ All further references to section(s) are to the Business and Professions Code, unless otherwise stated.

Included in this mailing was, among other things, a letter confirming the terms and conditions of respondent's probation.

C. Findings of Fact

1. Quarterly Probation Reports

Respondent was required under the terms of her probation to submit quarterly reports to the Office of Probation in a timely manner. In each quarterly report, respondent was required to state, under the penalty of perjury, whether she has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter.

The evidence introduced by the Office of Probation demonstrates that respondent failed to file her quarterly reports due April 10, July 10, and October 10, 2008 and January 10, 2009. In addition, her quarterly report due January 10, 2006, was filed late on February 13, 2006.

2. Abstinance-Based Support Meetings

Respondent was required to provide the Office of Probation with satisfactory proof of her attendance at a minimum of four acceptable abstinance-based support meetings per week. Respondent, however, failed to provide the Office of Probation with proof that she attended five required abstinance-based support meetings between January 2006 and November 2007. In addition, respondent's January 10, 2006 report regarding her attendance at such meetings was filed late on February 13, 2006.

3. Other Bar Meetings

Respondent was required to provide the Office of Probation with satisfactory proof of her attendance at a minimum of one Other Bar meeting per week. Respondent, however, failed to provide the Office of Probation with proof that she attended 14 required Other Bar meetings between October 2005 and December 2007. In addition, respondent failed to file her Other Bar reports due April 10, July 10, and October 10, 2008 and January 10, 2009.

4. Laboratory Testing

Respondent was required to comply with all instructions and requirements of the Office of Probation for testing her physical condition for the presence of alcohol and/or drugs.

Respondent was subsequently instructed by the Office of Probation to have substance abuse testing quarterly. Respondent was to then provide a declaration with each quarterly report stating, under penalty of perjury, that she was in compliance with this condition.

Respondent failed to provide proof of laboratory testing to the Office of Probation for six different quarters.⁷ In addition, respondent failed to timely provide proof of laboratory testing to the Office of Probation for three other quarters.

5. Individual Therapy

Respondent was required to participate in individual therapy with an alcohol addiction therapist who would recommend the frequency and duration of sessions. Respondent was ordered to instruct the therapist to prepare and submit a report to the Office of Probation for each calendar quarter describing respondent's compliance with attendance and treatment recommendations. With each quarterly report, respondent was to report her compliance with this condition and provide proof of attendance at the therapy sessions.

Respondent failed to provide the Office of Probation with proof of attendance at therapy sessions for six different quarters. In addition, respondent filed her proof of compliance late on one occasion, and reported her non-compliance during another quarter.

D. 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

⁷ Said proof was due by January 10 and July 10, 2006; April 10, July 10, and October 10, 2008; and January 10, 2009.

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. [Citations.]” (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536.)

Respondent violated her probation conditions by failing to:

1. Timely submit to the Office of Probation all of her required quarterly reports;
2. Timely submit to the Office of Probation proof that she attended all of her required abstinence-based support meetings;
3. Timely submit to the Office of Probation proof that she attended all of her required Other Bar meetings;
4. Timely submit to the Office of Probation proof that she had complied with all of her laboratory testing requirements; and
5. Timely submit to the Office of Probation proof that she had attended all of her required individual therapy sessions.

Therefore, the Office of Probation has demonstrated by a preponderance of the evidence that respondent willfully violated the probation conditions ordered by the Supreme Court in its August 29, 2005 order. As a result, the revocation of respondent’s probation in California Supreme Court case no. S134803 is warranted.

IV. Mitigating and Aggravating Circumstances

The parties bear the burden of proving mitigating and aggravating circumstances by clear and convincing evidence. (Std. 1.2.)

A. Mitigation

Respondent failed to demonstrate, by clear and convincing evidence, the existence of any mitigating circumstances. (Std. 1.2(e).)

B. Aggravation

A member's prior record of discipline is an aggravating factor. (Std. 1.2(b)(i).) Here, respondent has been previously disciplined on three separate occasions.

Effective February 25, 2001, respondent received a public reproof for practicing law while she was suspended for failure to pay bar dues. In mitigation, respondent demonstrated candor and cooperation with the State Bar. In addition, respondent's misconduct occurred while she was suffering from emotional/physical difficulties and did not result in any harm. There were no aggravating circumstances.

Effective October 4, 2002, respondent, in Supreme Court case no. S107562, was ordered suspended for two years, stayed, with three years' probation on condition that she be actually suspended for six months and until she proves her rehabilitation, fitness to practice, and learning and ability in the general law pursuant to standard 1.4(c)(ii). This matter involved respondent's failure to comply with the terms and conditions of her public reproof and two criminal conviction matters for driving under the influence of alcohol.⁸ In aggravation, respondent had a prior record of discipline. In mitigation, respondent was participating in the Lawyer Assistance Program and had checked herself into a residential recovery program.

Effective September 28, 2005, respondent, in Supreme Court case no. S134803 (the underlying matter), was ordered suspended for three years and until she provides proof satisfactory to the State Bar Court of her rehabilitation, fitness to practice and present learning and ability in the general law pursuant to standard 1.4(c)(ii), stayed, with five years' probation on condition that she be actually suspended for 18 months and until she proves her rehabilitation, fitness to practice, and learning and ability in the general law pursuant to standard 1.4(c)(ii). In this matter, respondent stipulated that she failed to comply with several terms and conditions of

⁸ These two convictions involved blood-alcohol levels at or in excess of four times the legal limit.

probation ordered in Supreme Court case no. S107562, and violated the Supreme Court's order that she timely comply with subdivisions (a) and (c) of rule 955 of the California Rules of Court.⁹ In aggravation, respondent had two prior disciplines and committed multiple acts of misconduct. In mitigation, respondent was candid and cooperative with the State Bar.

As an additional point in aggravation, respondent's misconduct in the current proceeding involves multiple acts of wrongdoing. (Std. 1.2(b)(ii).)

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. at p. 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 reason to believe that she will comply with the conditions of her previously imposed probation. Although respondent has been placed on disciplinary probation on three previous occasions, each time resulted in her failure to

⁹ Effective January 1, 2007, rule 955 was renumbered and is now rule 9.20.

satisfactorily complete her probationary requirement. Therefore, the court finds no compelling reason 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 that the probation of respondent **Natasha Anke Kotto** previously ordered in Supreme Court case no. S134803 (SBC case nos. 02-N-15508; 04-O-10272; 04-O-15172) be revoked; and that:

1. She be suspended from the practice of law for a minimum of three years and remain suspended until the following requirement is satisfied:
 - i. She must provide proof satisfactory to the State Bar Court of her rehabilitation, fitness to practice and present learning and ability in the general law pursuant to standard 1.4(c)(ii), 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.¹⁰

¹⁰ Respondent 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 successfully complete State Bar Ethics School or to take and pass the Multistate Professional Responsibility Examination as she was ordered to do so in Supreme Court matter S134803 (SBC case nos. 02-N-15508; 04-O-10272; 04-O-15172).

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).¹¹ This inactive enrollment order will be effective three calendar days after the date upon which this order is served.

Dated: May 18, 2009.

RICHARD A. PLATEL
Judge of the State Bar Court

¹¹Any period of involuntary inactive enrollment will be credited against the period of actual suspension ordered. (Bus. & Prof. Code, § 6007, subd. (d)(3).)